

Town Of Sandwich

THE OLDEST TOWN ON CAPE COD



BOARD OF APPEALS

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TOWN OF SANDWICH ZONING BOARD OF APPEALS

COMPREHENSIVE PERMIT UNDER G.L. C. 40B, §§20-23

PERMIT NUMBER 09-03

TOWN CLERK
TOWN OF SANDWICH

APPLICANT: Forestdale Village, LLC

APR 15 2010

LANDOWNER: Forestdale Village, LLC
PO Box 746
Forestdale, MA 02644

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RECEIVED & RECORDED

SUBJECT PROPERTY: 74 and 76 Route 130, Forestdale, Massachusetts
Map 11, Parcels 241, 242, 244, 244, 246 and 253
Map 12, Parcels 94, 95 and 96

DATES OF PUBLIC HEARINGS: January 12, February 9, February 23 and March 9, 2010

DISPOSITION: Comprehensive Permit Approved with Conditions

Upon Motion by Robert Jensen and seconded by Fredrick Watt, the Sandwich Zoning Board of Appeals (Members: Erik Van Buskirk, Christopher Neven, Frederick Watt, James Killion and Robert Jensen voting unanimously in favor) voted on April 13, 2010 to GRANT the Application of Forestdale Village, LLC ("owner and applicant") requesting a Comprehensive Permit under Massachusetts General Laws, Chapter 40B, §§20-23 for development of 148 residential units on 58.9-acres of land located at 74 and 76 Route 130, Forestdale, Massachusetts in the R2 Zoning District and identified as Parcels 241, 242, 244, 246 and 253 on Map 11 and Parcels 94, 95 and 96 on Map 12 of the 'Sandwich Assessors' Maps (the "Site"), generally as shown on a Preliminary Site Development Plan entitled "Phasing Plan- Forestdale Village" prepared by SEA Consultants and dated 6-25-09.

I. BACKGROUND

THE DEVELOPMENT PROJECT

The Development Project approved under this Comprehensive Permit consists of an approximately 58.9-acre site on which up to 148 one, two and three bedroom single family residences will be constructed and conditioned as follows:

- At least 25 percent of the units constructed, or up to 37 of the planned 148 units, shall be restricted and sold only as "affordable" units; and;
- At least 80 percent of the units constructed, or up to 119 of the planned 148 units, shall be restricted and sold only as age-restricted to buyers 55 and older.

The following plans and documents submitted as part of the Comprehensive Permit Application filed with the Sandwich Zoning Board of Appeals Board ("the Board") on November 20, 2009:

- "Comprehensive Permit Application, Local Initiative Program, Volume I dated November 25, 2009" prepared by Archit8 Studio LLC, SEA Consultants Inc., Clancy Appraisal Company, Bailey Brokerage and Consulting, Village Realty, Fort Hill Infrastructure Services LLC, Tech Environmental Inc. and Public Archaeology, Inc.;
- "Comprehensive Permit Application, Local Initiative Program, Volume II dated November 25, 2009" prepared by Archit8 Studio LLC and VHB Inc.;
- Environmental Notification Form (EEA # 14512) received by MEPA dated November 16, 2009; and
- Determination of Site Eligibility and Preliminary Approval under LIP from the Commonwealth of Massachusetts Department of Housing & Community Development dated September 30, 2009

2. Additional documents and Plans submitted by the Applicant:

- Preliminary Site Development Plan entitled "Forestdale Village" prepared by SEA Consultants, Inc.;
- Site Access Plan prepared by VHB Inc.;
- Building Front Elevations, Floor Plans and Specifications ("the Architectural Drawings") prepared by Archit8 Studio, LLC dated July 16, 2009;
- Request for Relief and Waivers dated November 19, 2009 and listed under "Application" of Comprehensive Permit Application, Local Initiative Program (LIP), prepared by Archit8 Studio LLC and dated November 25, 2009; and
- Proof of site ownership (refer to deeds recorded December 31, 2009 in Book 24279, Page 43 and Book 24279, Page 49)

3. Additional Technical Documents and Peer Review Reports submitted to the Board:

- Memorandum from the Office of the Town Engineer offering technical transportation comments dated January 12, 2010;
- Non-binding transportation, stormwater design and site design technical comments from the Cape Cod Commission on LIP application materials dated February 3, 2010;
- Transportation peer review report from Vanasse Associates dated March 4, 2010;
- Transportation peer review report from Vanasse Associates dated March 8, 2010; and
- Memorandum from the Office of the Town Engineer offering additional technical transportation comments dated March 9, 2010

4. Other public documents submitted to the Board:

- Letter from Sandwich Housing Authority expressing support of LIP application dated June 8, 2009;
- Letter from Clark-Haddad Post, Number 188 expressing support of LIP application dated June 23, 2009;
- Letter from Sandwich Board of Selectmen expressing conceptual support for LIP application dated July 2, 2009;
- Letter from Sandwich Commission on Disability expressing support of LIP application dated August 3, 2009
- Letter from the Massachusetts Historical Commission indicating no issues of state concern dated December 11, 2009;
- Memorandum from the Sandwich Zoning Board of Appeals voting to approve motion for extension agreement dated December 16, 2009;
- Memorandum from the Sandwich Conservation Commission regarding not having jurisdiction over project site dated December 17, 2009;

- Letter from the Office of the Sandwich Town Manager recommending the applicant not be required to complete an EIR dated December 21, 2009;
- Memorandum from the Sandwich Fire Department regarding road width standards and emergency access needs dated December 22, 2009;
- Memorandum from the Sandwich Water District regarding availability of public water supplies dated December 22, 2009;
- Letter from the Sandwich Planning and Development Department recommending the applicant not be required to complete an EIR dated December 23, 2009;
- Memorandum from the Sandwich Zoning Board of Appeals voting to approve motion for extension agreement dated December 23, 2009; and
- Memorandum from the Office of the Town Engineer/Tree Warden regarding issues associated with Route 130 Scenic Road designation dated March 8, 2010

II. PROCEDURAL HISTORY

1. A public hearing was duly noticed and opened on January 12, 2010. The public hearing was continued for further presentations and public comments on February 9 and 23 and March 9, 2010. The public hearing was closed at the conclusion of the hearing on March 9, 2010; and
2. The applicant was represented by attorney Jonathan D. Fitch. A Preliminary Site Development Plan and a Site Access Plan was prepared by ArchitS Studio, LLC, SEA Consultants, Inc., and Vanasse, Hangen, Brustlin, Inc.

I. PROJECT AND PROPERTY DESCRIPTION

1. The cluster subdivision project is comprised of 148 detached, single family homes on a 58.9 acre site;
2. The density is approximately .40 acres per lot;
3. The project is limited to a total of 299 bedrooms allocated among the 148 houses at the discretion of the developer;
4. Of the 148 homes, not less than 25 percent (37 if the final total is 148) shall be designated, constructed and sold as affordable and SHI eligible housing. Twenty five percent of the homes (37) will be sold at prices determined by DHCD to be affordable to eligible households earning 70 percent and 80 percent of the area median income. Affordability will be assured in perpetuity by the use of deed riders as required by DHCD as a feature of the LIP program;
5. The subdivision is designed to provide open space that comprises approximately 55 percent of the site as a requirement of the Natural Heritage and Endangered Species Program;
6. The individual house lots are primarily clustered in the northerly portion of the site conveniently adjacent to a proposed commercial project that would include shopping and services within walking distance. Houses are proposed to have 1, 2 and 3 bedrooms within 5 basic designs and floor plans plus variations. The developer anticipates greater variation for the 3 lots that abut Peter's Pond. Homes constructed on these lots will not exceed 3 bedrooms; and

7. One hundred nineteen (119) of the homes (or 80 percent) will be age restricted and sold to buyers who are age 55 or older. 29 of the 148 homes (or up to 20 percent) will not be subject to the age restriction. All houses will be constructed as handicapped adaptable and utilize Aging in Place design concepts.

IV. FINDINGS

GENERAL

1. Based upon the above-referenced documentation and representations, and the comments presented during the public hearings, the Sandwich Zoning Board of Appeals finds that:

- a. There exists a need for low and moderate income housing in the Town of Sandwich as measured by the statutory criteria set forth in G.L. 40B, §§ 20-23;
 - i. This project is consistent with local needs. According to the DHCD website listing of affordable housing by cities and towns of Massachusetts, Sandwich currently has an inventory of 272 affordable housing units. This inventory is also expressed as 3.6 percent of the total town housing units;
- b. In 2004, Sandwich produced a Community Affordable Housing Plan that was adopted by the Board of Selectmen and filed with DHCD. The plan contained an overview of then current housing conditions, strategies and goals and an action plan for the creation of affordable housing. The 2004 inventory of affordable housing in town was 271 units (refer to page 43). The goal stated for production of affordable housing was 65 units per year for the 10 years following 2004 (refer to page 56);
- c. By comparing the inventory of 271 units in 2004 with the 272 units in current inventory, production goals as called for in the 2004 Housing Plan have not been met;
- d. Two procedural goals in the 2004 Housing Plan to be found in this project do speak to some progress in the process of creating affordable housing:
 - i. to encourage the integration of smart growth principles in the development of housing; and
 - ii. to insure that the Town of Sandwich is an active partner in the development of affordable housing;
- e. The draft 2010 Sandwich Affordable Housing Plan provides information regarding proposed densities for affordable housing:
 - i. parcels located in water resource districts that are nitrogen sensitive are estimated to include four (4) units per acre; and
 - ii. parcels located outside of nitrogen sensitive areas are projected to include an average of eight (8) units per acre unless topography suggest fewer units.
- f. The housing needs of the community are addressed in Section 10.7 of the 2009 Local Comprehensive Plan (LCP) as stated "...the Town should be promoting affordable housing to satisfy the full range of local needs – not just to satisfy the 10 percent Chapter 40B target – and that it was important for local residents to understand this commitment and, to the greatest extent possible, be involved.”;
- g. Certain statistical findings pertaining to the current status of the Sandwich Affordable Housing Inventory (SHI) are pertinent to this decision. The LCP calls for the aggressive production of affordable housing as noted in Section 10.7 below:

- "Goal #1: To promote the provision of fair, decent, safe, affordable housing for rental or purchase that meets the needs of present and future Sandwich residents. At a minimum, the town shall seek to raise the affordable housing stock to 7.5 percent of all year-round units by 2010, and 10 percent of all year-round units by 2015."
- h. As a LIP application that employs smart growth planning, quality architecture compatible with the area, wastewater treatment, traffic mitigation, open space, proper stormwater management and the creation of 37 affordable units, Forestdale Village is consistent with the current LCP;
- i. The proposed project, as conditioned by this Comprehensive Permit, will not pose undue health or safety impacts on the Town of Sandwich as weighed against the need for low or moderate income housing; and
- j. As conditioned by this Decision, the proposed project:
 - will not be rendered uneconomic;
 - represents an acceptable balance between the need for low and moderate income housing and local planning and environmental concerns; and
 - is consistent with local needs within the meaning of G.L. c. 40B, § 20

SITE ACCESS AND TRAFFIC IMPACTS

1. The site will be served by two main access roads and one emergency way located at the far end of the proposed subdivision closest to Jeannie's Way. Traffic considerations were the primary issues of this application. The final site development plans will be developed by the applicant's engineer based on preliminary plans as well as studies and the recommendations of the peer review analyses. The ZBA finds that the additional traffic issues resulting from the project can be adequately mitigated by appropriate design and signage and that the final plans are to be submitted subject to ZBA approval to properly address the issues.

WASTEWATER

1. The project, which is not located within the Water Resources Overlay District as shown on the Town of Sandwich Zoning Map, is proposed to be served by a 50,000 gallon per day capacity enhanced nitrogen removal and ultra-violet disinfection wastewater treatment facility to be located offsite (on the Forestdale Village Green) that requires MA Department of Environmental Protection (DEP) groundwater discharge permitting approvals. The treatment facility will be sized to treat all wastewater from the project plus that from the adjacent proposed Forestdale Village Center commercial project. The facility will include enhanced nitrogen removal and a groundwater discharge using the drip-irrigation technique to further reduce the discharge of nitrogen to groundwater.

DRAINAGE

1. In accordance with the Massachusetts stormwater regulations, the project has been designed to manage the stormwater volume generated by up to the 100-year storm. To the extent feasible, the project stormwater management features are incorporated into existing depressions. The project incorporates certain Low-Impact Design elements such as bio-swales and minimum acceptable road widths to minimize the total volume of stormwater generated.

OPEN SPACE

1. Per Section 4400 of the 2009 zoning by-law, the project contains approximately 32.4 acres of open space. Open space is a feature of cluster development design. Cluster development is the preferred form of development in Sandwich.

ARCHITECTURE

The project includes architectural designs for five basic home types, each with variations to accommodate specific buyer requests (refer to Building Front Elevations, Floor Plans and Specifications ("the Architectural Drawings") prepared by ArchitS Studio, LLC dated July 16, 2009). The overarching architectural design is in keeping with traditional forms found in New England architecture. The building materials include clapboard siding, cedar shingles, and decorative trim. All of the homes include a front porch that faces the street and the homes have either one or two car garages, both attached and detached to the home. All of the homes will be designed to meet ENERGY STAR Certification for mechanical elements and appliances as provided by the developer.

DEVELOPER'S CREDENTIALS

1. The Determination of Site Eligibility issued by DHCD dated September 29, 2009 found the applicant and the development team met all applicable requirements.

FINANCIALS

1. The pro forma submitted with the application materials has been reviewed and the project found to be "financially feasible in the context of the Sandwich housing market" by DHCD during the site eligibility process. The pro forma was also found to be "consistent with cost examination and limitations on profits and distributions on the basis of estimated development costs". The town's substantial interests in assuring the developer's compliance with financial requirements of the Local Initiative Program are protected by Condition 7 of DHCD's September 2009 Determination of Site Eligibility that states: In accordance with the Comprehensive Permit Guidelines, Section IV (D), the project developer shall provide financial surety through a bond to ensure completion of the cost examination and distribution of excess funds required by 760 CMR 56.04."; and

The determination also states "when all units have received Certificates of Occupancy, the developer must submit to both DHCD and the Sandwich Board of Selectmen a project cost examination prepared by a certified public accountant to meet cost certification requirements. The specifics of the cost certification obligation will be contained in the Regulatory Agreement to be executed by the municipality, the project sponsor and DHCD."

V. CONDITIONS ATTACHED TO THE COMPREHENSIVE PERMIT

The Application of Forestdale Village, LLC for a Comprehensive Permit pursuant to G.L. Chapter 40B, §§20-23 and the Local Initiative Program regulations of the MA Department of Housing and Community Development (hereinafter DHCD) is granted subject to each and every one of the following conditions:

GENERAL

1. The Applicant shall comply with all local by-laws, rules and regulations of the Town of Sandwich and its boards and commissions unless expressly waived herein under Section VI of this Comprehensive Permit Decision;
2. The Applicant shall comply with the State Building Code and any local building permit regulations of the Building Inspector. The Applicant shall pay all required fees for all building permits, including any fees charged for inspections and permits, if necessary;
3. Prior to approval of said Definitive Subdivision Plan, the Board may have the Submission reviewed by the Planning Department and the Town Engineer to ensure compliance with this Comprehensive Permit, all applicable state and federal laws, and all local by-laws, rules and regulations except as may be expressly waived or modified by this Decision;

4. No construction activity shall commence and no building permits shall be issued under this Comprehensive Permit until the Board, after consultation with the Planning Department and the Town Engineer, has approved the Definitive Subdivision Plan submission as being in conformance with this Comprehensive Permit, and has so endorsed the Plan. The approved and endorsed Definitive Subdivision Plan ("Approved Plan") will be incorporated in and made part of this Decision;
5. The Applicant shall record this Comprehensive Permit, together with the Approved Definitive Subdivision Plan, in the Barnstable Registry of Deeds, and shall maintain copies of the recorded Approved Definitive Subdivision Plan and Comprehensive Permit at the Site during construction;
6. Prior to commencement of any construction activity on the Site, and prior to applying for any building permits for the Development Project, the Applicant shall provide the Zoning Board of Appeals and the Building Commissioner with:
 - a. the name, address and business telephone number and, if different the cell phone number of the individual who will be primarily responsible for all construction activities on the site;
 - b. a copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the premises have been paid;
 - c. evidence that all federal and state licenses and permits required for the development and that all local approvals, permits and licenses not expressly included in this Comprehensive Permit, have been obtained; and
 - d. evidence that the Approved Definitive Subdivision Plan and this Comprehensive Permit have been recorded in the Barnstable Registry of Deeds;

The provisions of this Comprehensive Permit shall be binding upon the Applicant and its successors and assigns, and the authorizations and obligations hereunder shall run with the land. Any instrument for sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Comprehensive Permit. This Comprehensive Permit may not be transferred by the Applicant to any other person or entity without the written approval of the Zoning Board of Appeals and the execution of any instruments or documents that may be required pursuant to Town Counsel's direction for the continuing enforcement of this Comprehensive Permit;

8. The Applicant shall not take any action, or fail to take action, such that the Development Project would be brought out of compliance with G.L. c. 40B for this Comprehensive Permit. Failure to comply with the terms and conditions of this Comprehensive Permit shall be grounds for the Zoning Board of Appeals to order cessation of construction on the Site until the Development Project is brought into compliance;
9. This Comprehensive Permit shall lapse if the construction of the site improvements authorized herein has not begun within three (3) years of the date this Comprehensive Permit is filed in the office of the Sandwich Town Clerk if no appeal is filed, or, if an appeal is filed, then within three (3) years after final resolution of said appeal in favor of the Applicant. An extension of said three-year time period may not be unreasonably denied by the Zoning Board of Appeals;
10. If the construction authorized hereunder is not completed within ten (10) years of the date hereof, no additional building permits shall be issued for the residential units unless this comprehensive permit is modified or extended by the Zoning Board of Appeals;
11. The roadways, utilities, drainage systems, wastewater collection systems, and all other infrastructure shown on the Approved Final Site Development Plans are private. As long as they remain private, the Town shall not have

any legal responsibility for the operation or maintenance of the roadways and other infrastructure in the Development Project;

12. The Applicant shall maintain the status of a limited dividend organization at every phase of the development, including but not limited to the construction and marketing phases, until all the dwellings in the Development Project have been conveyed out to bona fide purchasers;
13. The Applicant shall pay all usual and customary fees imposed by the Town for the purposes of monitoring compliance of the Project's residential construction with the terms of this Comprehensive Permit and with local by-law requirements and regulations not waived by this Decision. The Building Department will perform the monitoring or, if the Building Inspector and the Zoning Board of Appeals determine that a consulting engineer is required, then such engineer shall be hired at the Applicant's expense;
14. The Applicant shall establish a homeowners association with the responsibility for maintenance and repair of all common areas and facilities (utilities and any possible future amenities) within the Development Project. The homeowner's association documents shall set forth the obligations of the homeowner's association for the maintenance and operation of all common areas and applicable facilities. Provisions shall be made in the documents establishing the association for mandatory membership and funding by lot owners. Lots 1, 2, 3, 4, 5, 6, 7 and 8 may, however, be exempt from mandatory membership and funding requirements in the discretion of the developer;
15. Prior to the issuance of the first building permit for the Development Project, the Applicant shall have provided to the Zoning Board of Appeals and its counsel draft documents establishing a homeowners association and shall have obtained the Zoning Board of Appeals legal counsel's approval as to the form of such documents and verification that such documents are in conformance with this Decision and adequately reflect the unit owners' obligations described in this and related conditions;
16. The Applicant, by accepting this Comprehensive Permit, agrees to comply with, and to cause the Development Project to comply with, all requirements of the Comprehensive Permit, and all other applicable laws, rules, regulations, executive orders, and the Regulatory Agreement. Additionally, the Applicant agrees that the Zoning Board of Appeals or its designee, from the date hereof through the date which is one year after the Applicant has sold the last dwelling unit in the development Project shall, upon twenty-four hours notice, have access during normal business hours to all books and records of the Applicant concerning the Development project in order to monitor the Applicant's compliance with the affordability and limited dividend requirements of this Decision;
17. All of the affordable units must be owner-occupied except for bona fide temporary absences and the Deeds shall expressly reference this Comprehensive Permit. An exception shall be made for any units acquired by the Sandwich Housing Authority under its scattered site rental program.

PLANS AND DESIGNS

18. Approval is specifically for the amended preliminary site development plan titled "Forestdale Village", and filed with the Zoning Board of Appeals on March 9, 2010 which plan includes two site access roads;
19. The two intersections of the site access roads with Route 130 shall be designed and incorporated in the final site development plans as shown on the permit plan by VHB, Inc. dated March 8, 2010;
20. Approval of architectural plans for houses is limited to size, design and scale of house types A, B, C, D and E with options as shown on the plans by Archit\$ Studios, LLC and filed with the permit application on November 26, 2009. Variation to the plans shall be permissible to the extent of rearrangement of exterior architectural

features and interior layouts of the house types shown on the approved plans in the discretion of the developer. Permissible variation shall not be construed to allow any increase in the gross square footage or number of bedrooms in an approved design;

21. Notwithstanding condition 20 above, house designs for Lots 1, 2, 3, 4, 5, 6, 7, 8, 45, 46 and 47 as shown on the Preliminary Site Development Plan may be at the discretion of the developer;
22. Notwithstanding condition 20 above, homes constructed on lots 45, 46 and 47 as shown on the Preliminary Site Development Plan shall not exceed either 3 bedrooms or 2,000 square feet in size;
23. No site work or building construction shall commence until final site development plans consisting of definitive subdivision plan, final road and intersection construction plans, final accident study of the intersection of Route 130 and Cotuit Road, final traffic study of Pimlico Pond Road, final landscape plans, final drainage plans, a Road and Drainage Inspection and Maintenance Plan, final utility plans and final sidewalk plans have been submitted and approved by the ZBA. Site work and building construction may commence without MA DEP approval for the proposed wastewater treatment facility. However, no certificates of occupancy shall be issued by the building inspector prior to receipt of approved wastewater treatment facility plans by MA DEP. The approval of all aforementioned plans shall not be unreasonably delayed or denied;
24. Notwithstanding condition 20 above, lots 1-8 as shown on the Preliminary Site Development Plan front on a public way ("name"). Lots 1-8 will be served by individual Title 5 wastewater systems. Certificates of occupancy can be issued subject to the issuance of a Title 5 certificate of compliance;
25. The number and location of fire hydrants shall be shown on the final utility plans;
26. All utilities shall be installed underground;
27. Final architectural plans shall be submitted with each building permit application. Such plans shall be in compliance with the MA Building Code in effect at the time of building permit application;
28. Each building lot shall comply with dimensional requirements as follows:

Minimum Lot Area:	5,000 square feet
Minimum Lot Frontage:	50 feet
Minimum Front Yard:	12 feet
Minimum Side and Rear Yard (dwelling):	10 feet
Minimum Side and Rear Yard (accessory structure):	6 feet
Maximum Lot Coverage (lots 12,000 square feet or less):	55 percent
Maximum Lot Coverage (lots over 12,000 square feet):	35 percent
29. Street trees shall be planted on one side of each road. The side used for street trees shall be the same side as the side used for the location of fire hydrants and shall be as shown on the final landscape plans;
30. Plantings shown on the final landscape plans shall be guaranteed by the developer for 2 years from planting. Any loss during the guarantee period shall be promptly replaced and also guaranteed for 2 years;
31. Open Space as shown on the definitive subdivision plan shall be restricted to passive recreational uses;
32. The applicant will prepare and submit a detailed study of the accident history at the intersection of Route 130 and Cotuit Road for the most recent three years of data that is available. Specifically the applicant will prepare a

collision diagram that summarizes the type, frequency, and severity of accidents at this intersection. Based on this assessment, the applicant will attempt to determine factors that have led to the accident rate at this intersection and based on that assessment, the applicant will make recommendations for improvements at this intersection to improve general traffic safety. To the extent that signage, lane usage, pavement markings and other minor changes are necessary to improve the intersection, the Applicant will implement such improvements as part of mitigation for this project. Should more substantial improvements be necessary such as geometric changes (lane widening) and traffic signal upgrades including but not limited to phasing, timing, pedestrian phases or signal head changes, the applicant will provide a "fair share" payment based on the improvements needed. The "fair share" amount to be determined (reviewed and agreed to by the Town Engineer), will be calculated based on standard "fair share" methodology (similar to that used by the Cape Cod Commission) where the cost of the improvements needed and the capacity added is generally compared to the project traffic to be generated through this intersection and the percent of capacity added that will be used by the project. The percent of the increased capacity to be used by the project is the percentage payment required against the cost of the improvement project. The fee shall be paid within 1 (one) year of the date of this decision or issuance of certificates of occupancy and building permits shall be suspended;

33. The applicant shall provide the Town of Sandwich with a review of the existing roadway alignment along Pimlico Pond Road between Cotuit Road and Route 130. This review will focus on identifying potential signage and striping improvements that can be considered and implemented by the Town of Sandwich as recommended in a Peer Review analysis conducted by Vanasee Associates, Inc. dated March 4, 2009. The applicant shall provide the Town of Sandwich with an exhibit that identifies the potential improvements that the town can consider for implementation;

34. Two access roads shall be provided along Route 130 for the proposed project. The intersection of each access road at Route 130 shall be constructed in general compliance with the Site Access Plan prepared by VHB, Inc. and included in the town's Traffic Peer Review report prepared by Vanasee Associates, Inc. dated March 4, 2010. These plans shall require approval as parts of the final site development plans required by Condition 23 herein. The northern most curb-cut on Route 130 and the road bisecting the proposed commercial development known as Forestdale Village Center shall be subject to further design review and possible reconfiguration in conjunction with the permitting for Forestdale Village Center; and

35. The applicant is required to adhere to the Sandwich Board of Health regulation for the Design, Operation and Maintenance of Small Wastewater Treatment Facilities. Variation of the regulation can be provided by the Director of Health for the Board of Health.

AFFORDABILITY REQUIREMENTS

36. A total of 25 percent of the final number of homes constructed (or up to 37 affordable houses) shall be located in a scattered manner throughout the subdivision where each street block does not exceed more than 25 percent of said street block lots as affordable houses. No more than 2 affordable houses shall be located next to each other in each street block. The ratio of the 37 affordable units shall be: 80 percent shall be age restricted and 20 percent shall not be age restricted;

37. A Buyer Selection Plan shall be provided stipulating that the buyer of the Affordable Dwelling shall be selected through a fair lottery process (the "Lottery") that is in compliance with the Fair Marketing Regulations of the LIP guidelines adopted by DHCD and that the local preference be followed to the maximum extent allowed by such guidelines;

38. The affordable units shall be priced for sale at amounts determined by DHCD;

39. The maximum sale price for the Affordable Dwellings shall be reviewed and approved by the Monitoring Agent at the time of the Lottery for the selection of buyers of the Affordable Dwellings;
40. The Affordable Dwellings shall be sold subject to an affordable housing restriction ("Deed Rider"), enforceable by the Town of Sandwich, and requiring that the Affordable Dwellings remain affordable in perpetuity or for the longest period allowed by law if other than in perpetuity. Such Deed Rider shall be in a form agreed to by the Applicant, DHCD, and the town, shall restrict the Affordable Dwellings in accordance with the requirements of G.L. c. 184, §§31-33, and shall be recorded senior to any liens on the Dwellings in order to protect the continued availability of the Affordable Dwellings in the event of any foreclosure, bankruptcy, refinancing or sale;
41. The Applicant shall record a covenant on the land comprising the Site, which shall incorporate the above requirements of this Section V and shall append thereto a copy of the agreed upon form of Deed Rider for the Affordable Dwellings. The Applicant shall not be entitled to obtain a building permit for any of the Dwellings in the Development Project until evidence of the recording of said covenant has been provided to the Board. Further, the Applicant shall not be entitled to obtain occupancy permits for more than one the market-rate dwellings until evidence has been provided to the Zoning Board of Appeals that the executed Deed Rider for the Affordable Dwelling has been recorded;
42. The developer shall proceed with construction of houses so that a minimum of 1 out of every 4 houses that receives a Certificate of Occupancy shall be an affordable unit. The developer, by accepting this decision, agrees that requests for Certificates of Occupancy shall be made in compliance with this condition. The Building Inspector shall strictly enforce this condition;
43. Upon completion of the Development Project and within three (3) months of the sale of the last dwelling, the Applicant shall provide to the Board a full certification of the total development costs and total development revenues for the Development Project, on a federal income tax basis, prepared by a certified public accountant acceptable to the Affordability Monitoring Agent and to the Board; and
44. Notwithstanding anything herein to the contrary, it is the intent of this Comprehensive Permit that up 25 percent of the final number of homes constructed (at least 37 of the dwellings) in the Development Project shall be and remain affordable for purchase by income-qualified buyers for at least as long as the Development Project is not in compliance with the Town of Sandwich Zoning By-law, or for the longest period allowed by law, if longer, so that such dwelling shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

SITE DEVELOPMENT CONDITIONS

45. The Applicant shall obtain, prior to commencing of any construction, any order of conditions which may be required from the Board of Health and/or MA DEP permits and approvals that may be required, with respect to the Site and the proposed project;
46. All construction shall be in accordance with the Subdivision Rules and Regulations of the Town of Sandwich, except as waived herein, and substantially in conformance with stormwater best management practices specified by MA DEP (*Massachusetts Stormwater Handbook*) and construction best management practices specified by the United States Environmental Protection Agency (*EPA National Mem of Stormwater Best Management Practices*). Compliance shall be subject to review by the Town Engineer or Zoning Board of Appeals' consulting engineer, at the Applicant's expense if required;

47. All lighting for the Development Project shall be installed and maintained in such a way that lights shall be shielded and directed so as to avoid the direct emission of light onto nearby residential properties;
48. Roadway paving width shall be a minimum of 20 feet. Sidewalks shall be constructed on one side of the roads at a width of 4 feet except for the south entry road which shall not require a sidewalk;
49. The Applicant shall keep the premises clean during construction. Upon completion of all work, and prior to issuance of any occupancy permits, all debris and construction materials shall be removed and disposed of in accordance with State laws and regulations;
50. Adequate erosion and sedimentation control measures to be implemented by the Applicant shall be submitted to the Building Inspector for his approval prior to the start of any construction activity. Said measures shall be maintained throughout the period of construction and until all disturbed areas have been permanently stabilized in accordance with Final Approved Site Development Plans;
51. On a daily basis during construction, the developer shall maintain all reasonable means of dust control and shall secure all construction debris from wind disbursement. There shall be no construction on Sundays or on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving or Christmas. Hours of work associated in any way with construction shall be 7:00 A.M. to 6:00 P.M.;
52. Any earth to be removed from the site shall be minimized to the extent possible;
53. The northern entry road, including the Route 130 intersection as shown on the Final Road and Intersection Construction Plans, shall be cleared of trees only within its layout and constructed to rough grade to rough grade at which time its construction shall pause. Construction shall not proceed beyond rough grade until the Town Engineer and the Applicant agree which additional trees must be removed in the interest of public safety. If any existing trees larger than 4 inches in diameter need to be removed from within the layout of Route 130, construction shall not re-commence until the Zoning Board of Appeals, at an informal hearing, approves a mitigation landscape plan prepared by the developer. Approval shall not be unreasonably delayed or denied. Once approved, the mitigation landscape plan shall be considered one of the final site development plans required by Condition 23 herein;
54. The residences subject to this comprehensive permit shall not be constructed in less than 3 years, which period shall commence on the date of issuance of the first building permit. During the first 12 months commencing upon issuance of the first building permit, the developer may apply for and receive up to 49 building permits. At his discretion, the developer may take longer than 12 months to apply for and receive the initial 49 building permits. After at least the initial 12 months and receipt of 49 building permits, the developer may apply for and receive 49 additional building permits during the 12 month period commencing upon issuance of the 50th building permit. After at least the initial 24 months and receipt of 98 building permits, the remaining permits may be applied for and issued. Issuance of building permits shall also be subject to the provisions of Condition 41 herein pertaining to the completion of the affordable houses in a proportionate manner;
55. Certificates of Occupancy shall not be issued for more than 138 units until and unless all road construction, paving, utilities and landscaping are completed in compliance with the Approved Final Site Development Plans and a final inspection is completed by an agent of the Zoning Board of Appeals; and

56. No Certificate of Occupancy shall be issued until road construction is completed to the binder course of pavement and all utilities and sidewalks shown on the final site development plans are constructed and operational to the extent required to provide adequate access from a public way and utility services to the lot for which the Certificate of Occupancy applies.

APPEARANCE OF FINISHED UNITS

All dwellings constructed in the Development Project, including both market-rate and Affordable, shall have the same exterior appearance and shall be built in conformance with the basic outline construction specifications and renderings in the Architectural Drawings submitted to the Zoning Board of Appeals and referenced herein.

MISCELLANEOUS

57. All terms used in this decision that are also defined in 760 CMR 56.02 shall have the same meanings as stated in 760 CMR 56.02;

58. No building permits shall be issued until the Regulatory Agreement and any other permit documentation required by DHCD are fully executed and, as appropriate, recorded at the Barnstable Registry of Deeds;

59. No building permits shall be issued until this permit is recorded at the Barnstable Registry of Deeds and a copy showing recording information is delivered to the office of the Building Inspector and the office of the Planning Director;

60. As a requirement of DHDC per Section B-9 of the LIP Guidelines, the developer shall secure a final approval from DHCD before commencing any site work or construction of buildings. A copy of the final approval shall be promptly delivered to the office of the Planning Director;

61. All houses shall be designed and built as handicapped adaptable; and

62. Eighty percent of the homes shall be age restricted in compliance with DHCD and applicable federal regulations (42 USC 3601) for occupancy by persons 55 years of age or older.

MATERIAL CHANGES

If, between the date this Decision is filed in the office of the Sandwich Town Clerk and the date of the completion of the Development Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Development Project as reflected in and approved by this Decision and as shown on the Approved Plan(s), such changes shall be governed by 760 CMR 56 (05.11). In no case, however, shall the Applicant be allowed to implement a Development Project change that increases the number of lots or dwellings, alters the building footprints, changes the mix of Affordable and market-rate dwellings, changes the dwelling tenure from ownership to rental, or increases the height of the buildings, without submitting a new application and undergoing a new public hearing and decision process.

NOTICE TO THE BOARD OF APPEALS and BUILDING DEPARTMENT

At least fourteen (14) days prior to the start of construction, the Applicant shall provide written notice to both the Zoning Board of Appeals and the Building Department of the anticipated construction start date and the anticipated construction schedule.

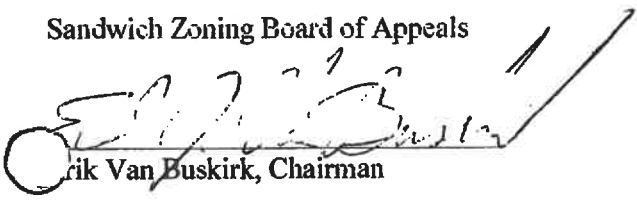
VI. WAIVERS

This Comprehensive Permit includes waivers from specified provisions of the Town of Sandwich Zoning By-laws to allow construction (as noted below) for waivers 2, 3, 4, 5 and 6. No other waivers of Town of Sandwich Zoning By-laws or regulations are included.

1. Definitive subdivision plans and all supplemental and associated definitive plans (as set forth in the Subdivision Rules and Regulations of the Planning Board) postponed until after a final decision on the application;
2. minimum lot area, frontage and setbacks for dwellings and accessory buildings;
3. maximum lot coverage;
4. width of road paving;
5. open space, procedural and lot density requirements of Section 4400 of the Zoning by-law applicable to cluster subdivision;
6. road bond or Form E application for lots 1-8; and
7. subdivision regulation requirements for ownership of roads, sidewalks and streets trees only to the extent necessary to conform with the conditions expressed in this decision.

DATED: April 13, 2010

Sandwich Zoning Board of Appeals



Erik Van Buskirk, Chairman

Notice of this Decision was filed in the Office of the Sandwich Town Clerk on April 15, 2010.

Any person aggrieved by this Decision may file an appeal pursuant to the provisions of Massachusetts General Laws, Chapter 40B, Sections 21 and 22 within twenty (20) days of the date of notice of this Decision.