



COREEN V. MOORE
TOWN PLANNER

TOWN OF BOURNE
Office of the Town Planner
TOWN HALL
24 PERRY AVE.
BUZZARDS BAY, MA 02532
PHONE: 508-759-0615 • FAX: 508-759-8026
Email: cmoore@townofbourne.com



MEMORANDUM

To: Zoning Board of Appeals
Cc: Kenneth Murphy, Building Inspector
Anthony Schiavi, Town Administrator
Matthew Sawicki, Superintendent
Samuel Haines, Conservation Agent
Terri Guarino, Health Agent
Timothy Lydon, Town Engineer
Kerry Horman, Affordable Housing Specialist

From: Coreen V. Moore, Town Planner

Date: March 23, 2021

Re: Cape View Way 40B – Affordable Housing Development

I have reviewed the above-mentioned project and offer the following comments and findings.

The Town of Bourne has been making progress towards meeting its housing needs. In fact the Town, through the Bourne Housing Partnership and Bourne Affordable Housing Trust, has been a pioneer in creating and implementing proactive strategies to promote affordable housing.

The Bourne Housing Authority has for many years created and maintained affordable rental units for elderly and low-income persons. Demand continues to exceed supply, however, of housing for Bourne residents whose incomes are too low to afford prevailing market prices. The cost of new construction and land makes it uneconomic to build housing without substantial density benefits to private developers, or significant government or charitable investment.

Town of Bourne Housing Production plan

The Bourne Housing Partnership commissioned the Bourne Housing Production Plan per the State mandate. Following are excerpts of Bourne's Goals included in the Plan.

1. Strive to reach the state's 10% affordability goal. Seek ways to provide housing support to more area residents, raising the share of affordable housing from almost 7% of year-round resident households now to at least 10% within the next decade.
2. Increase housing opportunities for those in targeted categories of housing need, for persons who are physically or mentally challenged and those who have acute needs because of their special vulnerability, including elders, homeless, and single female heads of households as well as more generally serving low-income and very-low income households regardless of particular circumstances.

3. Promote equal opportunity and fair access to housing. guarding against discrimination provide support and encourage the development of innovative strategies designed to address the housing needs of Bourne residents, with particular attention to the needs of low- and moderate income renters.
4. Integrate environmental protection and housing production strategies. Integrate the development of affordable housing with the protection of Bourne's environment, including use of innovative septic technology and nitrogen loading analyses, as appropriate.

The States Comprehensive Permit Act (Chapter 40B)

A Massachusetts law which allows developers of affordable housing to override certain aspects of municipal zoning bylaws and other requirements. Chapter 40B was enacted in 1969 to address the shortage of affordable housing statewide by reducing barriers created by local municipal building permit approval processes, local zoning, and other restrictions. Its goal is to encourage the production of affordable housing in all communities throughout the Commonwealth.

Project History

The Town of Bourne acquired this property through the Tax Title process. During a joint meeting between the Board of Selectmen, Conservation Commission and the Planning Board it was voted to donate the land to the Bourne Housing authority for the purposes of providing affordable housing.

In 2019 the Bourne Housing Authority entered into a development agreement to lease the property to the Preservation of Affordable Housing, Inc. and the Housing assistance Corporation for the purposes of providing affordable housing as stated in the deed.

The project proponents met with town staff (Conservation, Planning, Health and the Building Inspector) on June 10, 2012 and October 27, 2020 to review and discuss the proposed development. Staff commented on many aspects of the project, many of which have been included in the project submission to the Zoning Board of Appeals.

Attached to this memo is a checklist of application requirements taken from the town's adopted comprehensive permit rules, specifically section 3.01. As you will note most information has been submitted or has been requested to be waived. Below are my comments as to the requested waivers.

The Applicants requested the following specific waivers from the ZBA's Local 408 Rules:

1. **Section 3.01(j).** Proof of filing of a Project Notification form with the Massachusetts Historical Commission for the site.

A waiver is requested as the Property is vacant and no notification is required.

Staff comments: *The mere fact that the property is vacant is not a sufficient reason for the requested waiver. The town of Bourne performed an historic survey of many properties in 1999, 2000 & 2015, two properties to the east were identified as historically significant. Vacant site could contain archeological elements, i.e. physical remains of past human activities.*

2. Section. 3.01(k). Proof of filing of a Rare Species Information Form with the Massachusetts Natural Heritage and Endangered Species Program for the Property.

A waiver is requested as the Property is not a mapped habitat and a filing is not required.

Staff comments: Staff agrees with this waiver request.

3. Section 3.01(l). A Pro Forma for the Protect with the Application.

A waiver is requested because, under 760 CMR 56.05(6)(a), a zoning board of appeals may not request to review pro forma or other financial information as part of an application for a comprehensive permit filing; and that information may only be requested by a board after all of the preconditions of 760 CMR 56.05(6) have been satisfied, including that:

- (1) peer review has taken place;
- (2) if any issues have been raised the applicant has had the opportunity to respond;
- (3) the Board has had the opportunity to discuss mitigation with the applicant; and
- (4) the applicant has indicated that the proposed mitigation would render the project uneconomic.

Staff comments: Staff agrees with this waiver request, however the Board should only grant this waiver provisionally and should revisit when the above preconditions have been met.

4. Section 4.02. Attorneys' Fees for General Representation.

A waiver is requested from any request to the Applicants for payment of fees to reimburse the Board for fees for general representation by its counsel as such fees are not allowed and are expressly prohibited under 760 CMR 56.05(5) which provides that: "Legal fees for general representation of the Board or other Local Boards shall not be Section 5.01.1. DEP accepted Local Rules and Regulations cannot be waived without mitigation.

A waiver is requested from this provision as it is overly broad and inconsistent with MGL c.40B and 760 CMR 56.00.

Staff Comments: Staff suggests that if after going through the application, the Board determines that in order to review that application it requires technical advice in such areas as civil engineering, transportation, environmental resources, design review of buildings and site, and (in accordance with 760 CMR 56.05(6) review of financial statements that is unavailable from municipal employees, it may employ outside consultants. The Board may, by majority vote, require that the Applicant pay a reasonable review fee in accordance with 760 CMR 56.05(b) for the employment of outside consultants chosen by the Board alone.

Again, the board should only grant this waiver provisionally and should revisit once the initial review of the project has commenced.

It is also the opinion of staff that at the minimum the stormwater design and report should be reviewed by an outside consultant.

5. Section 5.01.2. Cape Cod Regional Policy plan.

A waiver is requested from this provision as it is overly broad and inconsistent with MGL c.40B and 760 CPR 56.00.

Staff Comments: The Cape Cod Commission has been determined to be a “local board” and will comment and advise on policies of the Cape Cod regional Policy Plan. Staff suggests that this waiver is not necessary.

Bourne Zoning Bylaw (ZBL) provisions: The Applicants request waivers from the following Zoning Bylaw provisions:

1. **ZBL §1210.** The Applicants request a waiver from the requirement that the Building Inspector must determine in writing that the Project satisfies all ZBL requirements before issuing a building permit. The Project will conform to the comprehensive permit requirements.

Staff Comments: Staff does not agree with this waiver request. The Board cannot require additional regulations for a Comprehensive Permit than that of market rate projects. This regulation applies to all projects, the building inspector must indicate that the requirements of the zoning bylaw has been met or that the decision of the Board has been complied with.

2. **ZBL §1220.** The Applicants request a waiver from the requirement in this provision that Property may not be used unless the Building Inspector certifies that the use complies with the ZBL. The Project will conform to the comprehensive permit requirements.

Staff Comments: See staff comments above #1.

3. **ZBL §1230. Site Plan/Special Permit.** The Applicants note that this section does not apply to the proposed residential use as, under 760 CMR 56.05(7), special permit requirements do not apply to an application for a comprehensive permit.

Staff Comments: Staff agrees with this statement

4. **ZBL §2220 Use Regulation Schedule.** Principal Uses. Residential. The Applicants request a waiver from the prohibition in §2220 against siting multifamily dwellings in the R-40 District.

Staff Comments: Staff agrees with this waiver request.

5. **ZBL §2460.** Setting of Lot Bounds for corners of lots on a subdivision plan endorsed after 1979. The Applicants request a waiver from the requirement to set bounds as the prior subdivision parcels that make up the Property will be merged into one parcel and bounds are not necessary.

Staff Comments: Staff agrees with this waiver request.

6. **ZBL §2498.** Planning Board must determine that the proposal does not circumvent the Subdivision Control Law. The Applicants request a waiver from any action or determination

by the Planning Board as the ZBA must act as the Planning Board under the Subdivision Control Law.

Staff Comments: *Staff agrees with this waiver request.*

7. **ZBL §2500 Intensity of use Schedule.** The Applicants request the following dimensional waivers:

Requirement	Proposed	Waiver Requested
Minimum Area - 40,000 s.f.	100,000 s.f.+	No.
Minimum Frontage -125'	125+	No.
Minimum Front Yard - 30 feet.	10 feet	Requested.
Minimum Rear Yard - 15 feet	7.8 feet	Requested.
Minimum Side Yard -15 feet	15'+	No.
Maximum Lot Coverage - 20%	32%	Requested.
Maximum Building Height -35 feet	38.9 feet	Requested.
Minimum usable open space - 20%	64%	No

Staff Comments: *Staff agrees with these dimensional waiver requests.*

8. **ZBL §2640 and §2650.** Rate of Residential Development and Rate Exemption e). The Applicants request either a waiver from the application of the rate of residential development set forth under ZL §2640 or an acknowledgment by the ZBA that the affordable housing units to be developed are "Bourne Affordable Housing Units" as defined under ZBL Article V and so the Project is exempt from the rate of residential development under Exemption (e).

Staff Comments: *Staff agrees with this waiver request.*

9. **ZBL §3300 Parking Requirements.** §3320. Two spaces per dwelling or 102 spaces for 51 units. The Applicants request a waiver to allow a total of 89 parking spaces (including 4 handicap and 12 compact spaces) for a ratio of 1.6 spaces per unit.

Staff Comments: *Staff agrees with this waiver request. Due to the location of the project and the availability of services i.e. bus station, restaurants, post office, convenience store etc. vehicular dependency may not be essential.*

10. ZBL §3500. Landscaping and Screening.

§3512(ii). Plants. Minimum number of trees equals planting area length divided by 30 or shrubs divided by 3.

The Applicants request a waiver for the parking area. The upper parking area has the leaching field and no trees are possible. The lower parking area will retain as much existing vegetation as possible as required under ZBL §3514. Where planting is possible, trees have been added at 20 feet to 30 feet on center.

§3513(iv). Planting Areas.

The Applicants request a waiver to eliminate the requirement for plantings within the parking areas.

§3570. Natural Cover Removal Special Permit for exposing 10,000 s.f. of bare earth. Note: Special permit relief may not be imposed. 760 CMR 56.05(7).

Staff Comments: Staff does not object to the above wavier requests. However Section 3570 is allowed as long as the work is in conjunction with a valid building permit or under a ZBA approval. It appears the natural cover removal is more of a timing issue, when will site development begin? Before or after the permit is issued.

11. ZBL §4400. Earth Removal Special Permit.

The Applicants note that this provision would not apply to the Project because all earth removal performance will be incidental to the residential construction, which is exempt from this provision; but, in any event, the Applicants note that no special permit relief may be imposed under 760 CMR 56.05(7).

Staff Comments: Staff does not object to the above wavier requests. Section 4400 is allowed as long as the work is in conjunction with a valid building permit or ZBA approval. No special permit would be required.

D. Water District Rules, Regulations & Specifications

The Applicant's request a waiver from any relief required to be obtained from the North Sagamore Water District, including under the District's Rules, Regulations & Specifications ("District's Rules"); and requests that the ZBA grant any necessary relief including but not limited to permission to connect the Project to the District's water system, but with the Project's water system to comply with all of the technical requirements of the District's Rules, except as follows.

A waiver is requested from the Water District's Rules, to the extent necessary, to allow the Project's water mains to be installed as shown on the Plans and a waiver from the connection fees is requested.

Staff Comments: Staff defers comments on the above request for water department relief to the Sagamore Water District.

E. Planning Board's subdivision Rules and Regulations.

As expressly provided for under 760 CMR 56.05(7), no waiver from the Planning Board's Subdivision Rules and Regulations is required for the Project as the Project is not a new subdivision

and, instead, is combining 7 parcels in an existing subdivision approved and endorsed in 1987 into one buildable lot; however, the Applicants request the ZBA act as the Planning Board as required for a comprehensive permit review and grant and endorse a modification to reconfigure the cul-de-sac for the subdivision way approved and endorsed in 1987, so as to approve and endorse the revised cul-de-sac configuration as shown on the Plans. To the extent that the Subdivision Rules and Regulations apply to the reconfiguration of the cul-de-sac because a modification of the 1987 configuration of the cul-de-sac is requested, the following waivers are requested, as shown on the Plans:

Subdivision Waivers		
Section 264.	Environmental Impact Report.	A waiver is requested.
Section 312.	Required Cross Section.	A waiver is requested.
Section 321(f):	Minimum Centerline Radii.	A waiver is requested.
Section 322(a)	Widths,	A waiver is requested.
Section 322(b)	Widths	A waiver is requested.
Section 324	Minimum Stopping Distance.	A waiver is requested.
Section 352(a):	Stormwater Drainage Pipe.	A waiver is requested.
Section 352(d).	SW Management Design.	A waiver is requested.
Section 354.	Cable Utilities. In shoulder.	A waiver is requested

Staff Comments: 760CMR 56.05(7) "If a Project does not request a subdivision approval, waivers from subdivision requirements are not required" Staff suggest that a modification of a previous subdivision is a request for subdivision approval and waivers are required.

The previous subdivision will be modified by merging all lots and modifying the right of way.

Staffs suggest that a table similar to #7 Section 2500 above be provided to determine the extent of the relief requested.

The Project's stormwater infrastructure and erosion controls will conform to the latest version of the Massachusetts DEP Stormwater Standards.

Staff Comments: As recommended above, it is the opinion of staff that the stormwater design and report be reviewed by an outside consultant.

Requirements of Comprehensive Permits
as submitted to the ZBA

Per Comprehensive Permit Rules requirements adopted June 19, 2002

Cape View Way
3/24/21 CM.

Application Requirements:	Info Supplied	Info not Supplied	Comments
1. Preliminary site development plan [Section 3.01(a)]			Plan Sht C-5
a. Buildings outline location	✓		
b. Streets	✓		
location	✓		
materials	✓		
c. Drives	✓		
d. Parking areas	✓		
e. Walks	✓		
f. Paved areas	✓		
improvements	✓		
h. Open areas	✓		
Note: Structures of 5+ must have site development plans signed by a registered architect			
2. Report on existing site conditions [§ 3.01(b)]	✓	Plan L5-1	Existing Conditions Site Plan
3. Summary of conditions of surrounding areas [§ 3.01(b)]			
a. showing the location and nature of existing:			
1. buildings	✓		
2. street elevations			
3. traffic patterns			
4. character of open space		N/A	
4. Preliminary scaled architectural drawings [§3.01(c)]			Plans dated?
a. floor plan	✓		no date
b. elevations	✓		shown
c. sections	✓		
d. construction type		X	Plotted on 12/19/2019
e. exterior finish	✓		Rec 3/5/21
Plans cover sheet A-102 thru A-505			
5. Tabulation of proposed buildings [§ 3.01(d)]	✓		51 units
a. by type	✓		3 Levels
b. size	✓		
c. # of bedrooms	✓		1 BR, 2 BR
d. floor area	✓		# 3 BR
			see Sht A-102 & pg 11 of application
6. Ground coverage [§3.01(d)]			
a. % of buildings	✓		14%
b. paved areas	✓		"hot coverage" 32%
c. open areas	✓		64%
7. Preliminary subdivision plan (if applicable) [§3.01(e)]	✓		see pg 12 of app
8. Preliminary utilities plan [§3.01 (f)]			
a. location & type of sewage	✓		
b. drainage	✓		
c. water facilities	✓		
d. hydrants	✓		

Requirements of Comprehensive Permits
as submitted to the ZBA
Per Comprehensive Permit Rules requirements adopted June 19, 2002

Application Requirements:	Info Supplied	Info not Supplied	Comments
9. Documentation [§3.01 (g)(i)(ii)(iii)]			
a. Proof of organizational requirements	✓		see page 8
b. Acceptable funding	✓		of app.
c. Site control	✓		
10. Lists of requested exceptions [§3.01 (h)]	✓		see page 17
a. Explanation	✓		
11. Certified abutter's list [§3.01 (l)]	✓		pg. 29
12. Mass Historical Commission proof of filing [§3.01 (j)]		X	wavier requested
13. Mass Natural Heritage & Endangered Species proof of filing [§3.01 (k)]	✓		pg. 9 - not in a mapped area
14. Proforma [§3.01 (l)]		✓	requested relief pg. 18
15. Project Eligibility letter [§3.01 (m)]	✓		dated 2/23/21 pg 30.
16. Filing Fee [§3.02]	?		
17. 20 Copies of Complete Application [§3.03]	✓		
18. Filed with Conservation Commission [§5.01.1] (if applicable)	✓		hearing April 1, 2021

ZBA Hearing April 7, 2021
2021-CPOC6