

Zoning Board of Appeals Decisions Decisions for: 06-02-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

COMPREHENSIVE PERMIT: 18-09 – Modification #017-16

APPLICANT/OWNER(S): MEGANSETT CROSSING, LLC / Michael Galasso

SUBJECT PROPERTY: 676, 688 and 702 North Falmouth Hwy., No. Falmouth, MA
Assessor's Map: Map 02, Section 06, Parcel 003, Lot 002 – 676 No. Falmouth Hwy
Map 02, Section 06, Parcel 003, Lot 003 – 688 No. Falmouth Hwy
Map 02, Section 06, Parcel 003, Lot 004 – 702 No. Falmouth Hwy

DEED/CERTIFICATE: Book 27573 / Page 0325 (Same # for 3 Lots)

Zoning: Residential B

Overlay District(s): Megansett Harbor Coastal Pond Overlay District

SUMMARY: Comprehensive Permit Modification Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 4, 2016, the applicant applied to the Zoning Board of Appeals for a Modification of approved Comprehensive Permit #18-09 previously known as Cubby Construction Corp – Holly Park Development, now known as Megansett Crossing, located at 676, 688 and 702 North Falmouth Highway, which was originally approved and filed with the Town Clerk on July 17, 2009. On July 13, 2013, at a duly posted public hearing granted (unanimously) a modification of Comprehensive Permit #18-09 under #55-13, transferring said Comprehensive Permit to Michael Galasso and TRI Resource, Inc. – Decision filed with Town Clerk on July 23, 2013. On June 14, 2014, at a duly posted open meeting of the Board of Appeals, the Board administratively granted transfer of Comprehensive Permit #18-09 from Michael Galasso and TRI Resource, Inc. to Megansett Crossing, LLC.
2. On April 12, 2012, at a duly posted open meeting of the Board of Appeals, the Board administratively granted a two (2) year extension for Comprehensive Permit #18-09 with an expiration date of July 17, 2014. On June 19, 2014, at a duly posted meeting of the Board of Appeals, the Board administratively granted an eighteen (18) month extension for Comprehensive Permit #18-09 with a new expiration date of January 16, 2016. On December 10, 2015 at a duly posted open meeting of the Board of Appeals, the Board administratively granted a one (1) year extension for Comprehensive Permit #18-09 with a new expiration date of January 15, 2017.
3. On February 4, 2016, Megansett Crossing, LLC submitted a request for Board administrative approval as 'insubstantial' pursuant to 760 CMR 56.05 (11)(a) to modify the plans approved in Comprehensive Permit #18-09 previously known as Cubby Construction / Holly Park Development. Original plans approved a ten (10) unit development (2 duplex structures and 2 triplex structures) with no garages and one-way driveway; proposed plan is for twelve (12) units (6 duplex structures), all with a one-car garage, one-way driveway. On February 18, 2016 at a duly posted open meeting of the Board of Appeals, the Board reviewed the application, which requested changes to the structures and site layout of the approved 40B development in Comprehensive Permit #18-09 and determined (unanimously) that the changes to the approved plans are substantial and require further review by the Board.
4. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.
5. On February 22, 2016 applicant Michael Galasso signed a waiver to extend the thirty (30) day requirement for a public hearing on the Modification of Comprehensive Permit #18-09. The waiver was filed with the Falmouth Town Clerk on February 25, 2016 (see file).

6. On March 2, 2016 the Zoning Administrator invited Michael Galasso to a preliminary plan review meeting wherein Scott Schluter, PE - with the Town's Engineering Department and Assessor Patricia Favulli to review the proposed changes to the project. Anne Connolly, Direct of Falmouth Housing Trust, was present as well.
7. A duly advertised public hearing was opened on March 24, 2016.
8. On April 9, 2016 at 9:00 AM the Board conducted a site visit to review staking and site conditions. Some public attended but no questions or comments were received by any Board Member.
9. The public hearing for modification of Comprehensive Permit #18-09 under #-017-16 was terminated on May 19, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy voted to have the Zoning Administrator draft a decision to Grant the Modification of Comprehensive Permit #18-09 under Modification #017-16 with Conditions. Minutes from the hearing are on file in the Board of Appeals.
10. On June 2, 2016 at an open meeting of the Board, consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision with a vote of 4 – 1 (Member Murphy in opposition) to approve the decision as drafted and amended and to Grant a Modification of Comprehensive Permit #18-09 under Permit #017-16 with Conditions.
11. Michael Galasso of Megansett Crossing, LLC and Attorney Peter L. Freeman of Freeman Law Group, LLC were present before the Board and reviewed proposed plans to modify Comprehensive Permit #18-09.
12. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails/Info Submitted from Abutters/Interested Parties

- 3/7/2016 Memorandum submitted to the file from Falmouth Housing Trust dated 3/7/2016 with comments regarding the review meeting of 3/2/2016 regarding proposed changes to approved 40B.
- 3/17/2016 E-mail from Peter MacDonald in support of proposed project.
- 4/20/2016 E-mail from Virginia Valiela to Zoning Administrator Budrow regarding questions and concerns of proposed changes to project on subject property being requested by Michael Galasso.
- 5/5/2016 Patricia Johnson of Wild Harbor Road in North Falmouth submitted information on other 40B projects relative to bedroom count per acre (she spoke at hearing – see public comment).
- 5/19/2016 E-mail letter from Robert Leary in support of the proposed changes to Comprehensive Permit #18-09.
- 5/19/2016 Handout at hearing from Virginia Valiela, interested party, with GIS map of subject property, 1950 aerial view of subject property, photo of box turtle she found on subject property, Health Department memo dated May 13, 2009 regarding alternative sewage system proposed in original approval #18-09 for subject property and an e-mail date 5/19/2016 from Ms. Valiela noting the items attached and concerns of density of project.

Letters/E-mails/Information from Applicant/Representative(s)

- 2/4/2016 Michael Galasso of Megansett Crossing, LLC submitted an application, fee, plans and letter of February 4, 2016 explaining changes to Comprehensive Permit #18-09 and requesting a modification to said Permit.
- 2/4/2016 Attorney Peter L. Freeman, on behalf of Michael Galasso, submitted a letter dated February 4, 2016 'Notice of Project Change' requesting that said changes to approved plans in Comprehensive Permit #18-09 be approved administratively under 760 CMR 56.05 (11)(a).

2/4/2016 Letter dated January 26, 2016 from Falmouth Board of Selectmen – signed by Chairman Jones in support of the plan revisions and requests that the applicant and the ZBA continue to work toward a plan for all four affordable units to be sold at 80% AMI – with attached Updated Development Budget (submitted by Michael Galasso).

2/4/2016 Letter dated December 9, 2015 to the Board of Selectmen Chairman from James Fox, Chairman of the Planning Board stating that the Planning Board voted to recommend the Megansett Crossing 40B project under the Local Initiative Program (submitted by Michael Galasso).

2/4/2016 Memorandum dated July 16, 2015 to Board of Selectmen Chairman Jones from Falmouth Affordable Housing Committee stating support of the Megansett Crossing, LLC project in North Falmouth (submitted by Michael Galasso).

3/18/2016 Letter of March 17, 2016 from Michael Galasso listing additional waivers requested through this modification of #18-09 Comprehensive Permit and minor changes to plans recommended by the Engineering Department and Falmouth Fire Rescue Department in the March 2, 2016 review meeting.

3/24/2016 Power Point Presentation regarding proposed project and comparison with previously approved project on subject property – presented at 3/24/16 Hearing and submitted by Michael Galasso.

3/24/2016 E-mail to Peter Freeman from Alana Murphy, Deputy Associate Director of Housing Development Division DHCD dated 3/24/2016 informing Mr. Freeman that the DHCD has approved the modifications to Megansett Crossing as described in a letter from Mr. Freeman dated February 4, 2016 (att'd to e-mail) – submitted to file by Michael Galasso.

4/22/2016 Second Power Point Presentation by Michael Galasso reviewed at the April 21, 2016 Hearing.

5/5/2016 Third Power Point Presentation by Michael Galasso reviewed at the May 5, 2016 Hearing.

5/17/2016 E-mail from Michael Galasso with attached revised development budget comparing 10 units to 12 units.

Letters/Referrals/E-mails from Town Departments

1/28/2016 Letter dated January 26, 2016 from Falmouth Board of Selectmen – signed by Chairman Jones in support of the plan revisions and requests that the applicant and the ZBA continue to work toward a plan for all four affordable units to be sold at 80% AMI (submitted by Heather Harper, Assistant Town Manager).

2/9/2016 ZBA staff submitted a copy of the original Decision for Comprehensive Permit #18-09 for subject properties.

2/4/2016 thru

2/22/2016 E-mails between Michael Galasso and Zoning Board of Appeals staff regarding plans, information and request for administrative review.

3/21/2016 Packet of information submitted by ZBA staff with items from Town Administration, Planning Board and Michael Galasso giving background on project.

4/1/2016 E-mail from Heather Harper, Assistant Town Manager, to Michael Galasso dated April 1, 2016 (ZBA and others cc'd) regarding funding from Falmouth Affordable Housing Fund for Megansett Crossing project.

5/4/2016 Memorandum from Scott Schluter, PE - Staff Engineer with Department of Public Works to Zoning Administrator Budrow regarding revised plans for Megansett Crossing reviewed on April 29, 2016 with Mr. Galasso, Zoning Administrator, Fire Department and Engineering.

5/9/2016 E-mail, with ZBA Administrator cc'd, between Michael Galasso and Virginia Carmichael with CPC regarding questions on possible CPC funding for Megansett Crossing.

5/17/2016 E-mail, with ZBA Administrator cc'd, between Virginia Carmichael with CPC and Michael Galasso regarding answer on possible CPC funding for Megansett Crossing.

Plans submitted by Applicant/Applicant's Representative

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise - Architect Drawing L-1 'Scheme 4A Revised Site Plan' dated August 27, 2014 revised April 26, 2016 with a Board date 'received' stamp of May 5, 2016;

"Landscape Plan Megansett Crossing North Falmouth Highway North Falmouth, MA" - Drawing L-1.0 - drawn by Lisa Swansey Landscape Architect - plan is not dated - with a Board date 'received' stamp of February 4, 2016;

"Site Plan" prepared for Megansett Crossing, LLC in North Falmouth, MA - Sheet 1 of 7 through 7 of 7 as drawn by Holmes and McGrath, Inc. dated May 15, 2013 and with a final revision date of 8/25/2014 - with a Board date 'received' stamp of February 4, 2016;

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise - Architect - Drawing Number A-01 'Scheme 4A Building Type A', dated August 27, 2014 and with a Board date 'received' stamp of February 4, 2016;

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise - Architect - Drawing Number A-02 'Scheme 4A Building Type A' dated August 27, 2014 and with a Board date 'received' stamp of February 4, 2016;

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise - Architect - Drawing Number A-30 'Scheme 4A Buildings Type A, B & C' dated August 27, 2014 with a Board date 'received' stamp of February 4, 2016; and

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise - Architect - Drawing Number SK-1 'Scheme 4A Solar Roofs' dated August 27, 2014 with a Board date 'received' stamp of February 4, 2016.

Hearing - March 24, 2016:

Attorney Peter Freeman reviewed the history of the proposed project that was granted a Comprehensive Permit in 2009, #18-09 and said permit has not lapsed due to extensions approved by the Board of Appeals. He explained that it was approved under the Local Initiative Program (LIP) as a development with ten (10) units; and recently received approval under the LIP to allow for two (2) additional units. Three (3) of the proposed twelve (12) units will be affordable at 80% of the Barnstable County median income and one at 110% of the Barnstable County median income. Note: It was explained during the hearing the fourth affordable unit at 110% of the median income would not count on the housing inventory list.

Michael Galasso shared a Power Point Presentation with the Board and public that reviewed the proposed modifications to the project that includes removing the two triplex buildings, adding two additional units and constructing six duplex buildings - all with a one-car garage and a first floor master bedroom. He stated that the number of bedrooms will remain as approved at thirty (30) bedrooms on site; he reviewed the designation of the affordable units; reviewed the proposed children's play area; and discussed recent changes suggested to the plan after the department meeting that was held on March 2, 2016 at the Board of Appeals office.

The Board discussed concerns with density, lot coverage proposed, setbacks to the front property line off the Route 28A road layout, footprints of buildings (size) and if the fourth unit can become an affordable at 80% that will count on the housing inventory. Attorney Freeman and Michael Galasso responded to all questions.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

Public Comment:

- Patricia Johnson of Wild Harbor Road in North Falmouth - stated concerns with the proposed project relative to density and location to Route 28A, which she noted traffic reports stating 9,000 trips daily on Route 28A
- Sean Murphy of 20 Overy Drive in North Falmouth stated concerns with the proposed project relative to density, impact from lights onto property to abutters

Following public comment, and comments from the public that the site had not been staked, the Board requested that Mr. Galasso stake certain buildings on the property so that the Board members could have a better understanding of the size and location of the proposed buildings.

Mr. Galasso addressed the concerns of the Board and stated that the cost of staking of three of the buildings would add to the expense of the project and stated that this is an affordable project which makes it less likely to add the additional affordable unit.

Consensus by the Board members is to see the property/buildings (at least 3 buildings) staked and reminded Mr. Galasso to submit a waiver for the proposed 3' setback as the approved setback in original plan was 11'.

Member Van Keuren suggested to conduct a Board site visit on April 9, 2016 at 9:00 AM. Zoning Administrator Budrow stated she will post a notice for the site visit by Board members.

Member Foreman made a motion to continue the hearing to April 21, 2016 at 6:30 PM. Member Hurrie seconded the motion. Motion carried 5 - 0.

Hearing - April 21, 2016:

Mr. Galasso presented a second Power Point Presentation noting the proposed changes to the site after previous hearing. He noted that the affordable units would be distributed in and located in units 3, 6, 8 and 11 (see plan); he proposed solar energy lights on site that can control the intensity of said lights and noted where they would be located on site; he noted that he is looking into the possibility of improving the setbacks to the front yard property line off Route 28A; and he discussed the density referencing Falmouth's Housing Policy #1 and noted that the proposed twelve (12) units is below the threshold for profitability and that Zone Business 3 allows up to six dwellings, with eight dwelling units under special permit. Mr. Galasso reiterated that the Board of Selectmen and the Planning Board have supported the proposed plan. DHCD will monitor the development.

The Board discussed the revised plans and asked for information on the fencing, net zero energy, landscaping within road layout - State property, proposed Monitoring Agreement and Master Deed drafts to be submitted and repeated concern of density and location so close to Route 28A - which is a main roadway that is heavily traveled.

Public Comment:

- Trish Mara of Chester Street in North Falmouth stated support of the proposed - need for affordable housing
- Patti Haney of Elm Road in Falmouth with Falmouth Housing Authority stated support of the proposed
- Nancy Hayward of Chase Road in West Falmouth stated she is in support of affordable housing but has concerns with density and setbacks
- Ed Curley with Affordable Housing Committee stated support of the proposed project
- Patricia Johnson of Wild Harbor Road, North Falmouth stated she is opposed to the development due to density and setback from Route 28A road layout

Board discussed density concerns, front yard setback concerns, increase in structures between the previously approved plans and the proposed plans and they questioned cost of 'net zero energy' vs. 50% energy improvement. Board members stated they prefer the duplex buildings as opposed to the previously approved triplex buildings. The Board further noted that the changes requested include an increase in both the density (10 to 12 units) and the size of units (increasing the lot coverage by structures from 12.3% to 24.6%), due both to the addition of garages and to enlargement to the interior space of units from an average of 1400 square feet (previous design - all 3 bedrooms) to 1,750 square feet (proposed - 2 and 3 bedroom units) Board members questioned if the 110% affordable unit could be 80%. Consensus is that taking into account the increase in unit size, the Board prefers ten (10) units. As

configured with twelve (12) units, the proposed project is too dense. The Board also expressed issues with setbacks, which in some places was as little as three feet from the layout of the State Highway – Route 28A. The Board asked if a driveway could be located at the front of the property so that buildings are set further back.

Attorney Freeman reviewed Board's top three concerns of setback to front property line, density and economics of the project. He stated that the applicant will review possibility of increasing the front; the extra two units are acceptable for the pro-forma – if the two units are denied, it won't allow the project to go forward. He stated that the pro-forma is based on the applicant's experience and that DHCD has reviewed said pro-forma.

Mr. Galasso stated that the three-bedroom units are approximately 1700 square feet in size and the two-bedrooms units are approximately 1400 square feet in size. He will look at the driveway to see if the Fire Department is amenable to cutting the width to 14' and allowing the buildings to move back 2'. He noted regarding the density and economics, they are amortizing the costs over the units. Mr. Galasso asked for additional time to work on the Board's concerns.

Member Murphy made a motion to continue the hearing to May 5, 2016 at 6:30 PM. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Hearing – May 5, 2016:

Mr. Galasso shared a third Power Point Presentation showing further revisions of the plans for modification. He noted the change in the front yard setback to the road layout of Route 28A that shows the closest setback to the front property line off Route 28A road layout is 8.5' [units 8 and 9]; all other units would be no less than 12' to front property line; and that it is not feasible to locate the driveway at the front of the property as a proper turning radius for vehicles and emergency vehicles would take up too much area. He compared the proposed plans with that of another 40B development nearby and further commented that the proposed development before the Board is what Town Meeting approved as criteria in affordable housing April 2015. Mr. Galasso reviewed the improvement of the units from what was proposed and approved in 2009 and reminded the Board about the 'net zero energy' of the project.

The Board asked questions of Mr. Galasso regarding the six sidewalks proposed to be constructed in the State road layout and asked if they are all necessary; what is status of the 110% affordable unit; is it possible to downsize any units and can the density be reduced (eliminate two units).

Public Comment:

- Jill Neubauer of Hatchville Road in Hatchville and Architect stated support of the proposed development siting design
- Peter McDonald of 21 Pine Street stated support of the proposed development
- Tom Clark of Katharine Lee Bates Road in Falmouth stated support of the proposed
- Trisha Herlihy with Falmouth Housing Authority stated support of the proposed
- Patricia Johnson of Wild Harbor Road North Falmouth stated she is opposed with concerns of density and setbacks
- Sean Murphy of 21 Overlay Drive in North Falmouth spoke in opposition due to density and impact on neighbors
- Virginia Valiela of Old Main Road in North Falmouth stated opposition to the proposed project citing density and impact to area

Board members discussed. Consensus is that the plans are an improvement to what was previously approved – meaning architectural design of units, addition of garages and bedroom on first floor; however, the majority of the members continue to feel that the density and lot coverage by structures and structures, parking and paving as proposed is an issue. In particular, the Board discussed how close the units, with families, will be to Route 28A if the State widens the now two-lane highway in the future. Board asked Mr. Galasso if he has spoken with the Community Preservation Committee (CPC) for any funding of the affordable units.

Attorney Freeman reiterated that being reduced to the original number of ten (10) units would prevent the project from going forward. He feels the design is appealing, the greater good is that they are beautiful buildings and improved from what was originally approved by this Board in 2009.

Mr. Galasso stated he would like to look into obtaining CPC funds and will contact CPC and return to the Board with answers regarding possible funding.

Member Foreman made a motion to continue the hearing to May 19, 2016 at 6:30 PM. Member Van Keuren seconded the motion.

Hearing – May 19, 2016:

Michael Galasso informed the Board that CPC funds would require application and a Town Meeting vote; it is too late to get in for Fall 2016 Town Meeting. He said CPC suggested he apply for Falmouth Housing Funds. He explained that in the past it would have taken \$30,000 to \$50,000 additional funds per affordable unit but with this project it would take \$85,000; and a project with 12 units, four of which are affordable needs \$40,000 subsidy. Mr. Galasso told the Board that with 12 units he is at 9.3% return and with 10 units he would be at 3.37%. He said that going to 50% of energy would eliminate subsidy from energy source. He reminded the Board that with the 12 units they have 26' setbacks between each building and landscape plan shows a 25' buffer to the edge of the current layout of Route 28A.

Board Discussion:

Board questioned whether there was any direct subsidy or economic benefit of making the buildings net zero energy. Mr. Galasso informed the Board that there was not direct subsidy, but that there was a benefit of approximately \$2,000 to the unit owners and that net zero energy creates a higher market rate price. He explained to the Board that the residents can lease the solar panels or receive a reduction in electrical costs.

Member Van Keuren asked if the solar panels are included in the construction cost. Mr. Galasso stated that the solar panels are included in the construction cost.

Board discussed construction costs and felt that \$212 per square foot was a high cost and that it should be possible to trim these costs so that the project would remain economically feasible at a lower density. Consensus of the majority of the Board members was that the density is too much – 10 units would be better; setbacks to Route 28A, although improved, is still a concern with the 8.5' and 9' setbacks; and solar panels that are in the construction costs, but the homeowner's will lease or purchase for benefit is a concern.

Public Comment:

- Virginia Valiela of Old Main Road in North Falmouth stated opposition and concerns with density and findings of box turtles and a Massachusetts protected flower, the trailing arbutus.

Attorney Freeman noted that the subject property is not within MEPA overlay.

Member Murphy made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Chairman Bielan closed the hearing.

The Board discussed the proposed modification, reviewed testimony given and information submitted. Board consensus is the proposed modification requesting the addition of two units to the project increases density, lot coverage by structures and raises questions on the safety of the individuals who will be residing on subject property due to its location right off from Route 28A. However, the majority of the Board is in favor of the proposed design of the units with master bedroom on first floor, a garage and reduction in parking created through addition of garages and do wish for the project to move forward with lower density. Consensus among Board members was that approval of project, subject to condition limiting number of unit to ten (10) would be desirable.

June 2, 2016: At a duly posted meeting of the Board of Appeals held on June 2, 2016 the Board reviewed and discussed the draft Decision.

Member Foreman made a motion to approve the modification of Comprehensive Permit 18-09 as set forth

in the amended draft Decision. Member Van Keuren seconded the motion. Motion carried 4 – 1 with Member Murphy in opposition.

FINDINGS

1. The Board finds that the Applicant, based on requirements of M.G.L. c. 40B, sec 20 – 23, submitted the following information:

- (a) It is a "limited dividend organization" as that term is used in G.L. c. 40B, s.21 and 760 CMR 56.04 (1) (a);
- (b) Evidence of a subsidy and project eligibility as indicated by the project eligibility/site approval letter from The Department of Housing and Community Development dated October 1, 2015; and
- (c) The Applicant submitted evidence of "control of site" by virtue of a deed filed with the Barnstable Registry of Deeds on February 25, 2016 – Book 29471 / Page 61.

2. The proposed modification of the development was reviewed by the following municipal officers or agencies:

Fire Department
Planning Board
Engineering Department
Board of Selectmen
Assistant Town Counsel
Cape Cod Commission
Affordable Housing Committee
Department of Housing and Community Development

3. The Board finds that the proposed modification of the development was approved by the town of Falmouth and DHCD as a Local Initiative Program (LIP). The Board finds that as a LIP project, DHCD will require final cost certification from the Applicant for the project and the Town of Falmouth will be responsible for the monitoring of the project pursuant to DHCD's LIP Guidelines. The Board further finds that DHCD requires the applicant to enter into a Regulatory Agreement with DHCD and the Town of Falmouth that provides for project monitoring, resale requirements of affordable units, and other matters necessary to ensure the continued affordability of the affordable units and project compliance with LIP requirements.

4. The applicant's testimony was that the Falmouth Housing Trust will be the Monitoring Agent for this development.

5. The Board finds that the Development will be called "Megansett Crossing" and is made up of three existing lots known as 676, 688 and 702 North Falmouth Highway as noted on the "Existing Conditions Plan", drawn by Holmes and McGrath, Inc., dated May 15, 2013, with a final revision date of 8/25/2014 and a Board date 'received' stamp of February 4, 2016. The Board further finds that the three lots totaling 1.7 acres, will be merged through an approved ANR plan signed by the Planning Board and filed with the Registry of Deeds as conditioned herein, with a copy of the filed ANR submitted to the Board of Appeals prior to issuance of a Building Permit.

6. The Board finds there are six duplex buildings proposed on the site. Three of the units have been designated affordable in perpetuity at 80% of median income for Barnstable County; and one unit designated at 110% of the median income. The Board finds through testimony by the applicant that the 110% affordable unit will not count on Falmouth's housing inventory.

7. The Board finds that the applicant proposed the modification with a setback of 3' from the front property line off the road layout of Route 28A. The Board further finds that the applicant was able to modify the plans and move the buildings so that the closest setback to the front property line from any structure would be 8.5'.

8. The Board finds that there will be two curb cuts for driveway access onto and off the site as previously approved – with the change that traffic will now enter subject property from the northerly most curb cut and exit at the southerly most curb cut of subject property.

9. The Board finds that the applicant proposed sidewalks throughout the road layout of Route 28A as well

as one from the playground to the proposed bus stop (see plans) within the road layout. The applicant is amenable to eliminate the sidewalks proposed within the road layout of Route 28A with the exception of one sidewalk or path that goes from the front of the playground area (approximately) to the bus stop that will be located within the road layout on the westerly side of the existing sidewalk off Route 28A. The applicant will need to get permission from the State Highway Department to construct the path through the road layout and for placement of the bus stop.

10. The Board finds that the applicant intends to create a 'playground' area for use by the children of any residents. The proposed playground area will be located between two of the most centrally located units on subject property.

11. The Board finds that each unit will be serviced by a public water supply and the development will have a shared Title V septic system that will have approval by Board of Health.

12. The Board finds through testimony by the applicant that he is amenable to relocating the hydrant that was originally proposed on the east side of the development just off Route 28A and relocate it to the easterly side of the driveway centrally located within the development.

13. The Board finds that the applicant will construct a 48" (4') high stockade type fence on the westerly rear property line from the emergency access driveway and running along the property line to the edge of clearing of the lawn area at the northern portion of the site and as conditioned herein. The fence is conditioned herein out of concern and as a safety issue by the Board based on the possibility of resident children's attraction or interest in the rail road abutting the length of this property.

14. The Board finds that the applicant has agreed to install and maintain a 'break-away' chain at the emergency access driveway located at the southwesterly corner of the subject property. The 'break-away' chain will allow access for emergency vehicles and will eliminate access from individuals using this as a cut through to abutting commercial property. The Board finds through testimony by the applicant that the purchase and sale of subject property included the easement allowing this 'emergency access' to subject property.

15. The Board finds that the following waivers of the Code of Falmouth have been requested and the Board of Appeals has granted said waivers. Minor deviations from otherwise applicable local rules may be authorized by the Board of Appeals in the subsequent review and approval of final plans.

- a. Section 240-68 A. – Front Yard Setback
- b. Section 240-69 A. – Maximum Lot Coverage
- c. Section 240-19 – Permitted Residential Uses
- d. Section 240-67 – Minimum Lot Dimensions
- e. Section 240-51 A. (5) – Multi-family Dwellings
- f. Section 240-66 D. – One Dwelling Per Lot

16. The Board finds that the proposed two additional units to the previously approved development creates too much density for the 1.7 acre site that consists of a long narrow strip of land measuring approximately 760' in length along Route 28A (frontage) and a depth of approximately 91' that limits setbacks of structures and location and design of driveway. The Board further finds that the Fire Department's recent submission of a letter dated April 29, 2016 stated that the new Massachusetts Fire Safety Code requires Fire Department Access Roads to be no less than 20 feet wide and that any reduction of the proposed 16 foot wide driveway will inhibit emergency vehicles in response to an emergency.

17. The Board finds that the applicant changed the design of the structures previously approved for this development and created a much larger footprint of structures and increased square footage of units. The design proposed includes a garage and a master bedroom on the first floor. The Board further finds that proposed design of the dwelling units is an improvement, however, the increase of the structures doubled the lot coverage requirements under Section 240-69 A. for structures from 12.3% previously approved to 24.6% - the maximum allowed is 20% in a residential zone, and total lot coverage by structures, parking and paving increased from 42.6% to 49.3% - the maximum being 40% pursuant to said section.

18. The Board finds that the plans submitted by applicant for the modification to the project discussed herein showed a 3' setback to the front property line of subject property off the road layout of Route 28A,

which was improved by the applicant during the hearing process so that two of the buildings had setbacks of 8.5' to the front property line – all other buildings range from 9' to 17' from the front yard property line. The required setback pursuant to Section 240-68 A. of the Code of Falmouth is 35'. The Board finds that the setbacks proposed, although improved through the hearing process, are still a concern.

19. The Board finds that the net zero energy proposed development is a benefit to the residents, but that the increase to the construction costs for this benefit is such that the project costs may have a negative impact to the applicant. The Board weighed this heavily and considered whether the project could still be cost effective if there was a reduction in the number of units.

20. The Board finds that they discussed the project at great length with the applicant including possibly reducing the size of the units to improve setbacks and lessen the impact to the site, reduce project by one or two units to reduce density on site and reducing the net zero energy to a reasonable degree. The Board finds that the applicant worked with the Board and improved the 3' setback to the front property line to an 8.5' setback for two of the structures and considered the response to the Board's concerns of reduction of density.

DECISION

Pursuant G.L. c. 40B, the Zoning Board of Appeals of Falmouth, after public hearing and findings of fact, hereby grants a Modification of Comprehensive Permit #18-09 under #017-16 to Megansett Crossing, LLC and Michael Galasso for the construction of ten (10) condominium dwelling units with associated infrastructure and improvements, subject to the conditions stated below. The term "applicant" as set forth herein shall mean the applicant Megansett Crossing, LLC and Michael Galasso, its heirs, successors and assigns. The term "Board" as set forth herein shall mean the Falmouth Zoning Board of Appeals. Unless otherwise indicated herein, the Board of Appeals may designate an agent or agents to review and approve matters set forth herein.

Conditions:

1. The development shall be constructed, including parking, parking surfaces, playground, septic system, fencing, landscaping, lot coverage and use of dwelling units, as represented to this Board in substantial conformance as shown on preliminary plans of record entitled and listed as follows:

"Site Plan" prepared for Megansett Crossing, LLC in North Falmouth, MA – Sheet 1 of 7 through 7 of 7 as drawn by Holmes and McGrath, Inc. dated May 15, 2013 and with a final revision date of 8/25/2014 – with a Board date 'received' stamp of February 4, 2016 shall be revised showing ten (10) units on subject property, number of bedrooms per unit, parking, playground area, lighting, removal of sidewalks within the road layout of Route 28A, with the exception of one sidewalk or path to bus stop, relocating fire hydrant to the easterly side of the driveway, and fencing. The revised "Site Plan" shall be submitted to the Board of Appeals for approval prior to issuance of a Building Permit.

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise - Architect – Drawing Number A-01 'Scheme 4A Building Type A', dated August 27, 2014 and with a Board date 'received' stamp of February 4, 2016;

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise - Architect – Drawing Number A-02 'Scheme 4A Building Type A' dated August 27, 2014 and with a Board date 'received' stamp of February 4, 2016;

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise – Architect – Drawing Number A-30 'Scheme 4A Buildings Type A, B & C' dated August 27, 2014 with a Board date 'received' stamp of February 4, 2016; and

"Megansett Crossing North Falmouth Highway North Falmouth, MA" drawn by Christopher T. Wise – Architect – Drawing Number SK-1 'Scheme 4A Solar Roofs' dated August 27, 2014 with a Board date 'received' stamp of February 4, 2016.

2. The applicant shall file an 'Approval Not Required' (ANR) plan with the Planning Board to merge the three subject lots. Once the Planning Board has approved the ANR, the applicant shall file the plan with

the Barnstable Registry of Deeds. The applicant shall submit to the Board of Appeals, prior to the issuance of a building permit, a copy of the filed ANR plan (with Registry Book and Page).

3. The development shall be limited to 10 condominium units constructed as five (5) duplex buildings as shown on the architectural plans noted above.

4. Three of the condominium units are designated as affordable units and shall be reserved in perpetuity for sale to households earning no more than eighty percent (80%) of the median household income according to statistics published by the U.S. Department of Housing and Urban Development (HUD). The affordable units will be located in one of the units in Buildings 1, 3 and 5.

5. The applicant has proposed, and the Board of Appeals hereby requires, that the following aspects of the Development shall be and shall remain forever private, and that the Town of Falmouth, unless otherwise agreed, shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- All driveway and parking areas
- Stormwater management facility
- Snow plowing
- Landscaping, including playground area
- Street lighting
- Fencing and breakaway chain

Note: The development will have Town trash pick-up at curbside off Route 28A.

6. The Falmouth Housing Trust shall be the Monitoring Agent for the Megansett Crossing development approved herein.

7. The applicant shall prepare the final draft of the Declaration of Condominium Trust, Master Deed, Deed Rider and Regulatory Agreement and submit said documents to the Board for approval as to form by the Board's legal counsel and for execution of appropriate documents by and with the Town. The applicant shall utilize Mass Housing Partnership's standard documents as the basis of their Monitoring and Regulatory Agreements and such document(s) shall contain at a minimum, the following terms:

- (a) The Affordable Units shall be reserved for sale in perpetuity to households earning not more than eighty percent (80%) of the median household income.
- (b) The right of first refusal to purchase an Affordable Unit on resale shall be granted to the Board of Selectmen.
- (c) The Affordable Units identified herein shall be identified in the Regulatory Agreement.
- (d) The Affordable Units shall be owner-occupied only; provided, however, that the Board may authorize the temporary rental of such units at a price affordable to a household earning not more than 80% of area median household income where the owner demonstrates that there is a bona fide reason for same, such as illness in the family, military duty, or the like.
- (e) The Condominium Documents shall state that no market rate unit can be rented to a tenant for a period of less than six (6) months.
- (f) The Condominium Documents shall state that no owner or tenant of any dwelling unit on subject property shall increase the number of bedrooms in a unit; and that there shall be no creation of a bedroom or sleeping accommodations in any basement of any dwelling within the development.
- (g) The Condominium Documents shall state that the association is responsible for all amenities and services not covered by the Town or as discussed herein, which may include, but are not limited to:
 - a. snow removal/plowing
 - b. driveway maintenance
 - c. landscape maintenance
 - d. fence maintenance
 - e. playground maintenance
 - f. septic system maintenance
 - g. on-site lighting

The Declaration of Condominium Trust and Master Deed, after approval by the Board, shall be executed and filed with the Barnstable Registry of Deeds and a copy of said filed documents shall be submitted forthwith to the Board of Appeals prior to issuance of any Certificate of Occupancy.

8. The applicant shall install and maintain a 'break-away' chain at the emergency access driveway located at the southwesterly corner of the subject property. The 'break-away' chain will allow access for emergency vehicles only and will eliminate access to individuals using this driveway as a cut-through to abutting commercial property.

9. The Applicant shall install a fence on the westerly property line from the emergency access driveway running along the property line to the edge of clearing of lawn area at the northern portion of the site. The fence shall be at minimum no less than 48 inches in height and shall be of the design of a stockade fence. The maintenance of said fence shall be included in the documents for the Development's Master Deed and/or Association covenants.

10. There shall be no sidewalks created within the road layout of Route 28A, except for the sidewalk/path from the general area of the playground through the State road layout to the proposed bus stop. As stated in Condition 12 below, the sidewalk/path to the bus stop and the bus stop must be approved by the State Highway Department prior to implementation or proposed. Any other sidewalk or path created will be solely within the subject property.

11. The applicant shall construct a playground area for the tenant's children between the middle of two buildings that are closest to the center of the subject lot. Revised plans showing the playground area are noted above and shall be submitted to the Board of Appeals for approval prior to issuance of a building permit. The playground maintenance shall be included within the documents for the Development's Master Deed and/or Association covenants.

12. There shall be no disruption to vegetation in the State road layout; the applicant will endeavor to keep all trees that are within the layout as a buffer. Any change or alteration, addition of landscaping or sidewalk/path to the proposed bus stop within the State road layout shall be conducted with approval in writing from the appropriate State office, with a copy submitted to the Board of Appeals prior to work being conducted.

13. Prior to the issuance of a building permit for any dwelling unit, the applicant shall submit the following final information or plans for approval by the Board of Appeals or its agent:

- Revised "Site Plan" showing 5 duplex structures – no more than 10 dwelling units
- Lighting plan
- Grading plan
- Septic Plan
- Erosion control plan
- Utilities plan including water, gas, electric, cable
- Signage plan
- Stormwater management design
- Final architectural plan

14. The term "applicant" as set forth herein shall mean Megansett Crossing, LLC and Michael Galasso, and its heirs, successors and assigns. The term "Town" shall mean the Town of Falmouth. The term "Board" shall mean the Falmouth Zoning Board of Appeals. Unless otherwise indicated herein, the Board of Appeals may designate an agent to review and approve matters set forth herein to be approved by the Board of Appeals subsequent to this Decision.

15. There shall be no derogation from any conditions set forth in Comprehensive Permit Decision for #18-09 except as stated herein.

16. There shall be no deviation, alteration or changes to the plans approved herein without prior approval by the Board of Appeals. Minor changes may be reviewed and approved by the Zoning Administrator.

Decision of the Falmouth Zoning Board of Appeals Continued:

Comprehensive Permit Number: 017-16

Applicant: MEGANSETT CROSSING, LLC and MICHAEL GALASSO

Subject Property: 676, 688 and 702 North Falmouth Hwy., No. Falmouth, MA
Map 02, Section 06, Parcel 003, Lot 002 – 676 No. Falmouth Hwy
Map 02, Section 06, Parcel 003, Lot 003 – 688 No. Falmouth Hwy
Map 02, Section 06, Parcel 003, Lot 004 – 702 No. Falmouth Hwy

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 1 to Grant the Modification of Comprehensive Permit #18-09 approved under #017-16 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Terrence J. Hurrie, Clerk, Board of Appeals

_____ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

CP Mod. #017-16 / Megansett Crossing, LLC / Filed with the Town Clerk 6/6/16