

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION – COMPREHENSIVE PERMIT**

COMPREHENSIVE PERMIT NO: 057-17

APPLICANT(S)/OWNER: NORTHSTAR PLACE, LLC

DEED/CERTIFICATE: Book 29530 / Page 152

SUBJECT PROPERTY: 0 Brick Kiln Road, East Falmouth, MA
Assessor's Map: Map 34, Section 05, Parcel 003, Lot 002

Zoning District: Agricultural B

Overlay District: Great Pond Coastal Pond Overlay District

SUMMARY: Granted Comprehensive Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of July 18, 2017, the Applicant, Northstar Place, LLC (“Applicant”) applied to the Zoning Board of Appeals for a Comprehensive Permit pursuant to M.G.L. c. 40 B, §§ 20 – 23 and 760 CMR 56.00 to construct ten (10) duplex buildings creating 20 rental units (five of which will be affordable rental units) on subject property known as 0 Brick Kiln Road, East Falmouth, Massachusetts.
2. Notice was duly given as required by Section 11 of M.G.L. c. 40A, and Section 21 of J.G.L. c. 40B, 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.
3. A duly advertised public hearing was opened on August 17, 2017. The hearing was continued by mutual agreement between Applicant and Board to September 14, 2017.
4. The public hearing was closed on September 14, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan and Member Ed Van Keuren directed the Zoning Administrator to draft an affirmative decision for review and possible vote by the Board at an open meeting on October 5, 2017. Minutes from the hearing are on file in the Board of Appeals.
5. On August 2, 2017 Zoning Administrator Budrow held a meeting in the Old Water Department Room in Town Hall with Town departments to review the plans for the proposed 40B. Attendees at the meeting were: Mallory Langler from Board of Health; Susan Hauptmann from Human Services; Scott Schluter from Engineering Department; Patricia Favulli Director of Assessing; John DeSangro, Manager of Applicant; Dana Wessell, Manager of Applicant, Michael Borselli, P.E. Project Engineer; and Stephen O. McKenzie, Applicant Representative.
6. The Applicant represented by Stephen O. McKenzie and Michael J. Borselli, P.E. of Falmouth Engineering, Inc., was present at the hearing to review and discuss proposed plans with the Board.
7. 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 from Abutters/Interested Parties

08/17/2017 E-mail correspondence from Chris Morris of 37 Jamie Lane stating concern with proposed playground location for the 40B development.

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

07/18/2017 Representative of the Applicant, Stephen O. McKenzie, submitted a Comprehensive Permit application with attachments as required under 760 CMR 56.00 which include site and architectural plans, two 'Letters of Eligibility' from Mass Housing Finance Agency – one dated May 5, 2017 and one dated May 12, 2017, a 'Site Characteristics and Narrative', a 'Design Approach Narrative', an 'Allowance for Tenant Furnished Utilities' sheet for proposed, a 'Quitclaim Deed' for subject property, a 'Standard Residential Purchase and Sale Agreement' for subject property, a "Notice of Certificate of Organization" for a LLC, a budget for proposed development, and a copy of 'Property Management Services' details from Mayflower Homemakers Management.

08/15/2017 Representative McKenzie submitted a letter dated August 11, 2017, to Zoning Administrator requesting waiver of Section 240-34 relative to application for multifamily residences in Agricultural B zone.

08/17/2017 Representative McKenzie submitted a letter date August 17, 2017 to Zoning Administrator requesting waiver of Town Code Section 172.1 'Registration to Determine Occupancy Limits' based on e-mail from Mallory Langler Health Agent dated August 17, 2017.

08/17/2017 Applicant submitted a rendering of a sign proposed for the development "123 Brick Kiln Road – Brick Kiln Place".

09/06/2017 Applicant submitted to the file a copy of proposed pole lights/lamps, photo of proposed 6' stockade fence material for buffering along westerly property line, photo of dual mail boxes on post for each building structure and a photo of a proposed bus shed for the development.

Letters/Referrals/E-mails from Town Departments/Agencies

07/28/2017 Referral submitted to the file from Lt. Mel Trott of Falmouth Fire Rescue Department with a request that the cul-de-sac within the 40B development have a 'Cape Cod Berm' around the interior to facilitate access for emergency vehicles

08/07/2017 Referral Memo submitted to the file from the Engineering Department with comments relative to the meeting held on August 2, 2017 for review of project by Town Departments

08/17/2017 E-mail from Mallory Langler Board of Health Agent with comments on proposed 40B project

08/18/2017 Referral submitted to the file from Cape Cod Commission with comments on proposed 40B project - they note application as 'Brick Kiln Place Comprehensive Permit Application'

09/13/2017 Referral Memo from Town Engineering Department dated September 13, 2017 submitted to the file with comments regarding revised plans submitted

Plans submitted by Applicant/Applicant's Representative

“Preliminary Site Plan for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated December 2, 2016 with a Board date ‘received’ stamp of July 18, 2017;

“Existing Conditions Plan for Lot 2 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 9 dated July 17, 2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Layout for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plans is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and stamped and signed by Michael J. Borselli, P.E. – with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Layout for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 3 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Grading & Drainage for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 4 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Grading & Drainage for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 5 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Septic System & Water System for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 6 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Septic System & Water System for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 7 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated on 9/7/2017 by Gary S. Labrie, P.L.S. and with a Board date ‘received’ stamp of September 7, 2017;

“Septic Details for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 8 of 9 dated July 17, 2017 with a final revised date of 9/1/2017 – plan is stamped and signed by Michael J. Borselli, P.E. and with a Board date ‘received’ stamp of September 7, 2017;

“Standard Details and Leaching Field Detail for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 9 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plans is stamped and signed by Michael J. Borselli, P.E. with a Board date ‘received’ stamp of September 7, 2017;

“Brick Kiln Place” architectural drawings by Rescom Architectural, Inc. consisting of Drawing A2 ‘Two Bedroom Plan and Elevations’ not dated; Drawing A1 ‘Three Bedroom Duplex – Floor Plan’ dated 11/30/2016; and Drawing A2 ‘Three Bedroom Duplex – Elevations’ dated 11/30/2016 – all with a Board date ‘received’ stamp of July 18, 2017; and

“123 Brick Kiln Rd” landscape plan drawn by Clipper Landscape LLC dated 6/21/2017 with a Board date ‘received’ stamp of September 6, 2017.

Public Comment – August 17, 2017 hearing:

Tom Pucci of 123 Jamie Lane asked for timing of construction, if trees on the westerly property line could be kept and that he would like to see a sturdy fence and trees to protect his view.

Russ Stevens of 18 Sophie Lane asked who would retain ownership of property, how will tenants be screened for occupancy, costs of units, will pets be allowed and how many bedrooms. He further asked if there is a set of parameters for the vetting process for tenants.

Jane Tobey of 5 Wyndelea Cir. stated concern as she runs a daycare center from her home and would like to know if this is Section 8 housing because she is concerned with potential drug traffic and will the entrance/exit have a stop sign.

Keith Kessel of 11 Wyndelea Cir. asked if units can be made smoke free – this may cut down on drug use.

Lori Weisman of Sophie Lane asked if any units will be Section 8.

Tina Williams and husband of 19 Jamie Lane asked if the land will be cleared as they have a chicken coop on subject property for over 20 years; they noted this lot has a lot of wildlife and they are concerned about having too much of the land cleared.

Representative McKenzie address all questions from public comment (see file for Minutes).

Public Comment – September 14, 2017, hearing:

Lori Weisman of Sophie Lane thanked the Applicant for listening to their concerns and asked how they can be kept in the ‘loop’ on landscape plans. She stated she is concerned about the safety of children with the topography of subject property.

Kate Rodrigues of 115 Brick Kiln Road asked about the fence proposed and if any trees on her property will be removed.

Duncan Welles of 38 Candace Lane asked how this development will impact property values.

Chairman Foreman and Representative McKenzie addressed public comment questions and concerns.

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

Chairman Foreman closed the hearing.

The Board discussed and directed the Zoning Administrator to draft an affirmative decision to be reviewed, discussed and voted on at a future duly posted open meeting of the Board.

October 5, 2017 – Duly posted Open Meeting:

Board reviewed and discussed Decision.

FINDINGS

1. The Applicant submitted the following information:
 - (a) Applicant is a “limited liability company” (LLC) as that term is used in M.G.L. c. 40B, § 21 and 760 CMR 56.04 (a), and a copy of the Certificate of Organization, filed with the Secretary of the Commonwealth on January 16, 2017 was submitted to the file on July 18, 2017. The Board finds that the Applicant shall become a Limited Dividend Organization prior to the commencement of this Comprehensive Permit;
 - (b) evidence of a subsidy as indicated by the project eligibility/site approval letter of Massachusetts Housing Finance Agency [MassHousing] dated May 5, 2017, and amended on May 12, 2017, and submitted to the file on July 18, 2017;
 - (c) the Applicant alleges “control of site” by virtue of a Standard Residential Purchase and Sales Agreement dated January 1, 2017 through January 1, 2019 by and between property owner (Seller) John J. DeSangro, Trustee of Currier Farms Nominee Trust and Northstar Place, LLC (Buyer), terms stated contingent on approval of a comprehensive permit – documents (proof of ownership and purchase and sales) submitted to the file on July 18, 2017.
2. The Town of Falmouth, according to DHCD, has not achieved the statutory minimum set forth in M.G.L. c. 40B, § 20 or 760 CMR 56.03 (5), nor is affordable housing located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial or industrial use.
3. The proposed development was reviewed by the following municipal officers or agencies:
 - Engineering Department – Scott Schluter
 - Board Health – Mallory Langler
 - Fire Department – Mel Trott
 - Planning Department – Town Planner Brian Currie
 - Assessors’ Department – Patricia Favulli
 - Board of Selectmen
 - Cape Cod Commission
4. The Board finds that the proposed Development will be constructed on a 3.65 acre parcel zoned Agricultural B that is currently a vacant lot. The Developer is proposing to construct ten (10) one-story, duplex buildings – creating twenty (20) dwelling units for rental on subject property – five (5) of which will be rented as affordable units and shall be held affordable in perpetuity. Units A, E, I, N and T (see “Site Plan Layout” with 9/1/17 revision date – Sheet 3 of 9 noted herein) are designated as the five (5) affordable units for this development. The Board further finds through testimony by the Applicant’s representative that the five (5) affordable units will be rented to households earning no more than 80% of Barnstable County median as set forth in DHCD guidelines. Furthermore, The letter of eligibility from Mass Housing Partnership notes in an attachment to the May 5, 2017 letter to Mr. DeSangro that: *MassHousing’s Appraisal and Marketing Division reports that there is a strong demand for rental housing in the area, with increasing rental and occupancy rates over the past three years..... A&M recommends that a more in depth analysis/market study be conducted at Final Approval to confirm the subject’s market area, the depth of the target market, the preferences/demands of area renters and support for proposed rent levels.*
5. The Board finds that the subject property is zoned Agricultural B which allows for a single-family dwelling or agricultural uses (Section 240-34 of the Code of Falmouth). The Board further finds that

the Applicant submitted a request to waive said section to allow for multifamily dwelling units on subject property.

6. The Board finds that according to Town Code Section 172.1 any rental property requires a rental property owner to register with the Board of Health every year for occupancy. The Board further finds that the Applicant submitted a request to waive said section for this Comprehensive Permit application to allow rental of twenty (20) dwelling units on subject property. Furthermore, the Board finds that a management company will be in place to monitor and maintain the development approved herein.
7. The Board finds that the proposed twenty (20) units will have a mix of two and three bedroom units as follows: Four of the five affordable units will be two-bedroom units; one unit will be a three-bedroom unit. Twelve of the fifteen market rate units will be two-bedroom units; and three will be three-bedroom units. The total number of bedrooms on subject property shall be no more than forty-four (44).
8. The Board finds that the proposed development represented herein will have a density of approximately 5.5 units per acre.
9. The Board finds according to testimony by Applicant's representative during the hearing process, that the Monitoring Agent for the development will be Barnstable Housing Authority.
10. The Board finds through testimony by the Applicant's representative, that a property management company will oversee the development and maintenance of subject property. The Applicant submitted to the file on July 18, 2017, a copy of a letter dated July 1, 2017, from Mayflower Homemakers Property Management Services that sets forth responsibility of monitoring, management and maintenance of subject property.
11. The Board finds that, although the subject property is within a Coastal Pond Overlay District, the proposed Title V septic system is adequate and appropriate for the proposed development. The Board further finds that the subject property has less than five (5) acres and less than five (5) lots, is located in a Stabilization Area and therefore does not require a subsurface sewage disposal system [see Section 240-100 B. of the Code of Falmouth]. The Board further finds that the proposed septic system will require review and approval by the Board of Health prior to installation of said system on subject property.
12. The Board finds that the proposed development meets all setbacks requirements under Section 240-68 A. and B. of the Code of Falmouth.
13. The Board finds that the proposed developments meets the lot coverage requirements under Section 240-69 A. of the Code of Falmouth.
14. The Board finds that the proposed units are ranch-style and meet the height requirement as set forth in Section 240-70 of the Code of Falmouth.
15. As required in this decision, each dwelling unit will be serviced by a public water supply and a Board of Health approved Title V septic system that will be inspected by the Engineering Department and the Board of Health during and after installation of said system.
16. The Board finds that adequate drainage will be installed on subject property as shown on Sheets 4 of 9 and 5 of 9 entitled "Site Plan – Grading and Drainage for #123 Brick Kiln Road" (both Sheets have a final revision date of 9/1/2017).

17. The Board finds that the Applicant has provided sufficient parking for each dwelling unit as well as ten (10) guest parking spaces as shown on the "Site Plan – Layout for #123 Brick Kiln Road", Sheet 3 of 9 with a final revision date of 9/1/17.
18. The Board finds that there are two (2) dumpster locations on site - one at the beginning of the development and one near the end of the cul-de-sac (See Sheet 3 of 9 of plans noted herein). Both dumpsters will be fenced in and trash will be picked up weekly.
19. The Board finds that the Landscape plan submitted, dated 6/21/2017, shows that the Applicant will endeavor to save existing vegetation as a buffer along the easterly and northerly property lines and that a six foot (6') stockade fence will be installed along the entire westerly side yard property line. The Board further finds that the Applicant's representative stated that it would endeavor to save existing vegetation and trees along the easterly side yard property line. To the extent that there are vegetative gaps along the easterly side yard, the applicant represented that it will plant vegetation to fill any of the said gaps.
20. The Board finds that the plan noted herein is a preliminary plan and that a final Landscape Plan shall be submitted to the Board of Appeals for approval along with final Site and Architectural Plans prior to the issuance of a building permit. The Landscape Plan shall include all lighting on site, mail box locations, signage and additional plantings along the westerly and easterly property lines to enhance the site and for additional screening.
21. The Board finds that the Development will not endanger public health, safety or the environment, provided that the Development satisfies all of the conditions set forth below.
22. If developed in accordance with the Conditions set forth herein, the proposed Development will be consistent with local needs.

VOTE: Member Bielan made a motion to Grant the Comprehensive Permit as drafted herein. Member Hurrie seconded the motion. Motion carried 4 – 0 (Member Murphy absent on 10/5/2017 meeting).

DECISION

The Zoning Board of Appeals of Falmouth, after public hearing and findings of fact, voted **5 – 0 to Grant the Comprehensive Permit** to Northstar Place, LLC to Grant a Comprehensive Permit to Northstar Place, LLC (Applicant) for the construction of the 40B development known as Brick Kiln Place on subject property consisting of ten (10) duplex buildings (20 units) along with infrastructure, landscaping, lighting, signage and improvements, subject to the following conditions. The term "Applicant" as set forth herein shall mean Northstar Place, LLC, its heirs, successors and assigns. The term "Board" as set forth herein shall mean the 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 as represented to the Board in substantial conformance as shown on plans of record set forth below entitled:

"Preliminary Site Plan for #123 Brick Kiln Road" prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated December 2, 2016 with a Board date 'received' stamp of July 18, 2017;

“Existing Conditions Plan for Lot 2 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 9 dated July 17, 2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Layout for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and stamped and signed by Michael J. Borselli, P.E. – with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Layout for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 3 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Grading & Drainage for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 4 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Grading & Drainage for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 5 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Septic System & Water System for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 6 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plans is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/7/2017 and with a Board date ‘received’ stamp of September 7, 2017;

“Site Plan – Septic System & Water System for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 7 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped, signed and dated on 9/7/2017 by Gary S. Labrie, P.L.S. and with a Board date ‘received’ stamp of September 7, 2017;

“Septic Details for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 8 of 9 dated July 17, 2017 with a final revised date of 9/1/2017 – plan is stamped and signed by Michael J. Borselli, P.E. and with a Board date ‘received’ stamp of September 7, 2017;

“Standard Details and Leaching Field Detail for #123 Brick Kiln Road” prepared for Northstar Construction in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 9 of 9 dated July 17, 2017 with a revised date of 9/1/2017 – plan is stamped and signed by Michael J. Borselli, P.E. with a Board date ‘received’ stamp of September 7, 2017;

“Brick Kiln Place” architectural drawings by Rescom Architectural, Inc. consisting of Drawing A2 ‘Two Bedroom Plan and Elevations’ not dated; Drawing A1 ‘Three Bedroom Duplex – Floor Plan’ dated 11/30/2016; and Drawing A2 ‘Three Bedroom Duplex – Elevations’ dated 11/30/2016 – all with a Board date ‘received’ stamp of July 18, 2017; and

“123 Brick Kiln Rd” landscape plan drawn by Clipper Landscape LLC dated 6/21/2017 with a Board date ‘received’ stamp of September 6, 2017.

2. The five (5) units designated as affordable units and known herein as Units A, E, I, N and T (see Sheet 3 of 9 "Site Plan – Layout" final revised date 9/1/17) shall be reserved in perpetuity as rental units to households earning no more than eighty percent (80%) of the median household income for Barnstable County.
3. To the extent permitted by law and by the subsidizing agency (MHP), preference for the rental of seventy percent (70%) of the Affordable Units in the initial lottery shall be given to (a) persons or families who are Falmouth residents; and/or (b) the parents or children of current Falmouth residents, and/or (c) employees of the Town of Falmouth or those employed within the Town of Falmouth. The local preference shall be implemented by a Lottery Agent approved by the Board. Prior to conducting the Lottery, the Lottery Agent shall submit a final Lottery plan to the Board of Appeals for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.
4. This Comprehensive Permit shall be a master permit which shall subsume all local permits and approvals normally issued by local boards. All local boards shall issue all necessary permits and approvals after reviewing such plans only to ensure that they are consistent with the Comprehensive Permit and applicable state and federal laws.
5. The Applicant shall meet all State requirements for the land and the proposed 'Brick Kiln Place' development.
6. This Comprehensive Permit shall not be transferred to a person or entity other than the Applicant without approval by this Board.
7. The Applicant shall provide the Board with a copy of the audited cost certification of the Development within one-hundred and eighty days (180 days) upon completion of construction.
8. Prior to the issuance of any building permit, the Applicant shall:
 - a. Record this Comprehensive permit with the Barnstable Registry of Deeds, at the Applicant's expense, and provide proof of such recording to the Board of Appeals and the Falmouth Building Commissioner forthwith and prior to approval of final plans for the project;
 - b. Prepare the final draft of a Monitoring Agreement and a Property Management Agreement (hereinafter referred to as 'management company') and submit said draft to the Board for approval as to form by the Board's legal counsel; and
 - c. Submit to the Board of Appeals evidence of Final Approval from the Subsidizing Agency as required by the Project Eligibility letter and the M.G.L. c. 40 B regulations.
9. Prior to the issuance of a Certificate of Occupancy for the development approved herein, the Applicant shall submit to the Board a copy of the signed Property Management Agreement for said development. There shall be no occupancy of a unit until a copy of the Agreement is signed by parties and a copy submitted to the Board.
10. Prior to the issuance of any Certificate of Occupancy, the Applicant shall enter into a Monitoring Agreement with Barnstable Housing Authority, approved as to form by the Board's legal counsel. Such Agreement(s) shall be consistent with the terms of this Decision. All costs associated with monitoring shall be borne by the Applicant. All financial information provided to the Monitoring Agent by the Applicant for the required audit after the initial round of rentals shall be provided at the same time to the Board by certified mail. All reports of the Monitoring Agent shall be provided by certified mail to the Board.

Management Issues

11. 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 to by the Town, 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
 - Trash removal
 - Street lighting

12. The Applicant shall retain, at all times, a management company to manage the subject property. The management company shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities described herein. The Applicant shall provide the Board with a copy of the contract, and any subsequent contracts, as stated above.

13. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system, subject to the approval of the Board of Appeals or its' designated agent. Such guidelines shall be incorporated by reference in the management contract. In the event that the Applicant or its' agent fails to maintain the stormwater management in accordance with such guidelines for operation and maintenance, the regulations of the Board of Health shall govern the matter, and the Applicant shall convey any easement necessary to implement such regulations.

Construction

14. 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:
 - Lighting plan
 - Development Sign
 - Fence plan (materials, height and exact location)
 - Landscaping and planting plan, including driveway material and maintenance
 - Final Site and Grading plan – including stormwater management/maintenance plan/agreement
 - Septic plan
 - Erosion control plan
 - Final architectural plans
 - Utilities plan

The reviewing agent, after approval of the above final plans submitted, shall have the power to sign off on the building permit application, provided there are no substantial changes to the preliminary plans noted herein and approved by the Board of Appeals.

15. During construction, the Applicant shall conform to all local, state and federal laws regarding noise, vibration, dust and blocking of Town roads. 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 before 7:00 a.m. and shall not continue beyond 7:00 p.m. There shall be no construction on any Sunday or state or federal legal holiday.

16. Lighting shall be installed in accordance with the referenced plans and deflectors added to fixtures to direct lighting downward onto development and not onto adjacent properties.

17. The Applicant shall conform to all pertinent requirements of the Americans with Disabilities Act.
18. The Applicant shall promptly pay the reasonable fee of the consulting engineer and the Board's legal counsel for review of the documents or plans described herein if necessary.
19. Inspections during the construction phase shall be conducted, at the expense of the Applicant. The Board of Appeals may appoint an agent to conduct such inspections.
20. Should the drainage system as installed prove not adequate to prevent the Development from increasing ground water elevation and adversely affecting nearby properties, the Board will, upon request of either the Applicant or any neighbor, review the ground water conditions with the interested parties and may administratively approve changes to mitigate the problem. It is intended that the Development not cause any increase in ground water elevation, over what may occur under the existing conditions that might adversely affect nearby residents.
21. All plantings shall consist of non-invasive, drought tolerant species. Plantings installed along drives and walkways shall also be salt-tolerant. The final landscaping plans shall preserve the existing perimeter tree cover to the greatest extent practicable, and shall include plantings on the westerly side yard property line adjacent to stockade fence as appropriate. Said plantings will be shown on the final Landscape Plan to be submitted as conditioned herein. Twelve (12) months after completion of plantings, the Applicant shall remove and replace any dead or diseased plantings and trees serving as screening. The contract with the Management Company shall address ongoing maintenance of landscaping features.
22. No Certificate of Occupancy for any building shall be issued until the improvements specified in this Decision and set forth on the plans of record are constructed and installed so as to adequately serve said building or adequate security has been provided, reasonably acceptable to the Board of Appeals, to ensure such completion. Any such performance guarantee shall be approved as to form by the Board's legal counsel.
23. The Board of Appeals denies any fee waivers for this Development.
24. The term "Applicant" as set forth herein shall mean "Northstar Place, LLC" and its heirs, successors and assigns. The term "Town" shall mean the Town of Falmouth. The term "Board" shall mean the 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.
25. The Applicant has requested, and the Board of Appeals has granted, the waivers from local rules set forth herein. To the extent that the plan shows additional waivers at specific locations not expressly set forth above, the additional waivers will require approval by the Board of Appeals. Minor deviations from otherwise applicable local rules maybe authorized by the Zoning Administrator.

Waivers Requested by Applicant and Approved herein:

1. Section 240-34 of the Code of Falmouth allows one single family home in this Agricultural B zoned district.

The Board herein approves the multifamily development as set forth and represented above for ten (10) duplex buildings containing no more than twenty (20) dwelling units for this subject property development.

2. Section 172.1 of the Town Code - 'Registration to Determine Occupancy Limits' 109.

The Board herein waives the requirement that the property owner register with the Board of Health every year for occupancy.

General Conditions:

26. This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later. In accordance with 760 CMR 56.05 (12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive permit as permitted by law.
27. The Applicant shall comply with all local regulations of the Town and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
28. This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction. This Decision also prohibits the parking of boats, Recreational Vehicles and trailers on the property.
29. If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (b) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

Comprehensive Permit Decision by Falmouth Zoning Board of Appeals continued:

Comprehensive Permit #: 057-17

Applicant: NORTHSTAR PLACE, LLC of East Falmouth, MA

Subject Address: 0 Brick Kiln Road, East Falmouth, Massachusetts (#123)
Map 34, Section 05, Parcel 003, Lot 002

Action: The Board of Appeals, by the signature below, represents that the Board voted as follows for the above-referenced Comprehensive Permit.

Vote: Board voted 4 - 0 to Grant the Comprehensive Permit requested herein Based on the Findings and subject to the Conditions stated above.



Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

OCT - 6 2017

FALMOUTH TOWN CLERK

AD @ 12:15 pm
Date filed with Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 20-23 of M.G.L. Chapter 40B and 760 CMR 56.00, and shall be filed within twenty (20) days after the rendering of the decision by the Board of Appeals.