



Commonwealth of Massachusetts
Plympton Zoning Board of Appeals
Notice of Decision

APPLICANT: CRANBERRY KNOLL CORPORATION

PROJECT: CRANBERRY KNOLL

DECISION: APPROVED WITH CONDITIONS

This is the decision (Decision) of the Plympton Zoning Board of Appeals (Board) relative to the application of Cranberry Knoll Corporation (Applicant) for issuance of a Comprehensive Permit in accordance with the provisions of Massachusetts General Laws, Chapter 40B, Sections 20 through 23, the regulations governing the Massachusetts Housing Appeals Committee, 760 CMR §§ 30.00 and 31.00, and the Model Rules promulgated by the Housing Appeals Committee.

I. CRANBERRY KNOLL – BACKGROUND

A comprehensive permit application was submitted to the Board on December 9, 2004. The application proposed to develop property by constructing 24 units situated on approximately 11.75 acres of land located Lake Street approximately one mile north of the intersections of Lake Street and County Road, in the Town of Plympton, MA, as shown on Plympton Assessors' Map D-7 as Parcel No. 2-8. The development application seeks approval of attached single-family dwelling units. The development is referred to hereinafter as "the Project".

The public hearing to consider the application was opened on January 4, 2005. At this hearing, Robert L. Marzelli, counsel for the Applicant and Director of Cranberry Knoll Corporation, introduced the project team: Richard L. Springer, President of Cranberry Knoll Corporation, Benjamin Gilmore, P.E., Civil Engineer, and Alan Vautrinot, P.L.S., Land Surveyor.

Robert L. Marzelli presented the Project and offered the following summary: the project site consists of 8.8 acres of upland area; there are 3.0 acres of wetlands on the site. The Applicant requests 24 units consisting of two-family attached singles, all of which will be age restricted to

one owner-occupant being at least 55 years old. A shared septic system will be provided for each building in accordance with DEP requirements. Each unit will have two bedrooms with a two-car garage.

Mr. Vautrinot provided a project overview as follows: Stormwater will be managed on site with a positive drainage system with multiple discharge locations. Existing woodlands are generally comprised of tall pines. Two existing bedrock wells on site will be used for irrigation of common areas. Mr. Gilmore reported that a new public well will be constructed to supply a flow of 5200 gallons per day, and that approvals will be required from the MDEP.

Several residents stated concerns about the density of the project and the buffer distances between the proposed structures and their residences.

A site walk was held on January 15, 2005. Intersection stopping sight distance adequacy was field-verified. Previous site disturbance and intermittent streams were noted.

A continued hearing was held on February 8, 2005

The Board expressed concerns regarding the need for greater open space, and more information.

Residents noted concern about the development's impacts on private wells, nutrient impacts to groundwater and wetlands, turtle and vernal pool habitats, lighting impacts, term of affordability, and adequacy of water storage for fire fighting.

A continued hearing was held on March 15, 2005. At this hearing the Applicant submitted the Preliminary Plans revised March 11, 2005. The Applicant's land surveyor, Alan Vautrinot, presented the revised site plans. The unit count has been reduced from 24 units to 16 units. Eight duplex buildings are proposed for a total of 16 units. The plan showed a revised roadway layout, revised building locations, revised stormwater basins and piped drainage system, revised well protection radius, lampposts, and watermain.

Residents expressed concern about density, traffic, access to Lake Street, and the walking path. As discussed with the Board, a portion of the walking path will be eliminated.

A continued hearing was held April 26, 2005. At this hearing the Applicant submitted the Preliminary Plans revised April 1, 2005. The Applicant stated that the unit occupancies would no longer be age-restricted. The Applicant stated that the previous subdivision approval for the site has not been recorded.

The Board reviewed Mainstream Engineering's December 22, 2004 with the Applicant. Alan Vautrinot responded on behalf of the Applicant. Mr. Vautrinot agreed that certain information requested in Mainstream Engineering's December 22, 2004 letter would be provided. The Applicant requested that the Board waive the Board of Health's requirement for septic system design based upon 440 gallon per day per unit. The Applicant stated that if gas heat is used, individual propane tanks will be provided for each dwelling unit. The Board requested that the Applicant provide a letter from the Fire Chief regarding acceptance of the fire protection proposal. The Board requested that the Applicant revise and submit a pro forma for the revised proposal.

The Applicant agreed to provide stockade fence along the property line at the Sakr residence to screen the units. The Applicant agreed to plant a landscaped buffer along the property line at the Sakr residence at other locations.

The Applicant's land surveyor stated there are no specimen trees on the property.

A continued hearing was held on May 12, 2005. At this hearing the Applicant submitted the Preliminary Plans revised May 5, 2005. The Applicant's land surveyor, Alan Vautrinot, presented the revised site plans. Plan revisions included changes to the walking path locations and roadway alignment, addition of a sidewalk, test pit data, an intermittent stream, fencing, landscaping, and roof drywells.

Plan revisions were discussed. The walking trail along the Sakr property had been eliminated and the buffers have increased from the proposed structures. The Plan showed about 240 feet of 6-foot tall stockade fence along the property line at the Sakr residence to screen the units. The Plan showed vegetated screening along the property line at the Sakr residence from the stockade fence to Lake Street.

At this hearing, further discussions regarding the water supply system continued. The Applicant submitted a revised pro forma for the May 12, 2005 hearing, for a 16-unit, unrestricted-age, development. The revised pro forma was reviewed at the May 5, 2005 hearing.

The Applicant represented that the units would have one-car garages instead of two-car garages. The Applicant agreed to plant white pines along the property line at the Sakr residence from the stockade fence south to the next property corner. The Applicant agreed to provide additional tree removal at the entrance for adequate turning radii.

A May 12, 2005 letter was received from Ivas Environmental stating that no vernal pools were found on the Site. No State-identified certified or potential vernal pools located on the site.

The Applicant stated that waiver from building permit fees is not requested.

Following testimony received at the May 12, 2005 hearing, the Board voted affirmatively to close the hearing.

II. FINDINGS OF FACT

Cranberry Knoll Corporation submitted to Federal Home Loan Bank of Boston New England Fund (NEF) an application for project eligibility under the comprehensive permit application. As noted in the project eligibility letter from NEF dated December 8, 2004, the proposal is "for the development of a 24 unit affordable housing development project off of Lake Street, Plympton, Massachusetts".

The Applicant, Cranberry Knoll Corporation is a Massachusetts corporation organized as a limited dividend corporation within the meaning of the General Laws, Chapter 40B. The Applicant has shown evidence of its control over the proposed site.

The Site is located within the Residential Agricultural Zone and Groundwater Protection District

Surrounding land uses consist of single-family homes on Lake Street, wetlands, and ponds associated with cranberry bog operations.

The topography of the Site consists of a gentle slope from Lake Street to the rear of the property, with a knoll as the focus of the development. The knoll, at the rear of the Site, varies in elevation of approximately 76' NGVD to an elevation of approximately 50' NGVD.

The Site consists of 11.75 upland acres with 2.96 acres of wetland resource areas located on the Site. The majority of the Site is wooded with some clearing in the area of the proposed roadway and shared septic system. It was reported that there are no known specimen trees on Site.

According to the Massachusetts Natural Heritage Atlas Estimated Habitat Map of State-Listed Rare Wetland Wildlife published by the Natural Heritage and Endangered Species Program, no portion of the proposed project is located within an estimated habitat area. According to FEMA Flood Insurance Rate Maps, there are no Zone A (100-year) floodplains identified on the site parcel.

The development would include construction of a circular access road with single entrance/exit from Lake Street. Stormwater runoff intercepted by the roadway would be piped to a series of five stormwater detention basins discharging to wetlands and irrigation reservoirs. Other site-generated stormwater runoff would flow directly to adjacent wetlands.

A public well supply to serve the development is proposed at the front of the property adjacent to Lake Street. The proposed access drive would abut the preliminary Zone 1 (protective area) of the well supply. A portion of the Zone 1 would extend onto the abutting property (cranberry bog), to be protected from threatening uses by and within a protective easement. The Zone 1 and Interim Wellhead Protection Zone are pending DEP review and approval.

The traffic report indicates that the increase in traffic from the site onto Lake Street is minimal and all increases in delays due to the added traffic from the Cranberry Knoll should be considered minimal or negligible having no noticeable impacts on traffic flows at the intersection of Lake Street and County Road (Route 106).

The need for affordable family housing is well documented in the Town of Plympton and it is preferable that these dwellings not be subject to age restrictions.

As discussed below, an analysis of the information provided by the Applicant indicates that the Project can generate a profit before taxes in the range deemed acceptable by NEF for the Housing Starts program with sixteen (16) dwelling units. The Board believes that this density, while above that allowed by the Plympton Protective By-Law, will allow the Applicant a profit acceptable to the subsidizing agency. The Board's decision to limit the development's density to sixteen (16) dwelling units as described below, of which four (4) will be sold to qualifying individuals with household income no greater than 80% of the applicable area median income, is a result of careful deliberation and incorporation of expert testimony, input from numerous town boards, agencies, commissions and departments, the neighborhood, and the Board's familiarity with the locus and its constraints. This testimony, input and knowledge has led the Board to the conclusion that this density is an appropriate balance between the town's need for affordable

housing and local planning concerns, including traffic, buffers, the environment, open space and a density that is consistent with the adjacent uses and the natural features of the subject site. Therefore, the Board concludes that a development of greater density than that allowed by this Decision or a development not consistent with the requirements of this Decision would not be "consistent with local needs" as that term is set forth in G. L. c. 40B, §§ 20-23.

Based on the materials before it, the Board has concluded that its decision to limit the Project's density to that noted within this Decision, together with the conditions of approval noted below, will not render the Project "uneconomic" as that term set forth in G. L. c. 40B, §§ 20-23.

The Applicant has not provided to the Board information to demonstrate the extent to which the inability to obtain the requested waivers will render the Project uneconomic.

In evaluating this Project, the Board has sought to determine a "window of profitability" within which the allowable net income before taxes of the Project should fall. The Board has determined that this window should define a minimum point at which a project would be considered uneconomic and a maximum point at which the Applicant's profit would be significantly in excess of the profit normally to be expected.

The Board understands that the permissible acquisition value which can be used in connection with determining development costs and profits is the lesser of (a) the "as is" appraised market value and (b) the purchase price of the land and improvements in the last arm's length transaction, if any within the last three years, plus reasonable and verifiable costs of property improvements and carrying costs. The Board further understands that, in the case of developments that have received a comprehensive permit, the economic benefits of the comprehensive permit greater than the allowed profit shall accrue to the town and shall not be used to substantiate an acquisition cost that is unreasonably greater than the current appraised fair market value under existing zoning without a comprehensive permit in place.

A financial review conducted for this Board concluded that, utilizing a land value as stated in the current pro forma of \$585,000, market based cost and sales assumptions, the Project would be economically viable with an expected profit of 20% at a density of sixteen (16) units of which four (4) units would be sold as affordable units.

III. REQUESTED WAIVERS AND EXEMPTIONS

Massachusetts General Laws c. 40B, §§ 20-23, empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers would not threaten public health, safety or welfare. The Board understands that waivers from valid local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is set forth in G. L. c. 40B, §§ 20-23. See 9 North Walker Street Development, Inc. v. Rehoboth Board of Appeals, No. 99-03 Housing Appeals Committee (June 11, 2003).

The Board believes that, under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic." See Rehoboth, id.

In a list of requested waivers from local bylaws and ordinances dated November 17, 2004, the

Applicant requested general and specific waivers from the Plympton Protective Bylaw; the Town of Plympton Rules and Regulations Governing the Subdivision of Land; the Town of Plympton Supplementary Rules and Regulations to the State Environmental Code: Title V, 310 Code Mass. Regs. §15.00.

The Board has reviewed these requests and has granted those that are consistent with the protection of the general health, safety and welfare.

The Board has denied the waiver requests where the Board finds that such denial of the request would not render the project uneconomic, or where the Applicant has not precisely identified the bylaw, regulation or fee requested to be waived, or where the Applicant has not provided information demonstrating that but for the waiver or exemption, the project would be rendered uneconomic.

The Board's decision as to the waiver requests is set forth in Appendix A. Any waiver request not specifically granted in Appendix A is denied.

IV. GRANT OF PERMIT AND CONDITIONS THERETO

Subject to the conditions set forth hereinafter, the Board grants this comprehensive permit (the "Permit") to Cranberry Knoll Corporation, for a development, located in Plympton, Massachusetts, to be known as "Cranberry Knoll."

Without the written consent of the Board, which consent shall not unreasonably be withheld, this Permit is non-transferable and non-assignable.

In accordance with the powers conferred to the Board by 760 CMR §31.08(4), if construction (other than site clearing and grading) authorized by this Decision has not begun within twenty-four (24) months of the date on which the Permit becomes final, the Permit granted by this Decision shall lapse unless extended by the Board for good cause shown.

The Board notes that 760 CMR §31.08 provides that:

If the [Housing Appeals] Committee finds, in the case of conditions imposed by the Board, that the conditions render the project uneconomic and that the conditions are not consistent with local needs, the Committee shall direct the Board to remove any such condition or to modify it so as to make the proposal economic.

In reaching this Decision, the Board has endeavored to insure that the conditions herein do not render the project uneconomic and that the conditions are consistent with local needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

General

1. The Permit is based upon a project eligibility letter issued to Cranberry Knoll on October 27, 2004 by the Massachusetts Housing Finance Agency under the New England Fund and the Housing Starts Programs.. The terms, and to the degree applicable compliance with such terms, shall be conditions precedent to the requirement that no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until the terms and restrictions of said Project eligibility letter have been complied with in full.

Compliance with Other Requirements

State and Federal Requirements

2. The Project, and all construction, dwelling units, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Project, shall comply with all applicable state and federal regulations. The Applicant will provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.
3. The Project shall comply with the Massachusetts Endangered Species Act, G. L. c. 131, § 23 and all rules, regulations and certifications required by the regulations under that act, 321 CMR §10 to the extent the same are applicable.
4. The Project shall comply with all best management practices, rules, regulations, permit and filing requirements, and certifications of the Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, and water supply.
5. Septic system design and installation shall conform to Massachusetts Title V regulations (310 CMR §15).
6. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, §§ 61-62H) to the extent the same are applicable.
7. The Project shall comply with the Massachusetts Public Shade Tree Act (G. L. c. 87) to the extent applicable.
8. The Project shall comply with the Massachusetts Scenic Roads Act as adopted by the Town of Plympton, G. L. c. 40, § 15C to the extent applicable.

Local Requirements

9. Except as waived by this Decision:
 - A. The development of this Project, including the construction of all dwelling units,

utilities, roads, drainage structures and other appurtenances, shall comply with the Plympton Zoning By-Law in effect as of the date of this Comprehensive Permit Decision.

10. Except as waived by this Decision or a decision of the Plympton Conservation Commission, the development of this Project shall comply with all rules, regulations, filing and permit requirements and certifications of the Plympton Conservation Commission with respect to stormwater disposal, wastewater disposal and resource protection.
11. Except as waived by this Decision or a decision of the Plympton Board of Health, the Project shall comply with the rules, regulations, filing and permit requirements and certifications of the Plympton Board of Health governing private wells, stormwater disposal and wastewater disposal in effect at the time of Application.
12. Except as waived by this decision, septic system design and installation shall conform to Supplementary Rules and Regulations of the Plympton Board of Health under and relating to Massachusetts Title V regulations (310 CMR §15), approval shall not be unreasonably withheld.
13. This Decision is issued under the provisions and limitations imposed by the Comprehensive Permit Law G.L.c.40B, s. 20-23. It shall not be read by any local, state or federal agency or official to include any analysis of substantive issues beyond the narrow parameters established by the Comprehensive Permit Law G.L.c.40B, s. 20-23. This Decision provides no assurance that the Project will or can comply with the requirements of any other law, including without limitation 310 CMR 10.00, 310 CMR 15.00, 310 CMR 40.00, 314 CMR 4.00, 5.00 and 6.00, 321 CMR 10.00, the State Building Code or rules and regulations promulgated and enforced by federal, state and local agencies or officials not otherwise waived by this Decision.

Density; Dwelling Units

14. The total number of dwelling units shall not exceed sixteen (16). The sixteen (16) units shall be comprised of 8 duplex buildings. Each of the sixteen (16) units shall contain no either two (2) bedrooms or three (3) bedrooms, such that the total number of bedrooms shall not exceed forty (40) for the entire Project.
15. The Project will provide three parking places for each dwelling unit - one vehicle in a garage associated with the dwelling unit with space for two additional vehicles in the driveway associated with the particular unit.
16. All dwelling units shall be offered for fee-simple sale only. No dwelling unit shall at any time be made available for sale in time-proportional ownership of any degree. Neither the developer nor the Applicant shall make any market rate unit available for rental.

Affordable Units

17. Not less than twenty-five (25%) percent of the total number of dwelling units approved, i.e., no fewer than four (4) units shall be affordable to individuals and/or families earning no more than eighty (80%) percent of the applicable area median income. The calculation of what constitutes the applicable median income shall be based on formulas or the methodology published by the Department of Housing and Community Development (DHCD), as revised, as of the date of the sale of the particular unit. In this Decision, such dwelling units are referred to as the "affordable units."
18. The affordable units shall be evenly distributed within the locus and shall be indistinguishable in architectural style, exterior finish materials, and exterior appearance from market units.
19. Each affordable unit shall be sold with a Deed Rider for the benefit of the Town specifying that (a) the affordability component of each affordable unit shall be preserved for at least ninety-nine (99) years, (b) the Town of Plympton or its designee shall have the right of first refusal with respect to the resale of any affordable unit, and (c) the resale price of any affordable unit shall not exceed the Certified Sales Price. As used in this paragraph, the "Certified Sales Price" of an affordable unit shall be the price such that a household of four earning the Base Income, as that term is defined by DHCD and within the geographic region encompassing Plympton, would pay no more than 30% of gross income for the sum of annual debt service (including principal and interest at current interest rates) plus property taxes, insurance and any condominium / homeowner's fees. If, for whatever reason, proceeds from a sale of an affordable unit generate funds in excess of the Certified Sales Price, such funds will be returned to the Town of Plympton for use in the development of the town's affordable housing inventory.
20. Affordable units may be rented by individual owners (other than the developer or the Applicant) to the extent permitted by the Regulatory Agreement, provided that such rental does not affect the status of the unit as an affordable unit. Rental agreements pertaining to affordable units must contain covenants such that the renter's median family income is no greater than 80% of the area median income, as that calculation is defined in the paragraph above.
21. Preference for the sale of the affordable units shall be given to local residents, children or parents of local residents, and/or employees of the Town of Plympton, such that up to seventy percent (75%) of the "affordable units" shall be made available to residents of Plympton who have been domiciled in Plympton for at least five years or any municipal employee currently employed by the Town of Plympton for at least thirty hours per week, to the extent permitted by law, when leasing units. Within three (3) months from the date on which this Decision becomes final, the Applicant shall submit to the Board for its review and approval as to form the Local Preference Plan as well as the required Affirmative Marketing Plan.

Condominium Agreements and Homeowners' Documents

22. Condominium agreements and homeowners' documents shall be in a form that conforms to this Decision and applicable law.
23. The Applicant proposes to establish a unit owners' association (the "Homeowners' Association") to maintain and repair all common areas and infrastructure, including roadway infrastructure, the common septic system, potable water system, stormwater management system, landscaping, ways and other improvements within the subject property. The documents establishing the Homeowners' Association shall set forth the obligations of the Homeowners' Association for the operation and maintenance of all such common areas and improvements. Prior to the issuance of any Certificate of Occupancy, the Applicant shall provide the documents establishing the Homeowners' Association and the rules and regulations of the Homeowners' Association to the Board for approval by legal counsel as to form and for verification that such documents are in conformance with this Decision.
24. Homeowners' Association Agreements shall contain the following terms and conditions:
 - a. A plan to maintain the shared septic system, drainage facilities, stormwater basins, and fire protection system.
 - b. A plan to maintain roads, sidewalks and walking paths, including snow removal and snow stockpiling areas, spring clean-up, repair of road surface and resurfacing as needed.
 - c. A plan to maintain all water supplies and systems.
 - d. All infrastructure systems are to be privately owned in perpetuity and recorded in the Plymouth County Registry of Deeds.
 - e. Assessment and collection of all reasonable and necessary Homeowners' fees, including the creation and maintenance of a reserve for capital expenditures sufficient to maintain the infrastructure described in this paragraph.
25. There shall be no on-site repair of motor vehicles or parking of large trucks or other oversized motor vehicles on the property. Occupants of the dwelling units shall be prohibited from such repair and parking.
26. The homeowners association shall provide tree trimming/tree removal as needed to provide the required sight distances at the site driveways intersections with existing ways.
27. The Homeowners' Association documents and Condominium Agreements shall provide that the Homeowners' Association is responsible for, and that the Town of Plympton shall never have any legal or financial responsibility for, operation or maintenance of roadways, driveways, parking areas, stormwater management, wastewater disposal, septic systems, snow plowing, landscaping, trash disposal or pick up, street lighting or other illumination.

Profitability

28. The Project shall be limited to a total profit, by the Applicant of 20% before taxes
29. Any profit above 20% profit before taxes shall be returned to the Town of Plympton for use in the development of the Town's affordable housing inventory.
30. The profit must reflect a land value based upon acquisition cost under existing zoning regulations without a comprehensive permit in place.
31. After sale of the final unit, the Applicant will provide to the Board copies of all statements of profit and loss submitted to the Project Administrator and/or the entity providing subsidized funding to the project showing total project costs and total project revenues. If the Board concludes that such financial information is insufficient to allow it to determine whether or not the Applicant has exceeded the allowable profit provided for in this decision, it may require a full compilation and certification of total development costs and total revenues prepared by a CPA acceptable to the Board according to generally accepted accounting standards and paid for by the Applicant. Upon completion of the compilation and certification, the CPA shall send a copy of that report to the Applicant, the Board, and the Plympton Board of Selectmen.

Marketing

32. No construction of any dwelling under this Permit shall commence until the Applicant has submitted to the Board and any and all other relevant public agencies for review and final acknowledgment of consistency with this Decision a marketing plan for the affordable dwellings, such plan to conform to all applicable requirements of the Massachusetts Department of Housing and Community Development.

Conditions Precedent to Commencement of Project

33. No work shall commence on the project until the Applicant has obtained all necessary permits and approvals from governmental entities having jurisdiction over the project.
34. No grading, land disturbance, or construction of any structure or infrastructure shall commence until:
 - A. A final Site Plan, including detailed way and utilities plans, water system, drainage system, septic system, streetlights and signs, have been reviewed and have received approval consistent with this Decision by the Board, and consistent with their respective jurisdictions by the Plympton Conservation Commission and the Plympton Board of Health. With respect to plans for utilities such as electricity and telephone the final Site Plan shall be as detailed as the procedures of the companies providing such utilities allow.
 - B. A form of Deed Rider, similar in form to that published by Massachusetts Housing Finance Agency (MHFA) but revised in content as required for consistency with this Decision, shall be subject to review and approval by the

Board and its legal counsel as to form and consistency with this Decision, said approval to not be unreasonably withheld.

- C. A Monitoring Agreement, similar in form to the Monitoring Agreement published by MHFA but revised in content as required for consistency with this Decision, has been executed by the parties to that agreement. The Monitoring Agreement shall be subject to review and approval by the Board and its legal counsel as to form and consistency with this Decision, said approval to not be unreasonably withheld.
- D. A Regulatory Agreement, similar in form to that published by MHFA or DHCD but revised in content as required for consistency with this Decision and subject to the terms and conditions of this Decision, has been executed by the parties to that agreement and has been recorded with this Decision. The Regulatory Agreement shall be subject to review and approval by the Board and its legal counsel as to form and consistency with this Decision, said approval to not be unreasonably withheld. This document shall contain, at a minimum, the following terms:
 - i. The affordable units shall be restricted as affordable in perpetuity to households with less than 80% of the applicable area median income, or for as long as the development is not in full compliance with the Town's local regulations, policies and bylaws.
 - ii. The Monitoring Agent for this Project shall be South Shore Housing Corporation.
 - iii. The right of first refusal to purchase an affordable lot or unit on resale shall be granted to the Town of Plympton or its designee.
 - iv. Condominium and /or Association fees for the affordable units shall be established based on the undivided interest of each such unit in the common areas as set out in M.G.L. c.183A, {5(a). For such purposes the fair market value of the affordable unit shall be deemed to be the maximum price at which the affordable unit can be sold
 - v. An identification of the affordable units.
- E. A NPDES Stormwater Pollution Prevention Plan, erosion control plan and stormwater management systems operations and maintenance plan has been submitted to the Plympton Conservation Commission together with a Notice of Intent, and an Order of Conditions has been obtained from the Commission for the Final Plans and recorded.
- F. The Applicant has submitted to the Board for review as to consistency with this Decision the plans for stormwater management and improvements for the project as approved by the Massachusetts Department of Environmental Protection (DEP), the Plympton Conservation Commission, and all other

relevant public agencies. Such plans shall be prepared by a Massachusetts registered professional engineer. These plans and improvements shall address the effects on abutters and assure that there will be no detrimental drainage or erosion impact on the abutting properties. Post development runoff shall not exceed predevelopment runoff rates at all discharge locations for the 2 year through the 100 year storm.

- G. Final and detailed landscaping improvements and plans prepared by a the Applicant's engineer shall be added to the final Site Plan submitted to the Board for review and approval, including acknowledgment of consistency with this Decision. Such plans shall include shade trees along streets, and shall specify the types, number, size and location of all proposed landscaping plants, trees and shrubs at maturity, the location and type of fence or other screening materials, plans and profiles of all planting and screening materials and details of any and all other proposed landscape materials.
- H. The final Site Plan shall include, without limitation, the following agreed upon items:
 - i. The applicant shall construct a fence, either four foot black chain-link and/or six-foot stockade to screen the subject property from the animal pens located on the abutting property at 55 Lake Street. The fencing shall begin at a point near the abutter's barn and continue to a jog in the stone wall where an intermittent stream is shown on the plan.
 - ii. A four-foot white pine or similar landscape improvement to screen the subject property from the abutting property at 55 Lake Street.
 - iii. Walking paths consistent with current plans, conforming to the existing topography, and minimizing clearing and grading.
- I. The condominium documents which will be submitted for review and approval by the Board and its counsel shall include, at a minimum, maintenance during and post construction as well as perpetual maintenance of the septic system, water system, roadway and drainage systems (routine and seasonal). The said condominium documents shall be recorded in the Plymouth County Registry of Deeds and shall be part of the Homeowners' Association documents.
- J. The Stormwater Management System Operation and Maintenance Plan approved by the Conservation Commission and/or DEP shall be incorporated into the development's recorded condominium documents referred to in the preceding paragraph.
- K. A proposed construction schedule identifying the sequence and approximate dates of all key stages of construction has been submitted to the Board, the Board of Health, Conservation Commission, Building Inspector, Police Department, Fire Department, and Highway Department for review and comment to the Board. This submission also will include identification of all contractors, field

engineers, and other professionals that will be involved in the implementation of the Project.

- L. An erosion control barrier (hay bales staked end to end and siltation fence firmly anchored with six (6) inches of soil on the uphill side) shall be installed in a location reasonably acceptable to the Plympton Conservation Commission. The erosion control barrier shall be inspected by the Conservation Commission prior to work commencing on the site and shall be maintained until all disturbed areas have been stabilized.
- 35. The Applicant, as it has agreed, shall obtain all necessary permits from the Massachusetts Department of Environmental Protection (DEP), for establishment of a public water supply, pumping facilities and distribution system to serve the project. This Comprehensive Permit is conditional upon the Applicant's ability to provide a permitted water supply for the development.
- 36. Proposed watermains with the project site shall be final-designed and constructed in accordance with the requirements of the Massachusetts Department of Environmental Protection's Guidelines and Policies. The watermain layout, indicated on the Final Plans, shall also describe bends and other fitting locations. Watermain construction details shall be provided on the final Site Plans in accordance with accepted water works standards and requirements.
- 37. A separate irrigation well supply and distribution system shall be provided for outside water uses.
- 38. The minimum separation between buildings shall be thirty (30) feet.
- 39. Driveways – Except for the access drive, common driveways may serve no more than two dwellings. Driveways shall be paved.
- 40. Streets - All street radii shall meet 50WB truck turning radii standards. Except as otherwise provided in the Decision, street (traveled way) width shall be 20 feet. The roadway cross section shall include 18 inch wide Cape Cod berms with 3 inch reveal, and three (3) foot grass-stabilized shoulders.
- 41. Utilities – All electric, cable and telephone utilities shall be as shown on the final Site Plan.
- 42. Water system design and construction shall meet the requirements, standards and regulations of the Massachusetts Department of Environmental Protection (DEP). If any private wells within 1000 feet of the project's water supply well are demonstrate to have reduced capacity or quality after construction of the project's well, the Homeowners Association will be responsible to either demonstrate that the project's water supply well is not responsible for the change, or to provide an alternate water supply to the owner of the affected private well.
- 43. The Water service shall be looped through the Project

44. A 10 foot minimum vegetated buffer shall be provided as shown on the final Site Plan between the stormwater basins and any property line .
45. The Applicant shall pay the expenses incurred by the Board and Town in evaluating the Plans required by the Decision and in monitoring construction for this Project. These expenses will be deducted from the special account established by the Town Treasurer for the Project. When the balance of the special account is reduced below \$3000 the Applicant shall promptly replenish the account so that it contains at least \$6000. Any excess remaining in the account at the completion of the Project will be promptly returned to Applicant. No Occupancy Permit shall issue for the final two market rate units until any construction-related damage to adjacent roads is repaired by the Applicant in a manner satisfactory to the Board. No Occupancy Permit shall issue for the final two market rate units until any construction-related damage to adjacent roads is repaired by the Applicant in a manner satisfactory to the Board. Conditions Precedent to Issuance of Building Permit

Conditions Precedent to Issuance of Building Permit

46. At least 15 days prior to the date on which the first request for a building permit is filed, final roadway plans, profiles and construction details shall be provided for approval by the Board. All proposed roadway construction, grading and appurtenant work shall be described in complete detail. The said plans shall include the following:
 - A. A complete development-roadway profile shall be provided for existing centerline and sideline grades, and proposed centerline grade;
 - B. Roadway turning radii adequate for fire apparatus on the plan;
 - C. The proposed street sign construction details;
 - D. Proposed street signage and markings locations;
 - E. Corner radii of the proposed traveled way’
 - F. Two-way roadway widths shall be 20 feet (traveled way);
 - G. A minimum 3/8-inch per foot crown for the paved surfaces;
 - H. A sidewalk construction detail
 - I. Proposed roadway slopes of the two-way development road shall not exceed six percent nor be less than one percent.
47. Adequacy of seasonal high groundwater separation below the stormwater basins to meet a two-foot minimum separation requirement shall be demonstrated. Soil infiltration rate shall be correlated from the percolation rate from the most restrictive soil horizon in each stormwater disposal area. The calculations with respect to recharge shall be based on witnessed, on-site testing within each disposal area. The design shall comply with the

Stormwater Management Policy.

- a. Stormwater routing calculations shall be submitted showing that the detention basins will completely drain to the outlet invert within the required seventy-two-hour time limitation (Stormwater Management Policy).
- b. Within the stormwater basin areas and excluding the required twenty-foot wide undisturbed vegetated buffer, heavy equipment access shall be provided for maintenance of the detention basin areas. Access road width for the stormwater basins shall be at least ten feet, to provide for maintenance (Stormwater Management Policy).
- c. Calculations shall be submitted with the Final Construction Plans to demonstrate that riprap at all proposed outlet pipe locations is properly sized to reduce velocity and prevent erosion. Sizing calculations shall be used for riprap splashpads, or use of a design table based on velocity/stone size. Final Plans shall indicate that riprap shall be hand-chinked all proposed locations.
- d. Recharge calculations shall be provided in accordance with Stormwater Management Policy with the Final Plans, demonstrating compliance with Standard 3. A note shall be added to the Final Plans, indicating that all roof drains be connected to drywells to facilitate “clean water” recharge to the groundwater.
- e. Drain-piping-sizing calculations, hydraulic profile, and supporting documentation shall be provided with the Final Plans to the satisfaction of the Zoning Board of Appeals to demonstrate the adequacy of the street drainage system for the 25-year storm. Any tailwater effects at the outlet pipes shall also be considered.

Conditions Precedent to Building Construction

48. Prior to the occupancy of any building, roads to and within the Project will have at least the first course of pavement, all shared utilities in the Project will be operational, street signs will be in place and house numbers will be provided at the building site to avoid conflict with building and lot numbers. Street names and house numbers shall be approved by the Plympton Fire Department.
49. Prior to the start of construction of any building, the Applicant shall provide a letter from the Fire Chief stating acceptance of the Applicant’s proposal for providing water supply for fire fighting.

Conditions Relating to Construction

50. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust and use of town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00 a.m. or on Saturday before 8:00 a.m. Construction activities shall cease by 6:00 p.m. on all days. No construction or activity whatsoever (except for interior finishing) shall take place on Sunday.
51. All staging areas including parking areas for construction labor shall be on site. No parking on Town ways in the vicinity of the site shall be permitted by any person associated with the construction of the Project.
52. No Occupancy Permit shall issue for the final two market rate units until any construction-related damage to adjacent roads is repaired by the Applicant in a manner satisfactory to the Board.
53. Affordable housing units shall be constructed coincident with the development of market rate units. In no event shall the number of affordable units built relative to the number of market rate units built be less than the ratio of 1:3. For the purposes of this section, "built" means constructed to a degree sufficient for issuance of a certificate of occupancy. Prior to the issuance of the certificate of occupancy for the twelfth (12th) market rate dwelling unit, the Applicant shall complete construction, obtain certificates of occupancy for, and convey all of the affordable dwelling units.
54. All stumps, brush, and other debris resulting from any clearing or grading shall be promptly removed from the locus. No stumps or other debris shall be buried on the locus.
55. The Applicant shall pay for appropriate and reasonable police details as necessary to protect public safety during construction close to or in the public right of way.
56. There shall be no on-site storage of fuels, oils, automotive fluids, fertilizers, pesticides, insecticides, herbicides, cleaning chemicals, and other hazardous materials of significant concern, other than household quantities for domestic use.
57. To ensure compliance with the terms and conditions of the Decision and any approval or order by any federal, state or local agency, the Applicant shall, within five (5) days of a request for Certificate of Occupancy for any of the buildings and/or structures approved in the Decision, submit to the Board a complete and detailed "as-built" plan of such structure, with a certification from a Professional Engineer or Architect registered in the Commonwealth of Massachusetts that the Project "as-built" complies in all substantive respects with the Plans approved pursuant with the Decision and any other approval or order by any federal, state or local agency.
58. Temporary certificates of occupancy will not be permitted. The Fire Department shall not sign the occupancy permit until all required fire prevention and detection systems are

installed and operating, carbon monoxide detectors are installed and operating, street signs and house numbers are in place and all required inspections have been completed by the Fire Department.

59. The wastewater needs of the Project will be serviced by an on-site sewage treatment facility to be constructed in the location shown on the Approved Plans. The wastewater treatment facility shall be constructed and operated in compliance with the requirements of the Plympton Board of Health and the Massachusetts Department of Environmental Protection. The Project shall comply, in all respects, with the rules, regulations filing and permit requirements and certifications of the Department of Environmental Protection (DEP) and any and all regulations of the Plympton Board of Health, governing on-site wastewater disposal.
60. The Condominium Documents will at all times require that all pesticide, herbicide and fertilizer use on site shall be consistent with an Integrated Pest Management (IPM) Plan. Administrative
61. Fourteen (14) days prior to the submission of the Final Plans to the Board, the Applicant must submit a certified check made payable to the Town of Plympton in a sufficient amount to compensate the Town of Plympton for outstanding costs incurred by the Town prior to the date of the Decision in connection with reviewing the application for a Comprehensive Permit.
62. Final approved plans are to be recorded at the Registry of Deeds and shall be recorded together with this Decision.
63. Substantial revisions to the Project or Plans, such as relocation or deletion of dwellings (except as specified in the Decision), material changes in unit architecture, style or materials, relocations of more than one property line or other substantive changes from the approved concept plan shall not be permitted without the written approval of the Board. If, between the date that the Decision is filed with the Office of the Town Clerk and the completion of the Project, the Applicant desires to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested. Substantial changes will be administered or addressed pursuant to 760 CMR §31.03.
64. Except as otherwise specifically provided herein, where the Decision provides for the submission of plans or other documents to the Board, the Board shall review and provide a written response as to whether such plans or other documents are consistent with the Decision within forty-five (45) days of the Board's receipt of such plans or other documents.
65. The Applicant has proposed, and the Board requires, that the following aspects of the Project shall be and shall remain forever private and that the Town of Plympton, except as a unit owner, shall not have, now or ever, any legal or financial responsibility for operation or maintenance of:

Structures, including buildings, dwellings and accessory structures

Roadways, driveways or parking areas

Stormwater management system

Public water supply and distribution system

Wastewater collection and disposal system

Snow plowing

Landscaping

Trash disposal or pickup

Street intersection signage and lighting

The roadway and driveways within the development shall not be dedicated or accepted by the Town of Plympton.

66. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the development until the twelfth (12th) dwelling unit has been conveyed. At such time, the operation and maintenance of common facilities within the development shall be the responsibility of the Homeowners' Association.
67. Prior to the time at which the Applicant turns over the operation and maintenance of the stormwater management system, the public water supply and wastewater disposal systems, ways and other improvements to the Homeowners' Association, the Applicant shall provide the Board with proof that an appropriate budget has been established and funded to maintain the systems, ways and improvements.
68. Monitoring and testing during the construction of ways and installation of utilities and drainage systems in accordance with the schedule set forth in the Plympton Planning Board Subdivision Rules and Regulations shall be conducted at the expense of the Applicant. The Board may appoint an agent to conduct such monitoring.
69. No unit shall be occupied until the improvements specified in the Decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or adequate performance security has been provided, acceptable to the Board, to ensure such completion. Any such performance security shall be approved as to form by the Board.
70. No dwelling or other structure that is part of the Project shall be sold or advertised or offered for sale until the Applicant has entered into a Monitoring Services Agreement, similar in form to the Monitoring Agreement published by MHFA but revised in content as required for consistency with the Decision, with a monitoring agent approved by the Board. The Board approves South Shore Housing Corporation as the monitoring agent with respect to the sale of the affordable units. The monitoring agent shall agree to be bound by the terms of this approval and shall certify in writing to the Board, on an annual

basis, that the affordable units approved herein continue to be occupied by income-qualified persons. Until all dwelling units have been sold, the Applicant shall pay all costs associated with the monitoring of this Project, including the costs of certifying that the Applicant has not violated any terms or conditions of this Project; thereafter all such costs shall be paid by the Homeowners' Association.

V. CONCLUSION

This Comprehensive Permit is granted with conditions. The Decision was approved by a vote of 3-0 of the Plympton Board of Appeals at a meeting of the Board on June 15, 2005.

Any person or persons with standing who are aggrieved by the Decision may file an appeal pursuant to the provisions of General Laws, c. 40A, Section 17. Such appeal must be filed within twenty (20) days of the filing of the Decision in the Office of the Town Clerk.

The Applicant has the right to appeal the Decision pursuant to the provisions of General Laws Chapter 40B, Section 22.

Copies of the Decision and notice thereof must be recorded by the Applicant at the Plymouth County Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must thereafter be filed with the Board of Appeals.

By the Zoning Board of Appeals of the Town of Plympton

Stephen Mattern

Scott Sauchuck

Bill McClellan

APPENDIX A

SPECIFIC WAIVER REQUESTS

TOWN OF PLYMPTON ZONING BYLAW

**AGRICULTURAL RESIDENTIAL AND GROUNDWATER PROTECTION
DISTRICT**

REGULATION: Section 4

DESCRIPTION: Schedule of Uses

SUMMARY OF REQUIREMENTS: Requirement that multifamily elderly residential developments also contain housing for handicapped persons.

PROPOSED ACTION BY APPLICANT: The Applicant seeks a waiver.

ACTION BY THE BOARD OF APPEALS: DENIED from the provisions relative to the use as elderly housing – these provisions are not applicable to the final project.
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REGULATION: Section 5

DESCRIPTION: Intensity of Use Regulation

SUMMARY OF REQUIREMENTS: Requirement that only one dwelling be placed on any one lot. Side yard and rear yard minimum size and building setbacks.

PROPOSED ACTION BY APPLICANT: The Applicant seeks a waiver.

ACTION BY THE BOARD OF APPEALS: GRANTED.
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REGULATION: Section 6.4.2

DESCRIPTION: General Regulations, Table of Parking Dimensions.

SUMMARY OF REQUIREMENTS: Aisle width at 90 Degrees – 24 feet. Minimum Driveway Width, one way – 12 feet; two-way 24 feet. Parking spaces, residential – 2 spaces per unit.

PROPOSED ACTION BY APPLICANT: The Applicant seeks a waiver.

ACTION BY THE BOARD OF APPEALS: AISLE WIDTH AND DRIVEWAY GRANTED FOR THE ACCESS ROAD. PARKING SPACES – DENIED.
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REGULATION: Section 7.2

DESCRIPTION: Multi Family Dwellings for Elderly and Handicapped -

SUMMARY OF REQUIREMENTS: Requirement limiting the number of elderly housing in Plympton; requirements for special provisions for handicapped persons; requirement that residents be at least 62 years of age, requirement of a minimum of 1 ½ parking spaces per unit.

PROPOSED ACTION BY APPLICANT: The Applicant seeks a waiver.

ACTION BY THE BOARD OF APPEALS: DENIED. These requirements are not applicable to the project as finally proposed by Applicant.
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REGULATION: Section 8.3.5

DESCRIPTION: Special Districts – Prohibited Uses and Uses Allowed By Special Permit in GPD I, II, III

SUMMARY OF REQUIREMENTS: Requirement prohibiting the permanent removal or regrading of the existing soil cover resulting in a finished grade within ten feet of the Spring high water level

PROPOSED ACTION BY APPLICANT: The Applicant seeks a waiver.

ACTION BY THE BOARD OF APPEALS: GRANTED.

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GENERAL WAIVER REQUEST

TOWN OF PLYMPTON SUBDIVISION RULES AND REGULATIONS

DESCRIPTION: Resubdivision.

SUMMARY OF REQUIREMENTS: None.

PROPOSED ACTION BY APPLICANT: The Applicant seeks a waiver from any requirement of the Subdivision Rules and Regulations which requires the three existing lots which were approved by the Planning Board to be combined into a single lot for the Project.

ACTION BY THE BOARD OF APPEALS: GRANTED – any requirement of the Subdivision Rules and Regulations which requires the three existing lots which were approved by the Planning Board to be combined into a single lot for the Project is waived.