

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

Comprehensive Permit No: 015-18

Applicants: HABITAT FOR HUMANITY of Cape Cod, Inc.

Property Address: 0 Barrows Road, East Falmouth, Massachusetts
Assessor's Map: Map 29 Section 05 Parcel 006 Lot 000A

Development Name: Willett Way Development

Summary: Granted with Conditions

PROCEDURAL HISTORY

1. On February 21, 2018, Habitat For Humanity of Cape Cod, Inc., located at 411 Route 6A, Suite 6, Yarmouthport, MA (hereinafter referred to as Applicant), with Attorney Warren Brodie as their representative, applied for a comprehensive permit from the Zoning Board of Appeals of Falmouth (Board), pursuant to Massachusetts General Laws, Chapter 40B, Section(s) 20 to 23 and 760 CMR 56.00, to sub-divide subject property and construct twelve single-family dwelling units off Barrows Road in East Falmouth. An application with Exhibits attached and labeled A through V that included required information pursuant to 40B guidelines was submitted and accepted as complete by the Zoning Administrator (see file for indexed items attached to application). The Applicant proposes to create twelve (12) lots on a 4.97 acre parcel known as Map 29 Section 05 Parcel 006 Lot 000A and construct a dwelling on each lot. The proposed dwelling units will be sold as affordable dwellings and maintained in perpetuity as such. The subject property is zoned Agricultural A and is located within the Childs River Coastal Pond Overlay District.
2. Town Departments were notified of the 40B project application on February 22, 2018 and were invited to attend a preliminary meeting to review the plans for the proposed 12 unit development on March 7, 2018. The meeting was attended by the Zoning Administrator, Sari Budrow; Representative of Habitat Attorney Warren Brodie, Carol Sutherland with CPC, Scott Schluter with Town Engineering, Director of Assessing Patricia Favulli, Carla Feroni the Housing Coordinator, Bob Ryley the Director of Construction, Health Agent David Carignan and Building Commissioner Rod Palmer.
3. A duly advertised public hearing was opened on April 19, 2018. There was testimony and public comment made during the hearing process. At the hearing(s) the Board voted each continuation to certain date as noted herein.
4. The public hearing was terminated on July 19, 2018. Voting members of the Board for this Comprehensive Permit were Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate Robert Dugan (sitting as voting member).

5. The Board received plans/revised plans, letter from interested parties, documents and other information before and during the public hearing process, all of which are on file in the office of the Board of Appeals at Town Hall.

Referrals/Letters from Town Departments/Boards

- 03/02/2018 Referral dated March 1, 2018 from the Town Water department Superintendent with comments for the proposed 40B Development was submitted to the file
- 03/06/2018 Referral dated March 6, 2018 from Lt. Mel Trott of the Falmouth Fire Rescue Department with three (3) concerns noted was submitted to the file
- 03/09/2018 Referral dated 3/8/2018 from the Town Engineering Department with comments and concerns was submitted to the file
- 03/26/2018 Referral dated March 23, 2018 from Deputy Director of Cape Cod Commission with comments and concerns regarding the proposed 40B project was submitted to the file
- 04/02/2018 Revised Referral dated 4/2/2018 from the Town Engineering Department that has comments regarding the revised project plan dated March 22, 2018

Correspondence/Referrals from Boards or Committees outside of Town Departments

- 2/22/2012 Letter of Referral from Cape Cod Commission with comments regarding the 40B project at 0 Barrows Road, East Falmouth

Note: Requests for referrals were sent to Board of Selectmen, Planning Board, Department of Public Works, Engineering, Water & Sewer, Conservation Commission, Board of Health, Assessors' Office, Community Preservation, Fire Department, Building Commissioner, Police Department, Cape Cod Commission, Town Counsel, Human Services

FINDINGS

1. The Board finds that the Applicant submitted a complete application with the following information:
 - (a) it is a "nonprofit 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 as indicated by a letter from Department of Housing & Community Development (DHCD) dated December 12, 2017, to the Town of Falmouth (Board of Selectmen) and Habitat for Humanity (submitted to file) as approval for project eligibility/site approval under the Local Initiative Program (LIP);
 - (c) the Applicant alleges "control of site" known as 0 Barrows Road, East Falmouth, MA – Map 29 Section 05 Parcel 006 Lot 000A by virtue of a Purchase and Sale Agreement dated February 8, 2016 between Living Waters Christian Center, Inc. as

‘Seller’ and Habitat for Humanity of Cape Cod as ‘Buyer’ [Note: ‘Amendment to Purchase and Sale Agreement’ signed by the parties and dated August 30, 2016; and ‘Second Amendment to Purchase and Sale Agreement’ signed by the parties and dated August 23, 2017].

2. The Board finds that the Town of Falmouth, according to DHCD, has not achieved the statutory minimum set forth in G.L. c. 40B, s. 20 or 760 CMR 31.04 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 Board finds that the proposed development was reviewed by the following municipal officers or agencies:

- Planning Department
- Engineering Department
- Conservation Commission
- Board of Health
- Fire Department
- Cape Cod Commission
- Water & Sewer Department
- Board of Selectmen

4. The Board finds that the subject property is zoned Agricultural A and consists of 4.97 acres that is located within the Childs River Coastal Pond Overlay District. The Board further finds that the Applicant/Buyer originally had proposed twelve (12) building lots and one (1) unbuildable lot; and that through the hearing process has reduced the number of lots to be subdivided into eleven (11) lots, ten (10) lots having a single-family dwelling constructed on them and one (1) lot - #11 – will remain vacant as ‘unbuildable’. The Board further finds that each of the ten (10) lots to have a dwelling will have separate septic systems, utilities and parking area. Furthermore the Board finds according to testimony by applicant’s representative is that the development will have an Association with Covenants and that a draft of said restrictions has been submitted to the file and will be finalized by the applicant upon approval of this Comprehensive Permit.

5. The Board finds that the ten (10) dwelling units approved herein will be serviced by the Town’s public water supply.

6. The Board finds that according to the Applicant’s representative, each lot will have the capability to park five (5) vehicles in anticipation of guests so that there will be no need to park on the roadway. The Board further finds that each lot will have a lamppost in the front of each dwelling and that control of said lamppost will be by the owner of the lot.

7. The Board finds that DHCD will be the Lottery Agent for this Local Initiative Program / 40B development located off 0 Barrows Road on a newly created road to be known as Willett Way, East Falmouth, Massachusetts. The Board further finds that DHCD and Habitat for Humanity will be the Monitoring Agent for the proposed Willett Way Development represented herein.

8. The Board finds that the Development of subject property as proposed does not appear to endanger public health, public safety or the environment, provided that the Development satisfies all of the conditions set forth below.

9. The Board finds that the Town Engineer, at the Department meeting held on March 7, 2018, stated that: *“As long as this is a roadway, the DPW will provide trash pickup at the driveways and snow plowing. If you can come up with an area to store snow, it would be helpful.”* Based on the statement by the Town Engineer (see Minutes of March 7, 2018 submitted to file) the Board finds that the snow plowing of the road to be known as Willett Way will be done by the Town with notification from the Development as to where to store the plowed snow; and that the applicant will work with the Postal Service to determine how best to deliver mail to the development (kiosk or individual unit delivery).

10. The Board finds that the applicant has submitted to the file a draft of a “Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project” with Exhibits attached (Exhibit A – ‘Property Description (blank)’, Exhibit B ‘Maximum Selling Price Form’ and Exhibit C ‘LIP Affordable Housing Deed Rider’). The Board further finds that the applicant submitted drafts of: ‘Declaration of Protective Covenants, Restrictions, Easements, Rights and Reservations for Willett Way Falmouth’ and ‘Declaration of Trust Establishing the Willett Way Homeowners Association’.

11. The Board finds that the increase in traffic flow due to the proposed development discussed and approved herein and known as Willett Way Development is a minor impact to an existing established and densely populated neighborhood. The Board finds that the applicant is amenable to locating a ‘bus bench’ near the entrance of Willett Way for the school age children that will be picked up by the school bus in that area.

12. The Board finds that the applicant was amenable to certain changes in the originally proposed application for Willett Way Development as the applicant reduced the number of lots from 13 with twelve (12) with a single-family dwelling to 11 lots with ten (10) of the lots having a single-family dwelling. The Board further finds that although the applicant did not want to locate a bus shelter on subject property near the entrance of Willett Way, the applicant is amenable to locating a ‘bus bench’ as an area for school children to await the school bus.

13. The Board finds that the construction of the ten (10) single-family units approved herein will be done in two (2) phases with the first phase consisting of five (5) units on the East side of the development being completed in first phase.

14. If developed in accordance with the Conditions set forth herein, the proposed Development will be consistent with local needs.

DECISION

Pursuant to MGL Chapter 40B Regulations and the CMR 760 56.00 Regulations, the Zoning Board of Appeals of Falmouth (herein referred to as Board), after public hearing and findings of fact, hereby grants, with a 4 – 0 vote, Comprehensive Permit #015-18 to Habitat for Humanity (herein referred to as Applicant) to subdivide subject property known as Map 29 Section 05 Parcel 006 Lot 000A (0 Barrows Road) into eleven (11) lots and construct one dwelling structure on ten

(10) of the lots as represented and shown on plans noted below – lot 11 (eleven) will remain unbuildable; that all ten (10) dwelling units will be sold to families who meet the 80% of median area income for Barnstable County; that such development will be known as Willett Way Development; and that said development will be constructed and maintained, with all associated infrastructure and improvements based and contingent on the following conditions:

CONDITIONS:

1. The Development shall be constructed as represented to this Board and as shown on the preliminary plans as revised and submitted to the file and entitled and dated as follows:

“Habitat for Humanity of Cape Cod, Inc. Willett Way Falmouth, Massachusetts” as drawn by VHB (Vanasse Hangen Brustlin Inc. of Watertown, MA) consisting of:

- Drawing C-1 ‘Legend and General Notes’ dated 01/23/2018 and with a Board date ‘received’ stamp of March 22, 2018;
- Drawing C-2 ‘Proposed Lotting Plan’ dated 01/23/2018 with a final revised date of 7/11/2018 with a Board date ‘received’ stamp of July 12, 2018;
- Drawing C-3 ‘Layout and Materials’ dated 01/23/2018 with a final revision date of 7/11/2018 with a Board date ‘received’ stamp of July 12, 2018;
- Drawing C-4 ‘Grading, Drainage, and Utilities’ dated 01/23/2018 with a final revision date of 7/11/2018 with a Board date ‘received’ stamp of July 12, 2018;
- Drawing C-5 ‘Site Details’ dated 01/23/2018 with a Board date ‘received’ stamp of March 22, 2018; and
- Drawing C-6 ‘Site Details’ dated 01/23/2018 with a Board date ‘received’ stamp of March 22, 2018.

Architectural Plans for a Typical 3-bedroom Ranch and a Typical 2-bedroom Ranch were drawn by Brown Lindquist Fenuccio & Raber Architects, Inc. for Habitat for Humanity of Cape Cod Inc. Plans have a ‘issued for review’ date of 9/29/2017 and a Board date ‘received’ stamp of February 21, 2018. Plans submitted show floor plans for both a 3-bedroom unit and a 2-bedroom unit, elevations, foundation/basement plans, framing plans and window schedules.

2. The Development shall be limited to ten (10) dwelling units consisting of seven (7) three-bedroom units and three (3) two-bedroom units. The development shall be limited to the dwellings shown on above plans with the subject property being divided into eleven (11) – Lot 11 being unbuildable.
3. The ten (10) single-family dwelling units approved herein shall be reserved in perpetuity for sale to households whose income is not more than eighty percent (80%) of the area median income as determined by the United States Department of Housing and Urban Development (HUD) and DHCD.
4. To the extent permitted by law, preference for the sale of the Affordable units in the initial round of sales shall be given to: (a) persons or families who are first time home buyers and Falmouth residents; and/or (b) employees of the Town of Falmouth; and/or (c) are employed

within the Town of Falmouth; and/or (d) has children attending Town schools. The local preference shall be implemented by Habitat for Humanity as the Lottery Agent and according to the "Lottery Plan" submitted with the application. Prior to conducting the Lottery, the Lottery agent shall notify the Board if there will be any change to the "Marketing Plan For Homeownership Applicants" that was submitted with the application as the 'Affirmative Fair Marketing Plan' for the development of the Project as approved herein. Any changes to the 'Marketing Plan' shall be submitted to the Board.

5. The split rail fences on certain lots (Lot 2, Lot 3, Lot 4, Lot 7, Lot 8, Lot 9 and Lot 10) as shown on Drawing C-3 referenced above in Condition 1 shall be constructed as shown and shall be maintained by the owner of said lots.
6. Each of the ten (10) lots will have a Title 5 septic system and the owners of those lots shall be responsible for the maintenance and upkeep of the septic system on their specific lot.
7. Prior to the issuance of any building permit, the Applicant shall prepare the final draft of a Regulatory Agreement, Deed Rider and Covenant/Agreement of ownership and submit same to the Board for approval as to form by the Board's legal counsel and for execution by and with the Town if required. Such document(s) shall contain at a minimum, the following terms:
 - (a) All ten (10) dwelling units shall be reserved in perpetuity for sale to households whose income is not more than the eighty percent (80%) of the area median income as determined by HUD and DHCD.
 - (b) The right of first refusal to purchase an Affordable Unit on resale shall be granted to the Board of Selectmen as representative of this Municipality.
 - (c) The Affordable Units 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.
8. Prior to the issuance of any certificate of occupancy, the Applicant shall enter into a Monitoring Agreement 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 until the sale of the last affordable unit, and thereafter by the sellers of the Affordable Units. All financial information provided to the Monitoring Agent by the Applicant for the required audit after the initial round of sales 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.
9. 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.

10. This Comprehensive permit shall not be transferred to a person or entity other than the Applicant without the written approval of this 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, shall not have, now or ever, any legal responsibility for operation or maintenance of same:
- All parking areas
 - Stormwater management facility, all drainage
 - Landscaping
 - Recreation area
 - Roadway maintenance
 - Bus bench maintenance
 - Maintenance of Lot 11 as a buffer
12. The Applicant or Unit Owners shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities such as road, recreation area, a 'bus bench' the applicant is amenable to placing at the entrance of Willett Way, maintenance of Lot 11 and stormwater/drainage as noted and described herein and said maintenance shall be set forth in a document as noted in Condition 7 above.
13. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management, subject to the approval of the Board of Appeals or its designated agent. In the event a management company is engaged, 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 the ten (10) single-family dwelling units, the Applicant shall submit the following final information and plans for approval by the Board of Appeals or its agent:
- Landscaping and planting plan
 - Grading plan
 - Erosion control plan
 - Utilities plan including water, gas, electric, cable
 - Stormwater management design
 - Final architectural plans
 - Final Site Plan

The Board of Appeals shall approve such final plans within 21 days thereafter. Such approval shall not be unreasonably withheld. The failure of the Board of Appeals to approve such final plan within said 21 days shall be deemed a lack of opposition thereto. There shall be no deviation, change or alteration of the plans approved herein without prior approval from the Board of Appeals. The Zoning Administrator may administratively approve minor changes.

15. During construction, the Applicant shall conform with 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. The Applicant shall conform to all pertinent requirements of the Americans with Disabilities Act as necessary.
17. 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.
18. 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.
19. The term "Applicant" as set forth herein shall mean Habitat for Humanity, 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.
20. The Applicant has requested, and the Board of Appeals has granted, the waivers from local rules as set forth below. Minor deviations from otherwise applicable local rules may be authorized by the Board of Appeals in the subsequent review and approval of final plans.
 - Section 240-67 A. of the Code of Falmouth – Minimum Lot Area (40,000 square feet)
 - Section 240-67 B. of the Code of Falmouth - Minimum Lot Width (50 feet required)
 - Section 240-67 D. of the Code of Falmouth – Minimum (80% minimum lot width)
 - Section 240-68 A. (2) of the Code of Falmouth - Minimum setback from street frontage (25 feet required)
 - Section 240-68 B. (1) of the Code of Falmouth – Minimum setbacks for side lot lines (10 foot setback required)
 - Article XXI. - Section 240-98 A. of the Code of Falmouth – Coastal Pond Overlay District – relief for subdivisions greater than five lots or five acres
 - Article XXIII - Section 240-111 of the Code of Falmouth – Performance Requirements - Site Design (site design through Comprehensive Permit)
 - Article XXIII - Section 240-113.1 of the Code of Falmouth – Performance Requirements Transportation and Traffic Management (addressed in Comprehensive permit)

- Article XXXIX – Section 240-192 of the Code of Falmouth – Site Plan Review, Applicability (addressed in Comprehensive Permit)
- Code of Falmouth Chapter 305 – Subdivision Regulations:
 - §305-24 Streets. B. Width, alignment and grades (1)(b) width of pavement including 1' berm in lieu of 22' including berms;
 - §305-24 Streets. B. Width, alignment and grades (1)(c) allow a minimum centerline radii of less than the required 150';
 - §305-24 Streets B. Width, alignment and grades (3)(c) allow roadway centerline vertical curve lengths less than 100' minimum requirement;
 - §305-24 B (5) Street – allow radius of 13' in lieu of required 25' at intersection of subdivision and Barrows Road;
 - §305-24 Streets. B. (8) relief to allow approximately 90 square feet triangular area outside of the locus property limits that prevents proposed project from meeting the 60' width for the first 200 feet standard;
 - §305-24. Streets. D. Dead-end Streets – allow a dead end street longer than 500'
 - §305-30. Sidewalks, grass plots and street trees. Relief from requirement of sidewalks, grass plots and street trees within the subdivision
 - §305-34. Streetlights. Relief from requirement of street lights within subdivision
- Fee Waivers – The applicant requests waivers from local fees such as Building Department, Health Department and Fire Department.

– NOTE: This Board does not arbitrarily waive any applicable rules, regulations or bylaws not specifically **requested in the application.**

21. Prior to the issuance of a building permit, the applicant shall file with the Barnstable Registry of Deeds a letter of 'no appeal' and a true copy and attest of the Comprehensive Permit decision signed by the Town Clerk, and then forward a copy of the filed Permit to the Board of Appeals forthwith.
22. This Comprehensive Permit shall expire three (3) years from the date of it being filed with the Town Clerk if no building permit has been issued unless an extension of said permit is approved by the Board of Appeals.

Comprehensive Permit Decision by Falmouth Zoning Board of Appeals continued:

Comprehensive Permit#: 015-18

**Applicant: HABITAT FOR HUMANITY of Cape Cod, Inc.
in Yarmouthport, MA**

**Subject Address: 0 Barrows Road, East Falmouth, Massachusetts
Map 29 Section 05 Parcel 006 Lot 000A**

Action: The Board of Appeals, by the Chairman's 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, Chairman, Board of Appeals

RECEIVED

AUG - 1 2018

8:29 Am

FALMOUTH TOWN CLERK

Date filed with Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of M.G.L. Chapter 40A or Section 22 of M.G.L. 40B, and shall be filed within twenty (20) days after the decision of the Board of Appeals.