



## TOWN OF BOURNE Board of Appeals

Bourne Town Hall  
24 Perry Ave., Buzzards Bay, MA  
02532  
Phone: 508-759-0615, X 1342



### COMPREHENSIVE PERMIT FOR A SECTION 40B AFFORDABLE HOUSING PROJECT – FINAL DECISION

**PETITION NUMBER:** 2021-CP06  
**NAME OF APPLICANT/ CURRENT OWNER:** PRESERVATION OF AFFORDABLE HOUSING,  
INC., AND HOUSING ASSISTANCE CORP. / BOURNE HOUSING AUTHORITY  
**PROPERTY ADDRESS:** CAPE VIEW WAY AND HOMESTEAD ROAD EXTENSION, BOURNE, MA  
**REGISTRY OF DEEDS INFORMATION:** SEE BELOW

#### SUMMARY

On January 19, 2022, the Board of Appeals voted to grant **COMPREHENSIVE PERMIT #2021-CP06 TO CONSTRUCT AND OPERATE A SECTION 40B AFFORDABLE HOUSING PROJECT CONSISTING OF 42 AFFORDABLE RENTAL UNITS** in accordance with M.G.L. Chapter 40B, Section 21, and Section 1320 of the Bourne Zoning Bylaws, for the property located at Cape View Way and Homestead Road Extension, Bourne, MA. The property consists of 3.04 acres and is shown on Bourne Assessing Parcels as follows:

#### Cape View Way Parcels:

No. 0: Assessing Map 7, Parcel 23 (11,456 s.f.)  
No. 6: Assessing Map 7, Parcel 86 (20,822 s.f.)  
No. 8: Assessing Map 7, Parcel 87 (20,691 s.f.)  
No.10: Assessing Map 7, Parcel 88 (21,382 s.f.)  
No.11: Assessing Map 7, Parcel 90 (23,610 s.f.)  
No.12: Assessing Map 7, Parcel 89 (23,000 s.f.)

#### Homestead Road Ext. Parcel:

No. 0: Assessing Map 6, Parcel 38-1 (6,926 s.f.)

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to grant a Comprehensive Permit and that copies of said decision, conditions thereto, and all plans and exhibits referenced in the decision, have been filed with the Town Clerk.

Any person aggrieved by this decision may appeal to the Superior Court or Land Court as provided in M.G.L Chapter 40A, Section 17 (as referenced in Chapter 40B, Section 21, Sentence 9), and by filing a NOTICE OF ACTION AND COMPLAINT with the Town Clerk within twenty (20) days of the date of filing of this decision or by filing an appeal pursuant to G.L. c.40B. SS 20-23 as may be relevant.

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For the Board of Appeals  
James E. Beyer - Chair

**ZONING BOARD OF APPEALS  
TOWN OF BOURNE  
CAPE VIEW WAY - COMPREHENSIVE PERMIT**

**I. THE PROJECT**

Property: The subject property is located at Cape View Way and Homestead Road Extension, Bourne, MA in the R-40 Zoning District and consists of 3.04 acres and is shown on Bourne Assessing Parcels:

Cape View Way Parcels:

No. 0: Assessing Map 7, Parcel 23 (11,456 s.f.)  
No. 6: Assessing Map 7, Parcel 86 (20,822 s.f.)  
No. 8: Assessing Map 7, Parcel 87 (20,691 s.f.)  
No.10: Assessing Map 7, Parcel 88 (21,382 s.f.)  
No.11: Assessing Map 7, Parcel 90 (23,610 s.f.)  
No.12: Assessing Map 7, Parcel 89 (23,000 s.f.)

Homestead Road Ext. Parcel:

No. 0: Assessing Map 6, Parcel 38-1 (6,926 s.f.)

Applicant: Preservation of Affordable Housing, Inc., and Housing Assistance Corp. ("Applicant"). The term "Applicant" shall include the Applicant's successors and assigns.

Owner: Bourne Housing Authority

Project Eligibility: By letter dated February 23, 2021, the Department of Housing & Community Development ("DHCD") issued a project eligibility letter under the Federal Low Income Housing Tax Credit Program ("LIHTC Program") to the Applicant to build 51 rental units at the Property, with 36 affordable units to be rented to eligible households earning no greater than 60% of Area Median Income, with the provision that in the event of a lender foreclosure, the minimum affordability requirement shall be that at least 25% of the units shall be rented to eligible households earning no greater than 80% of Area Median Income on the Property. (the "Project").

Application: On March 5, 2021, the Applicant filed the Application for the Project with the Zoning Board of Appeals (the "ZBA" or the "Board").

Public Hearing: On April 7, 2021, the public hearing on the Application timely opened and further hearings were held on May 19, 2021, July 7, 2021, August 4, 2021, August 11, 2021, September 15, 2021, October 6, 2021, November 3, 2021, November 17, 2021, December 1, 2021, December 15, 2021, January 5, 2022, and January 19; and the public hearing closed on January 19, 2022.

The Board: The following Board members attended all public hearing sessions or missed one session and reviewed a recording or transcript of the missed session and all materials submitted: James Beyer (Chairman), Pat Nemeth, Chris Pine, Wade Keene, and John O'Brien.

Decision Date: On January 19, 2022, Members James Beyer (Chair), Chris Pine (Vice Chair), Pat Nemeth, Wade Keene (with member John O'Brien dissenting) voted to grant the Application with conditions, as set forth below.

Note: all Exhibits described below are incorporated herein by reference.

## **II. JURISDICTIONAL REQUIREMENTS:**

Under 760 CMR 56.04(1), in order to be eligible to submit an application to the Zoning Board of Appeals for a Comprehensive Permit, the Applicant and the Project shall satisfy the following requirements under 760 CMR 56.04(1): (1) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization; (2) the Project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and (3) the Applicant shall control the Site.

### **1. Applicant's Status**

The Applicant is a limited dividend organization under 760 CMR 56.02 by virtue of receiving the Project Eligibility Letter from DHCD ("PEL") and agreeing to sign the required Regulatory Agreement with the DHCD under the LIHTC Program; thus, satisfying the requirements of 760 CNR 56.04(1)(a). See copy of PEL attached hereto as Exhibit A.

### **2. Fundable Project**

The Applicant received a Project Eligibility Letter dated February 23, 2021 from DHCD under the LIHTC Program ("PEL") indicating that the Project is fundable under the said Program; thus, satisfying the requirements of 760 CMR 56.04(1)(b)). See Exhibit A.

### **3. Site Control by Applicant**

The Applicant has a Development Agreement with the Bourne Housing Authority dated June 20, 2019 to enter into a long term ground lease for development and

operation of the Project, and it has been determined by DHCD in the PEL that the Applicant has site control; thus, satisfying the requirements of 760 CMR 56.04(1)(c) that the Applicant has site control. See Exhibit A and see the Development Agreement, a copy of which is attached hereto as Exhibit B.

### **III. FINDINGS OF FACT**

Following completion of the public hearing and based on the evidence submitted to the Board from all sources, the Board made the following findings of fact:

1. The Property consists of the parcels of land listed above, located at Cape View Way and Homestead Road Extension, Bourne, Massachusetts comprising approximately 3.04 acres of land.
2. The Property contains approximately 2.78 acres of buildable area and 0.26 acres of wetlands.
3. The Property is located in the R-40 Zoning District.
4. The Property is vacant.
5. As of the date of the Application, the Town of Bourne did not satisfy any of the safe harbors set forth under 760 CMR 50.03.
6. Intentionally omitted.
7. The Town of Bourne conveyed the Property to the Bourne Housing Authority in 2002 for the purpose of providing affordable housing.
8. The Bourne Housing Authority prepared and issued a Request for Proposals to develop the property for up to 63 rental apartment units.
9. The Applicant submitted a proposal for the Project and was selected by the Bourne Housing Authority to develop the Project.
10. The Applicant and the Bourne Housing Authority entered into a Development Agreement for the Project dated June 20, 2019. See Exhibit B.
11. Preservation of Affordable Housing, Inc. and Housing Assistance Corp. are both experienced and successful developers of affordable housing and have

collaborated on many such projects on Cape Cod, including High Meadow Town Homes, Canal Bluffs and Clay Pond Village in Bourne.

12. Thomas Houston of Professional Services Corporation, PC (“PSC”) was retained by the Board to perform a peer review of the site and civil engineering plans and of the Applicant’s Traffic Impact Assessment.
13. The PSC peer review found that subject to the Applicant making the changes as described in the Applicants’ response letters to the PSC peer review as to stormwater management and subdivision plans, the Project is in compliance with applicable state laws and regulations and good engineering practice. Those changes are described in a letter to the Board from Horsley Witten Group, Inc. dated December 14, 2021 (Exhibit C attached hereto).
14. The Applicant submitted a Transportation Impact Assessment (“TIA”) prepared by Vanasse & Associates, Inc. (“Vanasse”) dated May, 2021, which included certain recommendations and found: “With implementation of the aforementioned recommendations, safe and efficient access will be provided to the Project site and the Project can be accommodated within the confines of the existing and improved transportation system.”
15. Mr. Houston’s peer review of the TIA found that it was satisfactory, and Mr. Houston advised that the recommendations in the TIA, and some recommendations which he made, be included as conditions in the Board’s decision. In a letter to the Board dated July 22, 2021, Vanasse responded to the PSC peer review recommendations; see copy attached hereto as Exhibit D. The recommendations highlighted in Exhibit D will be implemented by the Applicants.
16. The project locus is not within a Massachusetts Division of Fisheries and Wildlife Priority or Estimated Habitat for Rare Species under the Natural Heritage and Endangered Species Program.
17. The Property contains approximately 0.26 acres of wetlands on the western portion of the Property and is in a FEMA Flood Zone X District; and as indicated in a letter to the Board from the Bourne Conservation Commission dated April 7, 2021, the Conservation Commission approved the Project under the state Wetlands Protection Act.
18. The Applicant intends to have the Project tie into the North Sagamore Water District (“Water District”) municipal water system. The Board will leave all matters related to such water connection, including without limitation technical matters, fees, and waivers for the Water District to decide; nothing contained in this Decision shall be construed as an authorization or waiver of matters within the jurisdiction of the Water District.
19. A water supply analysis to determine the sufficiency of the water supply for the Project’s fire flow and fire suppression system was performed by Wozny/Barbar & Associates, Inc. on behalf of the Applicant, and summarized in a memorandum dated August 30, 2021 to the Applicant’s architect, Michelle Waldon, AIA, of Icon Architects; see copy of said memorandum attached hereto as Exhibit E. The

memorandum was referred to the Bourne Fire Chief for review and the flow was found to be sufficient to serve the Project; see copy of memo from Assistant Chief David S. Pelonzi to Cassie Hammond dated September 10, 2021, attached hereto as Exhibit F.

20. The Applicant has applied to the Town of Bourne Board of Health for a conventional septic system under Massachusetts Title 5 and shall obtain the necessary Disposal Works Construction Permit under Title 5 from the Board of Health prior to the issuance of a building permit.
21. The Applicant will file a Notice of Intent under the National Pollution Discharge Elimination System (NPDES) General Construction Permit program prior to beginning any building construction on the Project, as well as a Stormwater Pollution Prevention Plan (SWPPP) prior to building construction. Copies of both the NPDES Notice of Intent and the SWPP shall be submitted to the Board and Building Inspector.
22. The Bourne Fire Department stated in the memo from Assistant Chief David S. Pelonzi to Cassie Hammond dated September 10, 2021 that the Project plans provide sufficient access for emergency vehicles; see Exhibit F.
23. The Bourne Police Department stated in a letter to the Board dated April 4, 2021 that after reviewing the information provided by the Board, the Department has no comments relevant to the proposed Project. See copy of said letter attached hereto as Exhibit G.
24. In response to comments from certain neighbors and to comments from the Board members in the course of the hearing, the Applicant presented a re-designed building and site plan that among other things: 1) reduces the number of units from 51 to 42 units; 2) maintains the 15' setback requirements under the Zoning Bylaw; and 3) lowers portions of the building from 3 stories to 2 stories.
25. This Decision is based on the Plans of Record , which are as further described in Exhibit H and which shall be referred to as the "Plans of Record." The Applicant stated at the hearing that it is reserving its rights as to the plans originally submitted with the Application.
26. The Property is located in the R-40 Zoning District and the Town's Zoning By-law provides that the maximum height of buildings in the R-40 Zoning District shall not exceed 35 feet; and the Project building will have a maximum height of 38.90 feet.
27. The Board finds that the maximum building height of 35 feet set forth in the Zoning Bylaw is not a local concern that outweighs the regional need for affordable housing with respect to this Project and this Property.
28. The Board finds that the Applicant or a related single purpose entity to be approved by DHCD under the LIHTC Program will enter into a Regulatory Agreement as required by DHCD which will be recorded with the Barnstable County Registry of Deeds.
29. The Application seeks to modify the existing Subdivision Plan approved in 1987 and recorded in Barnstable Registry of Deeds Plan Book 437, Page 50 and to have

the Board endorse a modified Subdivision Plan that has been submitted to the Board.

30. The Board finds that the proposed changes to the 1987 Subdivision Plan are reasonable and are necessary to implement the development of the Project and do not create any adverse impact.
31. The Board finds that the access way shown on the modified Subdivision Plan which is included in the Plans of Record approved hereunder provides sufficient access for the 40B Project and for the rear parking lot of the Bourne Fire Station at 51 Meetinghouse Road and that all frontage requirements that are necessary to support the Project and the Fire Station are satisfied.
32. The approval of the Project, with the waivers and conditions hereinafter stated, is Consistent with Local Needs under Chapter 40B.

**VOTED: Based on the foregoing, the Board voted on January 19, 2022 to grant a comprehensive permit to the Applicants subject to the following Conditions and Waivers:**

#### **IV. CONDITIONS**

##### **PREFACE**

Pursuant to 760 CMR 56.05(10), this Decision shall be a master permit which shall subsume all local permits and approvals normally issued by Local Boards, except for those relating to the Water District, the Board of Health in connection with the Massachusetts Department of Environmental Protection (“DEP”) Title 5, and the Conservation Commission with respect to the *Wetlands Protection Act*.

##### **A. Regulatory Conditions.**

1. The total number of dwelling units that may be constructed at the Property shall be limited to 42, with 9 one-bedroom units, 28 two bedroom units and 5 three bedroom units.
2. All dwelling units approved under this Comprehensive Permit shall be rental units.
3. At least 34 of the 42 rental units shall be and shall remain affordable and shall be leased to eligible households whose annual income does not exceed 60% of area median income, adjusted for household sized, as determined by the United States Department of Housing and Urban Development; provided, however, as provided in the PEL, that in the event of a lender foreclosure, the minimum affordability requirement shall be that at least 25% of the units shall be rented to eligible households earning no greater that 80% of Area Median Income (with the aforesaid units being collectively described as the “Affordable Units”); and further, subject to approval by DHCD, the Affordable Units and the remaining units

shall be included in the Town's Subsidized Housing Inventory, as maintained by DHCD, and the Affordable Units shall permanently remain affordable rental units for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

4. The Affordable Units shall be dispersed throughout the Project as designated by the Applicant by agreement with the Subsidizing Agency. The Affordable Units and the market rate units shall be constructed on substantially the same schedule. The Affordable Units shall be indistinguishable as viewed from the exterior from the market rate units.
5. The Applicant shall execute a Regulatory Agreement as required under G.L. c.40B and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement. The Affordable Units in the initial leasing of the Property shall be identified in a tenant location plan to be approved by the Subsidizing Agency and the Affordable Units shall not be segregated from the market rate units.
6. The Applicant shall annually recertify to the Subsidizing Agency, as may be required by the Subsidizing Agency, the continuing eligibility of any tenant in an affordable unit. If a previously eligible tenant becomes ineligible to occupy an affordable unit, the Applicant may charge the tenant a market rate rent; however, the Applicant shall comply with the Subsidizing Agency's requirements for converting another unit to an affordable unit.
7. In addition to the foregoing, it is further a requirement that the Project shall always be subject to a suitable regulatory agreement. Therefore prior to the expiration of the initial Regulatory Agreement with the Subsidizing Agency, the Applicant shall execute and record a successor Regulatory Agreement and Monitoring Services Agreement, to be approved by Town Counsel, for the period after the expiration of the term of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into this second Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent (collectively the "Town Regulatory Agreement"), which shall continue the affordability restrictions imposed by the Subsidizing Agency and this Comprehensive Permit. Such agreement shall be consistent with the terms of this Comprehensive Permit. The Applicant shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period after the expiration of the term of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.

Upon the effectiveness of the Town Regulatory Agreement, referred to above, rents for the Affordable Units shall continue to be restricted in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency (or its successor agency) that existed prior to the expiration or termination of the



previously effective regulatory agreement, as if it were still in force and effect. To the extent that the Subsidizing Agency (or its successor agency) has ceased to promulgate such applicable rules, regulations, and policies, then the rent for the Affordable Units shall be determined based on substitute regulations of a federal or state governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by the Applicant and the Town, in order to ensure the continued availability of the Affordable Units for the purposes set forth herein and in the Comprehensive Permit for the entire term of the agreement. Further, if M.G.L. c.40B (or its successor statute) still provides a mandate for municipalities to provide low or moderate income housing, the Applicant shall continue to operate and manage the Project as would permit the Project to be credited toward the Town's Subsidized Housing Inventory for purpose of Chapter 40B.

The Town Regulatory Agreement: (i) shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that the Project shall remain a rental project so long as the Project does not conform to local zoning; (iii) shall require that at least twenty five (25%) percent of the apartments in the project shall be to low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23; (iv) shall not restrict or limit the dividend or profit of the Applicant; and (v) shall restrict the number of allowed units to not more than 42 units.

The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded and shall be enforceable by the Town of Bourne and shall require that the Affordable Units shall remain affordable rental units for the shorter of 1) perpetuity; or 2) for so long as the Project does not conform to the Town of Bourne Zoning Bylaws.

8. While the Regulatory Agreement with DHCD (or another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency in relation to enforcement of affordability provisions.
9. When the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town of Bourne or its designee, to the full extent allowed by M.G.L. Chapter 40B, Sections 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010) or any other relevant decisional law or amendment to G.L. Chapter 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee, if requested.

10. In the initial lease-up for the Project, and to the extent allowed under G.L. c. 40B and the regulations promulgated thereunder and other applicable law, and subject to approval by DHCD, with respect to at least 70% of the affordable units, the Applicant shall provide a preference category for Bourne residents and for employees of the Town of Bourne.

This preference shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference set forth herein.

The foregoing local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.

The Applicant shall submit to the Board a report on marketing activity at the Project during the initial lease-up of the Project demonstrating compliance with the local preference requirement pursuant to the plan approved by the Subsidizing Agency as set forth below.

The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or DHCD, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

11. The Applicant shall develop a marketing plan for the Affordable Units for review and approval of the Subsidizing Agency, said plan to conform to any and all affirmative action requirements or other requirements as imposed by federal or state regulation and shall conform with the local preference requirement set forth above.
12. The Town, by and through the Board or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
13. Prior to receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Commission and the Board.

**B. General Conditions**

### Background, Administrative and Procedural Conditions

1. The Applicant will record this Comprehensive Permit after the 20-day appeal has expired at the Barnstable County Registry of Deeds and provide the recording information on the cover page of the Plans of Record.
2. This Comprehensive Permit shall not take effect until recorded in the Barnstable County Registry of Deeds and no construction shall take place until the Applicant has provided proof of such recording to the Board and the Building Inspector.
3. The Applicant shall provide the Town and its agent with authority to enter the Property during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard-hat, safety glasses, work boot requirements, and COVID-19 protocols, if applicable), with prior notice to Applicant in order to determine conformance with this Decision.
4. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements, subject to any waivers by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. All fees for Board consultants including fees incurred prior to the date of this decision shall be paid by the Applicant within 30 days of the receipt by the Applicant of the consultant's bill for services. Any outstanding fees owed for consulting services incurred by the Board before this decision was rendered shall be paid forthwith and before any building permit issues. Thereafter, no occupancy permit shall issue if an outstanding fee bill is 30 days overdue.
5. This Comprehensive Permit shall expire three (3) years from the date it becomes final as provided in 760 CMR 56.05(12)(c), and subject to tolling as provided in said Regulation, unless construction on the Project has commenced within such period. For the purposes hereof, "construction" shall mean the site work for the project infrastructure, which may commence prior to issuance of the Building Permit for the Project. The Applicant may apply to the Board for reasonable extensions to this Comprehensive Permit for good cause.
6. The Applicant shall comply with all local by-laws, rules, and regulations of the Town of Bourne, unless expressly waived hereunder.
7. The Project shall conform to all applicable state and federal laws, codes, and regulations.
8. The Project shall be constructed and operated in accordance with the Comprehensive Permit. Any substantial deviation must be approved through a modification of the Comprehensive Permit by the Zoning Board of Appeals pursuant to 760 CMR 56.05(11).

9. The modified Subdivision Plan submitted by the Applicant as part of the Plans of Record is approved and shall supersede the 1987 Subdivision Plan recorded at Barnstable Registry of Deeds Book 437, Page 50 as follows:
  - i. The 1987 Subdivision Lots 6-10 and Open Space Lot shall be reconfigured as shown on the modified Subdivision Plan into one parcel (the “40B Parcel”).
  - ii. The 1987 subdivision way as approved and endorsed under the 1987 Subdivision Plan shall be reconfigured as shown on the modified Subdivision Plan.
  - iii. The 1987 subdivision way, as reconfigured and approved under the modified Subdivision Plan, shall provide access only to the 40B Parcel and to the former 1987 Subdivision Lot 5 (said Lot 5 having been combined and merged with 1987 Subdivision Lots 3 and 4 (the site of the Bourne Fire Station at 51 Meetinghouse Road).
10. The June 30, 1987 Subdivision Decision is hereby modified to remove “Condition d” which provided that Lot 5 (i.e., now the rear parking area for the Fire Station) “shall become a residential and not a business lot.”
11. The provisions of this Comprehensive Permit shall apply to and be binding upon the landowner, the Applicant, and their employees and all successors and assigns in interest, whether by title, control, or contract.

Prior to Construction Conditions

1. Prior to issuance of a Building Permit, the Applicant shall provide to the Building Inspector and the Board:
  - a. a final set of Site and Engineering Plans, which shall include but not be limited to the stormwater plans and calculations (the “Final Site Plans”) for review by the Board’s peer review consultant to ensure consistency with the terms of this Decision; and 2) final architectural plans (the “Final Architectural Plans”) to confirm the consistency of such plans with the terms of this Decision and with the Massachusetts Building Code. Any comments from the peer review consultant, the Board or the Building Inspector shall be made in writing within thirty (30) days after submission by the Applicant, and if no comments or requests for additional information are received within such period then the Final Site Plans and the Final Architectural Plans shall be deemed to be consistent with the terms of this Decision.
  - b. a copy of the NPDES Notice of Intent;

- c. a copy the Operation and Maintenance Plan approved by the Bourne Conservation Commission or Massachusetts Department of Environmental Protection under the state Wetlands Protection Act;
  - d. a letter from the Project architect confirming that the Project complies with Architectural Access Board (AAB) Regulations;
  - e. Details of any temporary construction signs;
  - f. Disposal System Construction Permit for the Board of Health;
  - g. a “Will Serve” letter from the Water District; and
  - h. An affidavit from a registered Landscape Architect or Professional Engineer that the landscaping complies with the Landscaping Plan.
2. The Applicant shall submit to the Board, the Building Inspector, the Fire Department, and the Police Department, a construction schedule which details the timing of construction.
  3. One week prior to any land disturbance activities, the Applicant will conduct an onsite inspection with the Building Inspector and Town Conservation Agent to observe the erosion controls installed at the site and review the erosion controls anticipated to be employed during construction.
  4. There shall be no site work or exterior construction activity on the Property before 7:00 a.m., except fueling of vehicles which may begin at 6:30 a.m., or after 7:00 p.m., Monday through Friday and before 8:00 a.m. or after 5:00 p.m. on Saturday. There shall be no construction on the Property on the following days unless a special approval for such work has been issued by the Building Inspector: Sundays or the following legal holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and Christmas. The hours of operation shall be enforceable by the Building Inspector.
  5. Prior to starting any site work or construction activities authorized under this Decision (“Authorized Activity”), the Applicant and the general contractor shall hold a preconstruction meeting with the Building Inspector, Conservation Agent, and DPW.
  6. Prior to starting any Authorized Activity, the Applicant shall provide to the Building Inspector:
    - a. the company affiliation, name, address, and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site;

- b. a copy of a municipal lien certificate indicating that all taxes, assessments, and charges due on the Property have been paid;
  - c. certification from the Applicant that all required federal, state, and local licenses and permits have been obtained;
  - d. proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work; and
  - e. proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services to protect and secure the site and construction personnel.
7. During construction, at the end of each workday, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.
  8. Blasting, if any, shall be performed in a manner approved by the Fire Department and Building Department so as to prevent injury or property damage to the residents of the Town and proper evidence of insurance shall be provided to the Building Inspector before blasting begins.
  9. No stumps or construction debris shall be buried or disposed of at the Property.
  10. Applicant shall cease grading in the wetlands areas if box turtles are present. The turtles shall be moved within the wetlands area to a location safe from the grading activities, prior to resuming grading.

Prior to Issuance of Final Certificate of Occupancy Conditions

1. All utilities within the Property shall be installed underground.
2. The interior and exterior of all buildings and structures shall be constructed in accordance with the Final Building Plans.
3. All final water and stormwater infrastructure, retaining wall, fences and other hardscape and installation of at least a binder course of pavement for the site driveways and parking areas shall be in place and fully operational prior to the issuance of the Certificate of Occupancy for the Project, unless the Building Inspector determines otherwise, and if so, the Applicant shall provide surety for completion of such items as described below.

4. All lighting for the Project shall be as shown on the Final Site Plans.
5. All utility work and other roadwork within any public right of way shall be performed and conducted in conformance with the regulations of the Town, but this comprehensive permit shall constitute the necessary street opening permit. Contractors shall be duly licensed as required by the Town of Bourne. All such work shall be performed in accordance with current engineering and construction standards.
6. The Applicant shall install fencing and landscaping as shown on the Plans of Record Sheets C-19 and C-20 (Landscape Plans) and Sheet C-22 (Planting Details) and on the "Condition of Comprehensive Permit RE: Protection of Tudor Cherry Investors, LLC" attached hereto as Exhibit I, which said Exhibit includes an "Exhibit A" colored plan and an "Exhibit B" fence detail sheet.
7. Fire hydrants shall be located as shown on the Final Site Plans.
8. The Applicant shall sprinkler the Project's building with a wet automatic sprinkler system throughout, except for the attic which will have a dry pipe system with quick response heads. The Applicant shall submit final fire alarm/sprinkler plans to the Fire Chief for review and approval as required under the applicable Commonwealth of Massachusetts fire codes. The Project shall install the sprinklers in compliance with M.G.L. c. 148, § 26I, which shall require a sprinkler system designated per code as NFPA 13.
9. The Applicant shall equip each and every unit with water sense compliant plumbing fixtures in every bathroom, kitchen, and laundry area, and all underground water pipes shall have water-tight joints.
10. The Project shall have security cameras at the entrances to the buildings and the driveways.
10. There shall be a defined area to accommodate children waiting for school buses, as shown on the Plans of Record.
11. To the extent that landscaping and/or other items listed in Condition 3 above (under the heading of "Prior to Issuance of Final Certificate of Occupancy Conditions") for the Project are not completed prior to the issuance of a Certificate of Occupancy, and if the Building Inspector determines pursuant to said Condition 3 that it is acceptable for a Certificate of Occupancy (or temporary certificate) to issue, the Applicant shall provide the Town with a cash or other surety in an amount to be determined by the Board in consultation with and the Board's peer review based upon the Applicant's reasonable estimate of the costs to complete such work, which such surety shall be released to Applicant upon satisfactory completion of such work as determined by the Board. The applicant shall provide a two (2)-year guarantee on all new plant material such the applicant will replace any tree or shrub that dies within this time period.

12. Within ninety (90) days of completion of the Authorized Activities, the Applicant shall submit to the Building Inspector As-Built Plans for all infrastructure and landscaping improvements.
13. Prior to issuance of the first Certificate of Occupancy, the Applicant shall obtain approval from the U.S. Postmaster of the centralized location for mailboxes and parcel areas.
14. The Applicant shall make site and stormwater management changes described in the Horsley Witten Group, Inc. December 14, 2021 letter to the Board (Exhibit C) and the traffic mitigation measures highlighted in (Exhibit D).

#### Post Occupancy Conditions

1. All on-site structures and on-site improvements site shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, sewer and water infrastructure and the Applicant shall bear the cost of maintenance, repairs, replacement, snow plowing and trash removal for same in perpetuity.
2. The Applicant shall provide on-site property management during normal week-day business hours as well as a telephone number for tenants to contact management that is available by phone 24/7. In the event the Applicant engages a management company, the Applicant shall post the name and telephone number of the management company at the Property.
3. Fertilizer, pesticide, and herbicide use shall be minimized to the extent consistent with good landscape maintenance practice. Road salt shall not be used for vehicular areas.
4. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the site's storm-water management system in accordance with the Operations and Maintenance Plan described above.
5. The Applicant shall be permanently responsible for the following at the Project:
  - i. all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Plans of Record or alternate locations acceptable to the Bourne Fire Chief.
  - ii. all site maintenance and establishing a regular schedule for site maintenance;



- iii. repairing and maintaining all on-site roadways, including drainage structures and utilities therein;
  - iv. conducting annual inspection, maintenance, and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales, and pipelines;
  - v. site lighting.
6. Any Permit granted hereunder is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b), except to an affiliate of the Applicant.
7. Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings or modify any of the conditions stated herein shall be submitted to the Building Inspector who shall have the authority to approve such changes as immaterial changes. If the Building Inspector determines that the proposed changes do not conform in all material respects to the requirements of this comprehensive permit, s/he shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this decision or seek modification in accordance with 760 CMR 56.07(11).
8. The Applicant shall protect adjoining properties from damage due to construction attributable to the project site including public utilities, sanitary, water and storm drainage systems and other utilities from the project site. Applicant shall repair any damage immediately at no additional cost to the Town or the abutter, if found liable.
9. The Applicant shall be responsible for accomplishing the required construction work on the project in such a manner as to effectively minimize and control any water pollution, which might be caused by soil erosion from the project. It is intended that these features be maintained in appropriate functional condition from initial construction stages to final completion of the Project. The contractor shall be responsible for conformance with local, state, and federal soil erosion and siltation controls.
10. The facing on the retaining walls shall be ledgerstone.

**VI. WAIVERS:**

The Applicant shall comply with the Town of Bourne Zoning Bylaw and other local bylaws and regulations, except as expressly provided in the list of waivers attached hereto as Exhibit J and incorporated herein by reference.

BOURNE ZONING BOARD OF APPEALS

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James Beyer, Chair

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Chris Pine, Vice Chair

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John O'Brien

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Wade M. Keene

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Pat Nemeth

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Filed with Town Clerk on: \_\_\_\_\_

Sent to Applicant, certified mail, on: \_\_\_\_\_

**EXHIBITS:**

Exhibit A	Project Eligibility Letter
Exhibit B	Development Agreement
Exhibit C	Horsley Witten Letter 12-14-21
Exhibit D	Vanasse Letter 07-22-21
Exhibit E	Wozny/Barbar 8-30-21 Memo
Exhibit F	FD Memo to Cassie 09-10-21
Exhibit G	Police Dept. Letter 04-04-21
Exhibit H	Plans of Record
Exhibit I	Tudor Cherry Investors, LLC Condition
Exhibit J	Waivers

## **EXHIBIT J**

### **WAIVERS**

#### **Bourne Zoning Bylaw Provisions (Revised November 15, 2021)**

1. **ZBL §1210. ZBL Compliance.** 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. **GRANTED but Building Inspector must still determine that the Project satisfies all of the requirements of this Decision before issuing a building permit.**
2. **ZBL §1220. ZBL Compliance.** 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. **GRANTED but Building Inspector must still determine that the Project satisfies all of the requirements of this Decision before issuing a building permit.**
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. **NOT APPLICABLE**
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. **GRANTED to allow construction of a multifamily dwelling on the Property as shown on the Plans of Record.**
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. **GRANTED**
6. **ZBL §2480. Lot shape.** The Applicants request a waiver from the requirement that no lot shall be created so as to be so irregularly shaped or extended that the square of the lot perimeter exceeds thirty (30) times the gross lot area for any lot in excess of 80,000 square feet. **GRANTED**
7. **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. **GRANTED. The ZBA notes that the application was provided to the Planning Board for its review and comment.**

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

<b>Requirement</b>	<b>Proposed</b>	<b>Waiver Requested</b>
Minimum Area – 40,000 s.f. Complies.	100,000 s.f.+	None
Minimum Frontage – 125’	125’+	None
Minimum Front Yard - 30 feet.	30’+	None
Minimum Rear Yard – 15 feet	15’	None
Minimum Side Yard – 15 feet	15’+	Yes; but not for buildings, only for one retaining wall within 5’ of property line <b>GRANTED to allow for construction of said retaining wall as shown on the Plans of Record.</b>
Maximum Lot Coverage – 20%	13%	None
Maximum Building Height – 35 feet	38.9 feet <b>GRANTED to allow for construction of the Project as shown on the Plans of Record.</b>	Yes
Minimum Usable Open Space – 20%	61%	None

9. **ZBL §2640 and §2650. Rate of Residential Development/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). **GRANTED**

10. **ZBL §3300 Parking Requirements.**

- **§3320. Two spaces per dwelling or 84 spaces for 42 units.**

The Applicants request a waiver to allow a total of 73 parking spaces (including 4 handicap and 12 compact spaces) a ratio of 1.7 spaces per unit.  
**GRANTED**

11. **ZBL §3450. Lighting.**

- **§3453(c). Other Requirements**

The Applicant requests a waiver from the requirement of an illumination ratio (brightest/darkest) of not more than 4:1. The Illuminating Engineering Society recommends a uniformity ratio max:min of 15:1 for parking lots. Due to the maximum coverage requirement of the proposed leachfield, lighting cannot be sited within the parking lot, so the Applicant is unable to reduce the illumination ratio. ZBL §3453(c) does state that the Planning Board may approve alternative arrangements.

**GRANTED subject to the condition that the Applicants shall provide lens shields that buffer neighboring properties from glare, as shown on the Plans of Record (including the “Photometric Study” Plan).**

**12. 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 and lower parking area have the leaching field and no trees are possible. Where planting is possible, trees have been added at 20 feet to 30 feet on center. **GRANTED, to allow the species, sizes and number of trees as shown on the Plans of Record Sheets C-19 and C-20 (Landscape Plans) and Sheet C-22 (Planting Details)**

- **§3513(iv). Planting Areas.**

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

- **§3540 Parking and Loading Area Requirements**

The term “Lot Depth” is not defined in the Zoning Bylaw; Applicant requests a waiver to allow parking and loading as shown on the Project Plans. **GRANTED**

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

**13. ZBL §4400. Earth Removal Special Permit.**

The Applicants note that this provision would not apply to the Project because all earth removal performed 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). **NOT APPLICABLE**

### **Bourne Planning Board Subdivision Rules and Regulations (2017)**

#### Section 223: Standards of Access Adequacy

- A waiver is requested from minimum right-of-way width for a Collector Street of 50 feet. The right-of-way for Cape View Way under the 1987 Subdivision is 40 feet and the proposed modified right-of-way is 40 feet as shown on the Project plans. **GRANTED**

#### Section 264: Environmental Impact Report

- A waiver is requested from submitting a comparative Environmental Report. **GRANTED**

#### Section 266: Performance Guarantee

- A waiver is requested so that the ZBA, not the Planning Board, will set any performance guarantee under G.L. c.41, §81U, ¶7. **GRANTED**

#### Section 312: Required Cross Section

- A waiver is requested from any requirement to design and locate grading, pavement, utilities, and other improvements as indicated on the Required Cross Section in the Subdivision Rules Appendix, because Cape View Way is already an approved subdivision and is in use to serve Lot 5 for the Fire Department and the remaining portion of the way, as proposed to be modified is proposed to serve only one additional lot with no other through traffic. **GRANTED**

#### Section 321(f): Location and Alignment – Minimum Centerline Radii

- A waiver is requested from a minimum centerline radii of curved collector street of 250 feet. The proposed radii is 100 feet as shown on the Plans of Record. **GRANTED**

#### Section 322(a): Width – Minimum Right-of-Way Width

- A waiver is requested from minimum right-of-way width for a Collector Street of 50 feet for a small portion of Cape View Way. The right-of-way approved for the

1987 Subdivision is 40 feet. The proposed right-of-way width for the way as revised is proposed to be 40 feet as shown on the Plans of Record. **GRANTED**

Section 322(b): Width – Minimum Pavement Width for a Collector Street of 22 Feet

- A waiver is requested from the minimum pavement width of 22 feet for a Collector Street, to reduce the required minimum to 12 feet for the cul-de-sac portion of the roadway because this portion of the roadway will be one-way street. **GRANTED**

Section 324: Sight Distances

- A waiver is requested from the minimum forward stopping sight distance of 400 feet that is required for a Collector Street. **GRANTED**

Section 326.E: Pavement Surface

- A waiver is requested from the wearing surface of roadways and driveways within the right-of-way shall be a two-course, type I-1 bituminous concrete pavement applied with a 2 ¾" compacted base course and 1 ¼" compacted finish course. The Applicant is proposing a 3" pavement section as the Applicant does not think a 4" pavement section is required for the private way. **GRANTED**

Section 352.A: Stormwater Management – Road Drainage

- 7. A waiver is requested from the requirement that all piping be concrete unless protected corrugated aluminum is approved by the Board. High density polyethylene (HDPE) piping is proposed for the connections for the stormwater management facilities. **GRANTED**

Section 352.D: Stormwater Management – Design Requirements

- 1. A waiver is requested from the required water quality depth of 1.70 inches to allow a depth of 1.0 inch. The Conservation Commission has approved the Project and did not impose the 1.70 inch requirement. **GRANTED**
- 3. A waiver is requested from the prohibition against subsurface infiltration for the treatment and/or control of road runoff for new subdivision roads as this is not a new subdivision road. It was approved in 1987 and is simply being modified to allow the catch basins and recharge basins shown on the Plans of Record. **GRANTED**

Section 354: Cable Utilities

- d. A waiver is requested from the requirement to locate underground utilities as indicated on the Required Cross Section and to allow the utilities to be located as shown on the Plans of Record as this is not a new subdivision way. **GRANTED**