



Massachusetts Housing Finance Agency
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April 30, 2020

Michael Solimando, Manager
Village at Brick Kiln, LLC
1094 Blue Hill Avenue
Milton, MA 02186

**Re: The Village at Brick Kiln
Project Eligibility/Site Approval
MH ID No. 1063**

Dear Mr. Solimando:

This letter is in response to your application as “Applicant” for a determination of Project Eligibility (“Site Approval”) pursuant to Massachusetts General Laws Chapter 40B (“Chapter 40B”), 760 CMR 56.00 (the “Regulations”) and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (“DHCD”) (the “Guidelines” and, collectively with Chapter 40B and the Regulations, the “Comprehensive Permit Rules”), under the New England Fund (“NEF”) Program (“the Program”) of the Federal Home Loan Bank of Boston (“FHLBank Boston”).

You have proposed to build thirty-two (32) single-family homes, including eight (8) affordable homes of homeownership housing (the “Project”) on a 6.74-acre site located at 511 Brick Kiln Road (the “Site”) in Falmouth, MA (the “Municipality”).

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, “Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing has performed an on-site inspection of the Site, which local boards and officials were invited to attend, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

Municipal Comments

Pursuant to the Regulations, the Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. The Municipality submitted comments on the proposal identifying the following suggestions

- The Town’s Planning Board expressed concern that the Project’s location will negatively impact the Town’s Water Resource Protection District along Long Pond. The Planning Board

requests that the Project be built with either sewer service or a septic system capable of enhanced phosphorus and nitrogen treatment, in order to protect public drinking water supply.

- The Municipality requests that the proposed structures be sited to maximize their orientation for solar panel use.
- The Municipality would like to work with the Applicant to provide for “looped” water connections to avoid dead ends that can lead to stagnant water and increased maintenance costs.
- The Municipality requests that the Applicant extend the sidewalk from the adjacent Lutheran Church to the proposed Site.
- The Municipality recommends that the Applicant use “green” storm water solutions such as swales to mitigate water quality impacts.

MassHousing Determination and Recommendations

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval.¹ As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Applicant may apply to the Zoning Board of Appeals (the “ZBA”) of the Municipality for a Comprehensive Permit. At that time, local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with applicable state and local standards and regulations.

Based on MassHousing’s Site and design review, the following issues should be addressed in your application to the ZBA, and you should be prepared to explore them more fully during the public hearing process:

- Development of this Site will require compliance with all state and federal environmental laws, regulations, and standards applicable to existing conditions and to the proposed use related to floodplain management, wetland protection, river and wildlife habitats/conservation areas, stormwater management, wastewater collection treatment, hazardous waste safety, and public water supply. The Applicant should be prepared to provide evidence of such compliance.
- The Applicant must comply with Title V regulations regarding the design and construction of individual septic systems. The Applicant should provide evidence of such compliance prior to the issuance of a building permit for the project.

MassHousing has also reviewed the application for compliance with the requirements of 760 CMR 56.04(2) relative to Application requirements and has determined that the material provided by the Applicant is sufficient to show compliance.

¹ MassHousing has relied on the Applicant to provide truthful and complete information with respect to this approval. If at any point prior to the issuance of a comprehensive permit MassHousing determines that the Applicant has failed to disclose any information pertinent to the findings set forth in 760 CMR 56.04 or information requested in the Certification and Acknowledgment of the Application, MassHousing retains the right to rescind this Site Approval letter.

This approval is expressly limited to the development of no more than thirty-two (32) homeownership units under the terms of the Program, of which not less than eight (8) of such units shall be restricted as affordable for low or moderate-income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a Comprehensive Permit, the use of any other housing subsidy program, the construction of additional units or a reduction in the size of the Site, you may be required to submit a new site approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the Comprehensive Permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

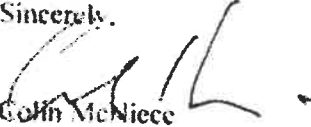
This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a Comprehensive Permit within this period or should MassHousing not extend the effective period of this letter in writing, this letter shall be considered to have expired and no longer be in effect. In addition, the Applicant is required to notify MassHousing at the following times throughout this two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when any appeals are filed.

Should a Comprehensive Permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBank Boston, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a "final draft" of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Michael Busby at (617) 854-1219.

Sincerely,


Colin McNiece
General Counsel

cc: Jennifer Maddox, Undersecretary, DHCD
The Honorable Dylan A. Fernandes
The Honorable David T. Vieira
Megan English Braga, Chair, Board of Selectmen
Terrance J. Hurrie, Chair, Zoning Board of Appeals

Attachment I

760 CMR 56.04

Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

The Village at Brick Kiln, Project #1063

MassHousing hereby makes the following findings, based upon its review of the application, and in consideration of information received during the Site visit and from written comments:

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income (AMI), adjusted for household size, as published by the U.S. Department of Housing and Urban Development ("HUD"). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Falmouth is \$77,300. A letter expressing interest for Project financing was provided by Abington Savings Bank, a member bank of the FHLBank Boston.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development and that such use would be compatible with surrounding uses and would directly address the local need for housing.

The Town of Falmouth does have a DHCD-approved Housing Production Plan. According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI), updated through October 22, 2019, Falmouth has 990 Subsidized Housing Inventory (SHI) units (6.66% of its housing inventory), which is 497 units short of the statutory minima of 10%.

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

In summary, based on evaluation of the site plan using the following criteria, MassHousing finds that the proposed conceptual Project design is generally appropriate for the Site. The following plan review findings are made in response to the conceptual plan, submitted to MassHousing:

Relationship to Adjacent Building Typology (Including building massing, site arrangement, and architectural details):

The proposed development is similar in character to abutting properties and the general pattern of development proximate to the Site. The proposed development will offer one-and two-story wood-framed homes with exteriors designed to represent the prevailing neighborhood context. The Applicant's design approach proposes to maintain a consistent massing, scale and building typology to that of the existing single-family homes found throughout Cape Cod.

Relationship to Adjacent Streets

The subject neighborhood is a rural residential area in the north central district of Falmouth. The neighborhood is bound northerly by Thomas B Landers Road and Blacksmith Shop Road, easterly by Gifford Street Extension and Locustfield Road and southerly by Brick Kiln Road and Route 28. Falmouth town center is about 4 miles southwest where elementary and middle public schools and the town center are located. The subject property abuts a single-family home, a religious facility; Long Pond Watershed land, vacant water resource land, and the Falmouth High School Campus. A YMCA is in the planning stages on a portion of the church property. There appear to be adequate lines of sight for vehicles entering and exiting the proposed Site. The proposed development is able to successfully integrate with existing development patterns.

Density

The Applicant proposes to build thirty-two (32) homes on 6.74 acres, all buildable. The resulting density is 4.74 units per buildable acre, which is acceptable given the proposed housing type and the uses found in the surrounding context.

Conceptual Site Plan

The proposed development will consist of thirty-two (32) single-family homes arranged along the road with sufficient separation between homes. All the homes will be oriented toward the center of the Site along a proposed green. The interior roadway is appropriately designed to meet the vehicular and pedestrian needs of the proposed development. The overall effect is of a complete, small neighborhood of individual homes with private yards, linked by a public sidewalk and shared common open space areas. The Applicant intends to create an access point leading to the Long Pond Watershed trail system.

Topography

The subject is a 6.74-acre lot with 183 feet of frontage along Brick Kiln Road. The upland lot has rolling wooded terrain. The lot has meandering terrain ranging from areas of generally level land at road front to rolling, sloping topography at the interior of the site. The site's topography is not an impediment to the proposed development.

Environmental Resources

The Long Pond Watershed is an assemblage of 105-acres of preserved open space north and south of Brick Kiln Road. The easterly boundary abuts the Falmouth high School campus, immediately behind the Site. There is an east-west trail through the property via a cart path that extends the full width of the Site from the high school. Trails into this land, preserved in perpetuity, are accessible from the rear of the Site.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

The Project appears financially feasible based on a comparison of sales submitted by Keller Williams Realty.

(e) that MassHousing finds that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

The initial pro forma has been reviewed for the proposed residential use, and the Project appears financially feasible with a projected profit margin of 7.27%. In addition, a third-party appraisal commissioned by MassHousing has determined that the "As Is" land value for the Site of the proposed Project is \$376,000.

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

The Applicant must be organized as a Limited Dividend Organization prior to applying for Final Approval. MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant owns the Site via Deed from Mary J. Mendoza to 511 Brick Kiln, LLC dated November 9, 2015 and registered with the Barnstable County Registry of Deeds in Book 29262, Page 54.