**Decision Number:**

**Date Application Filed:** January 19, 2021

**Applicant:** TGCI EMNACA LLC

**Property:** 3128B Cranberry Highway, Wareham, MA Assessors Map 8, Lot 1007C

**Approval Requested:** Comprehensive Permit, G.L. c. 40B, §§ 20-23

**Public Notice:** Notice published in \_\_\_\_\_\_\_\_\_\_\_, on \_\_\_\_\_\_\_\_\_\_, 2021, and notice sent by mail, postage prepaid, to all interested parties pursuant to G.L. c. 40A, § 11.

**Public Hearing(s) held:**

**Decision of the Board:** Comprehensive Permit APPROVED WITH CONDITIONS

**Members participating:**

**Date of Decision:** May\_\_, 2021

**PROCEDURAL HISTORY**

1. On January 19, 2021, TGCI EMNACA LLC, having a principal place of business at One Adams Place, 859 Willard Street, Suite 5, Quincy, MA 02169 (the “Applicant”), submitted a Comprehensive Permit Application to the Zoning Board of Appeals (the “Board”). The application proposed the creation of a total of twenty (20) two- and three-bedroom ownership units, parking, landscaping and other improvements to be located on the “Property” as defined above, all as described in the application as well as civil engineering, landscaping environmental, drainage and stormwater management, and traffic reports and plans prepared by experts.

2. The public hearing was opened on February 24, 2021, and continued to May 12, 2021, at which time the Board closed the public hearing.

3. The Board retained the following consultants to assist in the review of the Application:

\* Civil Engineering: Charles L. Rowley, P.E., PLS, Wareham, MA.

4. Aspects of the Applicant’s proposal were reviewed by the departments and officials of the Town of Wareham, who provided testimony and/or written submissions to the Board.

Board of Health

Department of Public Works

Building Commissioner

5. The Board reviewed the Applicant’s plans and specifications for the 20-unit project, and summarized findings in comment letters to the Board. The Board concluded that (1) the revised site design and building layout plans were generally acceptable, subject to comments detailed in review letters; (2) proposed traffic and circulation on the Property were generally acceptable, subject to comments detailed in review letters; (3) utility connections and service should be verified with appropriate Town authorities, but were generally adequate; (4) grading and drainage revisions were required but were not so extensive as to render the project infeasible; (5) proposed plantings and landscaping were generally adequate; (6) the existing site is serviced by municipal water and sewer systems which are expected to be adequate to serve the needs of the development, and, (7) the Applicant proposed to provide adequate parking spaces on the Property.

6. The documents and exhibits received during the public hearing, which constitute the record for this decision, are on file with the Board of Appeals. See Exhibit A.

**FINDINGS**

1. As evidenced by the Project Eligibility Letter issued by MassHousing by letter, dated January 12, 2021, the Applicant is qualified to make the Application pursuant to 760 CMR 56.04 in that:

\* The Applicant is or will become a "limited dividend organization" as that term is used in G.L. c.40B, s. 21 and 760 CMR 56.02, and it and its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder by executing and recording a Regulatory Agreement in accordance with the rules governing the NEF Program, and agreeing to restrict its profit to a “Reasonable Return” as defined under 760 CMR 56.02, meaning such return shall be as calculated according to guidelines issued by the DHCD, and with respect to building an ownership project, that profit to the Applicant is not more than 20%.

\* The “Project,” as defined herein, is fundable by a subsidizing agency under a low- and moderate-income housing subsidy program as evidenced by the site approval letter issued by MassHousing, dated January 12, 2021, pursuant to the Federal Home Loan Bank of Boston’s New England Fund (“NEF”) Program where MassHousing acts as the Project Administrator.

\* The Board finds that the Applicant has shown evidence of its interest in the Property sufficient to qualify as a recipient of a Comprehensive Permit. It maintains “site control” of the Property within the meaning of 760 CMR 56.04(1)(c), as evidenced by the Deed recorded in the Plymouth County Registry of Deeds at Book 41497, Page 318, included in the application; and,

\* 760 CMR 56.04(1) states that “compliance with these project eligibility requirements shall be established by issuance of a written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4), based upon its initial review of the Project and the Applicant’s qualifications in accordance with 760 CMR 56.04.” Such Project Eligibility Letter has been issued to the Applicant as described above.

2. The Applicant has submitted a complete Application which substantially conforms to the Board’s Comprehensive Permit Rules and 760 CMR 56.00.

3. The Town of Wareham has not met the statutory minimum set forth in G.L. c. 40B, s. 20 or 760 CMR 56.03(3) 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. The development of affordable units consistent with the Application will not result in the commencement of construction of such housing on sites comprising more than three tenths of one percent of such land area.

4. Subject to the conditions imposed by this decision, the Project is “Consistent with Local Needs” within the meaning of G.L. c. 40B, § 20, and Section 56.02 of DHCD’s Chapter 40B Regulations (760 CMR 56.02).

5. The Property is in the MR 30 and Strip Commercial (SC) Zoning Districts, as established in the Wareham Zoning By-law.

6. Based on the reports submitted by the Board’s technical consultants and Town staff and departments, the Board finds that the Project will not endanger public health or safety or the environment, subject to the conditions set forth below.

**DECISION**

Pursuant to G.L. c. 40B, the Zoning Board of Appeals of Wareham, after the public hearing and findings of fact, hereby grants a Comprehensive Permit to the Applicant for the construction of twenty (20) residential ownership dwelling units on the Property and associated infrastructure and improvements, subject to the following conditions. Unless otherwise indicated herein, the Board may designate the appropriate municipal agent or agents (or their consultants) to review and approve matters set forth herein.

**Conditions**

**A. General**

1. The holder of this Comprehensive Permit is TGCI EMNACA LLC. This Comprehensive Permit shall be a master permit which is issued in lieu of all other local permits or approvals that would otherwise be required, except for the issuance of Building Permits and Certificates of Occupancy by the Building Department under the State Building Code; provided, however, the Applicant shall pay all local fees for such permits or approvals as published in the departmental regulations or by-laws at the time application was made to the Board, including but not limited to building permits, inspections, water and sewer connections, inflow and infiltration fees, and curb cuts.

2. The Project is located on the Property and includes parking, utilities, stormwater systems and facilities, landscaping, sidewalks, walkways, a recreational area, improvements, and other improvements, all as depicted on a Final Revised Civil Engineering Site Plans, Final Revised Landscaping Plans, Preliminary Architectural Plans listed in Exhibit A.

3. The Project includes all features shown on the Final Revised Civil Engineering Site Plans, Final Revised Landscaping Plans, Preliminary Architectural Plans listed in Exhibit A, or as otherwise required by this Comprehensive Permit (collectively, the “Approved Plans”).

4. The Project shall be constructed in accordance with the Approved Plans. The Building Commissioner shall determine whether any proposed modification constitutes a change. 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) shall be submitted to the Building Commissioner who shall have the authority to approve such changes as immaterial changes. If the Building Commissioner determines that the proposed modification does not conform to the requirements of this Comprehensive Permit, he/she shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this Decision or seek change in accordance with 760 CMR 56.05(11).

5. The Project shall include the construction of twenty (20) units of home ownership housing in ten dwelling units, including:

\* Ten (10) residential units each of which shall contain no more than 2 bedrooms; and

\* Ten (10) residential units each of which shall contain no more than 3 bedrooms.

6. Of the twenty (20) ownership units, total of five (5) units shall be “affordable” as that term is defined under the Act, the 40B Rules and the NEF Program (the “Affordable Units”). At least 2 of the five Affordable Units will be three-bedroom units, at least one of which will have a first-floor primary bedroom.

7. Collectively, the residential units identified above shall be referred to as the “Units.”

8. The Units and Buildings containing the Units are depicted in a set of architectural plans listed as the Preliminary Architectural Plans in Exhibit A.  No Unit shall have more bedrooms than the number designated in the Preliminary Architectural Plans, and the Project shall include no more than a total of fifty (50) bedrooms, and bedrooms shall not be constructed within the lofts of Units.

9. The market rate Units and the Affordable Units shall be indistinguishable from the exterior when located in a single dwelling.

10. There shall be a maximum of Eighty (80) parking spaces located within the garages and on the paved driveways. All parking spaces shown on the Approved Plan shall be installed prior to the issuance of the certificate of occupancy for the units they are intended to serve.

11. All residential units approved under this Comprehensive Permit shall be for ownership only, to be formed as a part of a condominium

12. The Applicant shall comply with all local regulations of the Town of Wareham and its boards and commissions unless specifically waived herein or as otherwise addressed in these conditions.

13. The Applicant shall copy the Building Commissioner and the Board on all correspondence by and between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.

14. Except as otherwise specifically provided herein, the Applicant shall pay all permit application fees as well as reimburse technical peer review costs normally charged by the Town at such fees and rates in effect as of the date of the Application, which fees shall be the only fees chargeable to the Applicant. Reasonable efforts shall be made to conduct such review and issue permits within thirty (30) days following submission of a complete application and payment of application fees.

15. The Applicant shall obtain a funding commitment from an approved lender as required under the NEF Program for “Final Approval” as that terms is defined under 760 CMR 56.04(7), and a Regulatory Agreement executed by MassHousing and the Applicant or the Applicant’s successors and assigns shall be recorded at the Plymouth Registry of Deeds no later than the issuance of any building permit for the Project.

16. The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the Applicant and the successors and assigns of the Applicant, and the obligations shall run with the land in perpetuity unless otherwise amended by the Board. Reference to this Decision shall be incorporated in the condominium master deed to be recorded in connection with the Project.

17. In the event that the Applicant sells, transfers, or assigns its interest in the Project, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees, or assignees. The limited dividend restrictions shall apply to the owner of the Project regardless of sale, transfer, or assignment of the Project. Prior to substantial completion of construction, this Decision may be transferred pursuant to the provisions of 760 CMR 56.05(12)(b), upon approval of the Subsidizing Agency and after submission of notice to the Board.

18. After substantial completion, this Decision shall be deemed to run with the land pursuant to 760 CMR 56.05(12)(b). All affordability conditions required by this Comprehensive Permit for the affordable units shall be “in perpetuity” and shall remain in full force and effect for so long as the Project (without the benefit of waivers allowed by this Comprehensive Permit) does not fully comply with the Wareham Zoning By-law.

19. The sidewalks, driveways, roads, utilities, drainage systems, sanitary sewer system, water system and all other infrastructure located on the Property and shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town of Wareham shall not have, now or in the future, any legal responsibility for the operation or maintenance of such infrastructure, including but not limited to water, sewer, snow removal, trash removal, recycling, and landscape maintenance, which obligations shall be incorporated into the Condominium Documents. Waste disposal will have to conform to the Town’s solid waste removal contract and related bylaws.

20. The Applicant shall permit the Board and/or its representatives to observe and inspect the Property, subject to applicable safety standards, and construction progress until such time as the Project has been completed as evidenced by the issuance of a certificate of occupancy issued for the last Unit in the Project to be conveyed by the Applicant. The Building Commissioner shall be the chief enforcement officer for the purposes of this Decision.

**B. Affordability Requirements**

1. In perpetuity, at least five (5) of the twenty (20) Units in the Project, or 25%, shall be “Affordable Units,” meaning they shall be available for sale to and restricted for occupancy by households whose income does not exceed 80 percent of the area median income, as determined by the NEF Program and the United States Department of Housing and Urban Development (“HUD”) requirements, all as approved by MassHousing. Affordable Units shall be dispersed throughout the residential structures as depicted on the Approved Plans, subject to Final Approval by MassHousing, and there shall be a mix of bedroom types as set forth above. The Applicant shall be responsible for maintaining records sufficient to comply with MassHousing and NEF Program guidelines for the initial sale of such Affordable Units to income-eligible households.

2. The five (5) Affordable Units noted above and constructed at the Project shall meet the criteria for inclusion in DHCD’s “Subsidized Housing Inventory” (SHI) in accordance with 760 CMR 56.03(2).

3. The Applicant shall obtain approval by the Subsidizing Agency of an affirmative fair housing marketing plan in compliance with all federal and state laws and regulations prior to the sale of any of the Affordable Units.

4. In concert with Wareham officials, the Applicant shall provide the Subsidizing Agency with evidence of the need in Wareham for Local Preference as defined in DHCD’s Comprehensive Permit Guidelines and shall incorporate Local Preference in the affirmative fair housing marketing and selection plans for the Project if the Subsidizing Agency approves the same.

5. For the initial sales of Affordable Units, the maximum number of Affordable Units allowed by law and the applicable subsidy program, but not more than seventy percent (70%) of the Affordable Units, shall be reserved for sale to households that qualify under a local preference definition approved by the Subsidizing Agency. A lottery shall be established in a form approved by the Subsidizing Agency to effectuate this local preference. 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, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

6. Subject to a change in the subsidy program used to finance the Project, MassHousing (or its appointed agent) shall be the Project Administrator in connection with the NEF Program, with responsibility for regulating, monitoring, and enforcement in accordance with its Regulatory Agreement and MassHousing and NEF Program requirements.

7. Affordable Units shall be constructed contemporaneously with the market-rate Units in the Project as follows. No more than an average of three certificates of occupancy shall be issued by the Building Commissioner for Units designated for sale at fair market prices (the “Market Rate Units”) until at least one certificate of occupancy is issued for an Affordable Unit. The Affordable Units shall be reasonably interspersed within the Project as determined by MassHousing.

**C. Construction Schedule and Prerequisites**

1. For the purposes of this Decision, "commencement of construction” shall occur when the relocation of topsoil has been initiated. Prior to commencement of construction, whether or not pursuant to a building permit, the Applicant shall:

\* Request and participate in a preconstruction conference with Town departments prior to the commencement of construction. The Applicant shall request such conference at least twenty-one (21) days prior to commencing construction by contacting the Building Commissioner in writing. At the conference, a schedule of inspections shall be agreed upon by the Applicant, the Board, and other municipal officials or boards.

\* Submit to the Building Commissioner for review and approval a Phasing Plan, in form and substance consistent with industry standards or satisfactory to the Building Commissioner, showing construction of the roadways and utilities associated with each building.

\* Submit to the Building Commissioner for review and approval Final Plans (“Final Plans”) consistent with the Approved Plans and supporting documentation that conform to the requirements of this Comprehensive Permit and which incorporate the conditions herein. The Final Plans shall incorporate all conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record, the Registered (Civil) Engineer of record, the Registered Landscape Architect of record, or the Registered Architect of record. No construction of buildings, structures, or improvements shall be performed on the Property except in accordance with the Final Plans.

\* Submit to the Building Commissioner for review and approval a final landscaping plan consistent with the Approved Plans, signed and sealed by a Registered Landscape Architect.

\* Submit to the Building Commissioner, a construction maintenance plan for ensuring that construction vehicle tires are cleaned to minimize dust and dirt onto adjacent roads.

2. Prior to the issuance of a building permit for the Project, the Applicant shall:

\* Record this Comprehensive Permit with the Plymouth County Registry of Deeds, at the Applicant’s expense, and provide proof of the same to the Building Commissioner.

\* Submit to the Building Commissioner evidence of Final Approval from MassHousing, as required by the Project Eligibility Letter and the Chapter 40B regulations.

\* Obtain and file with the Building Commissioner a copy of all federal, state, and local permits and approvals required for the Project.

\* Submit for review and approval by the Building Commissioner plans and specifications concerning the proposed water and sewer connections, including profiles of the piping and all related structures, prior to the issuance of a foundation permit.

\* Submit to the Building Commissioner final Architectural Plans prepared and sealed by an architect with a valid registration in the Commonwealth of Massachusetts and the subsequent set of building permits shall be issued only upon the Building Commissioner’s receipt of the final architectural plans for those specific subsequent buildings. The Architectural Plans shall be submitted in such form as the Building Commissioner may reasonably request in conformance with accepted residential building industry standards.

\* Provide details of all drainage infrastructure and supporting technical materials required to prove compliance with applicable Massachusetts Stormwater Management Standards.

\* Provide evidence to the Building Commissioner that a Regulatory Agreement executed by MassHousing and the Applicant, including an acknowledgment executed by the Board, has been recorded at the Plymouth County Registry of Deeds.

\*

No building permit shall be issued until all improvements specified in this Decision and set forth on the Final Plans are constructed and installed; provided, however, that building permits may be issued if the Applicant provides a performance guarantee, reasonably acceptable to the Board, to ensure the completion of all remaining work on the improvements.  Any such performance guarantee shall be approved as to form by the ZBA’s legal counsel.

4. Prior to the issuance of the final certificate of occupancy, the Applicant shall satisfy the following conditions:

\* Provide the Building Commissioner with the identification of the Affordable Units within the Project in the form required by MassHousing, as applicable.

\* Submit to the Board, in digital file format and full-size paper copies, a final as-built plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The plan shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, rim elevations of structures with inverts, topographic contours, spot elevations, parking areas, and surficial structures associated with utilities.

\* Submit an as-built drawing of the water and sewer system to the Building Commissioner and Department of Public Works for the Project. The as-built drawing shall include the name of the person or company installing the water/sewer service, the date it was installed, and the name of the inspector.

**D. Architectural and Landscape Design Conditions**

1. Existing trees that will remain on the site post-construction (to be shown on the Landscaping Plan) shall be protected during construction with snow fencing or other physical barriers as determined by the Building Commissioner.

2. Snow storage areas shall be designated on the Final Plans. Such locations shall be located outside paved areas and on adjacent grassed areas to maximize recharge. When snowfall exceeds the capacity of the designated snow storage areas and impacts the ability to use travel ways, sidewalks or designated parking spaces or otherwise limits safe access to/from the site for residents or emergency vehicles, the Applicant shall truck the excess snow off-site for proper disposal.

3. The Applicant shall provide fencing of work areas during construction as may be reasonably required by the Building Commissioner.

4. The Applicant shall complete the landscaping improvements located on the Property as depicted on the Landscaping Plans in accordance with the construction phasing plan.

5. The landscaping shall be maintained by the Applicant, and subsequently the condominium association, which obligations shall be incorporated in the Condominium Documents described herein.

6. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions but in no event shall replacement occur more than one year from the discovery of the dead or diseased planting unless otherwise provided in the wetlands order of conditions for the Project.

**E. Civil Engineering and General Construction Conditions**

1. Soil material used as backfill for pipes, access drives, infiltration beds, and other underground drainage structures shall meet design specifications on the Final Plans.

2. Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. During construction, the site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner. All construction activities are to be conducted in a workmanlike manner.

3. All construction shall be performed in accordance with applicable laws and regulations regarding noise, vibrations, dust, glare, and sedimentation.

4. The Applicant shall ensure that nuisance conditions do not exist in and around the Site during construction operations. The Applicant shall at all times use reasonable means to minimize inconvenience to residents in the surrounding area.

5. Construction activities shall be conducted between the hours of 7:00 a.m. and 6:00 p.m.,

Monday through Friday and between the hours of 8:00 a.m. and 4:00 p.m. on Saturdays. For

purposes of this condition, construction activities shall be defined as: start-up of equipment or

machinery, delivery of building materials and supplies; delivery or removal of equipment or

machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of

earth materials; installation of utilities both on and off the site; removal of stumps and debris.

and erection of new structures. All off-site utility work shall be coordinated and approved by the

Building Department and shall not be subject to the timing restrictions set forth above.

6. All off-site utility work shall be coordinated and approved by the Municipal Maintenance department and shall not be subject to the timing restrictions set forth above. Finish work inside a structure once fully enclosed (walls, doors, windows, and roof) is not restricted by this condition.

7. Parking of all vehicles and equipment must be on site during construction.

8. The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the Project.

9. The Applicant shall implement dust control operations, in an approved manner, whenever necessary or when directed by the Building Commissioner. Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.

10. The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal roadways and driveways permitting access to residents, emergency vehicles, and others during construction and until the Condominium Association assumes responsibility for the same.

11. No building areas shall be left in an open, unstabilized condition longer than 180 days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.

12. The Applicant shall designate an on-call representative of the Applicant or condominium personnel to be available at all times to respond to emergencies at the Property.

13. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system, subject to modification and the approval by the Board’s peer review engineer. Such guidelines shall be binding upon the Condominium.

14. In the event that the Applicant or its agent fails to maintain the stormwater management system in accordance with such guidelines for operation and maintenance, or the water distribution system, or the sanitary sewer system, the Town may perform necessary maintenance or repairs and the Applicant hereby authorizes the Town to enter the Property for this purpose. In such event, the Applicant shall reimburse the Town for all expenses associated therewith; in the event of nonpayment, the Town may place a lien on the Property and any improvement thereupon.

**F. Water, Sewer, and Utilities Conditions**

1. Utilities shall be installed underground by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit, stormwater management systems, and the like.

2. Fire hydrants shall be placed as shown on the Approved Plans in locations approved by the

Onset Fire Department and Water District. If the Onset Fire Department and Water District

Department approves different hydrant locations such modification shall be accepted as an

insubstantial change pursuant to 760 CMR 56.05(11).

3. The service size for the domestic water service should be verified by the Onset Fire

Department and Water District and information on the fire service size and requirements should

be verified by the Onset Fire Department and Water District. The Applicant shall submit

information regarding the size of both the domestic and fire services as part of Final Plans, after

consultation with the Onset Fire Department and Water District.

4. The water and sewer utilities servicing the buildings in the Project shall be installed and tested

in accordance with applicable Town and Onset Fire Department and Water District requirements

and protocols, except as may be waived herein.

5. The Applicant will be responsible for all applicable sewer permit, capacity impacts and privilege fees in effect at the time application was filed with the Board, including a one-time $5.00 per gallon for Inflow & Infiltration mitigation.

**G. Condominium Requirements**

1. Prior to the conveyance of the first Unit in the Project, the Applicant shall establish a condominium, including a Master Deed, Trust and Bylaws establishing the owners’ association (the “Condominium Documents”) for the Project, and shall establish reserves specifically for repairs to, or replacement of, and maintenance of the common storm water management facilities as set forth herein. Such reserves, including the amount thereof, shall be reviewed and approved by the Board prior to the first conveyance.

2. The Condominium Documents shall include the following Project private maintenance obligations in a form acceptable to Town Counsel:

Maintenance of landscaping

Private street maintenance

Private sidewalk maintenance

Centralized mail delivery facilities

Maintenance of all sewers, water, and other utilities located on the Property

Maintenance of storm water management facilities

3. The Applicant shall be responsible for the private maintenance obligations set forth in para. G.2 until such obligations are transitioned to the condominium trustees of the condominium association no sooner than after 51% of the units have been sold, as provided in the condominium documents.

4. The on-site driveways, roads, utilities, drainage systems, and all other infrastructure shown on the Approved Plans as serving the Project shall remain private and the Town of Wareham shall not have, now or ever, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal, and landscape maintenance.

5. The Condominium Documents shall also include a provision, in a form acceptable to the Board and Town Counsel, that no building as shown on the Site Plans may be expanded, and all accessory buildings shall be prohibited unless otherwise approved by the Zoning Board of Appeals. Moreover, the Condominium Documents shall also provide that garage space shall not be converted into habitable space.

**H. Miscellaneous Conditions**

1. In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.

2. The Applicant or its designee shall be responsible for the operation and regular maintenance of all pedestrian walkways, parking areas, stormwater management systems, and other common facilities shown or described in the Final Plans and materials, including, but not limited to, regular snow plowing and garbage removal until such time the Condominium is formed, and the Condominium Association assumes responsibility for these obligations.

**I. Waivers**

The Applicant has requested, and the Board has granted, waivers from the Wareham Zoning By-Law and other local by-laws and regulations as specified below and in Exhibit B hereto. To the extent that additional waivers are subsequently determined to be required to construct the improvements shown on the Approved Plans, such waivers must be requested by the Applicant in accordance with 760 CMR 56.05(11).

**RECORD OF VOTE**

The following members of the Zoning Board of Appeals vote to grant a comprehensive permit subject to the above-stated terms:

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The following members of the Zoning Board of Appeals are in opposition to the grant of the comprehensive permit:

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Filed with the Town Clerk on May \_\_\_\_, 2021.

**DECISION**

For all the reasons stated above and pursuant to the Board’s authority found in G.L. c.40B, §§ 20-23, the Comprehensive Permit application is hereby APPROVED WITH CONDITIONS by a vote of \_\_ to \_\_.

EXHIBIT A: DOCUMENTS SUBMITTED AT PUBLIC HEARING

1. February 24, 2021 Presentation on Settler’s Glen from Development Team
2. Peer review letter from Charles L. Rowley, PE, PLS dated March 8, 2021
3. Planting List and Landscape Plan prepared by Kyle Zick Landscape Architect dated April 9, 2021
4. Revised floor and façade plans prepared by CME Architects, Inc. dated 5/3/2021
5. “Settler’s Glen: Comprehensive Permit Plan Overview Plan prepared by G.A. F. Engineering, Inc., dated January 12, 2021, revised through May 12, 2021.
6. Stormwater Report for “Settler’s Glen” prepared by G.A.F. Engineering, Inc., dated April 8, 2021. Peer review letter from Charles L. Rowley, PE, PLS dated May 10, 2021.

EXHIBIT B: LIST OF APPROVED WAIVERS

| **Comprehensive Permit Rules of The Wareham Zoning Board of Appeals (Adopted February 8, 2006)** | | | |
| --- | --- | --- | --- |
| Article 3.01 (f)  Approve \_\_\_\_  Deny \_\_\_\_ | Application Requirements | A subdivision plan conforming to the rules and regulations of the Wareham Planning Board. | A waiver is sought for this Article in its entirety to the extent that it would apply additional local requirements to the project site or any portion thereof. Instead, all work will be permitted pursuant to M.G.L. c. 40B and the regulations thereunder, as well as all state and federal regulation which may be applicable to the project site and any portion thereof. |
| Article 3.01 (j)  Approve \_\_\_\_\_  Deny \_\_\_\_ | Application Requirements | A financial projection of the project (pro forma) that includes a forecast of all income, expenses of the project | Financial information such as a pro forma is not applicable as it conflicts with 760 CMR 56.05(6) which states that the “Board may request to review the pro forma or other financial statements for a Project only after” certain preconditions have been met. The preconditions stated therein have not been met.  A waiver is sought for this Article in its and to the extent that they conflict with M.G.L.c. 40B and the regulations thereunder. In the event of a conflict between the requirements of these Articles and M.G.L. c. 40B and the regulations thereunder, the latter shall control. |
| Article 3.03 (b)  Approve \_\_\_\_  Deny \_\_\_\_ | Application Requirements | Additionally, the application fee shall include $5,000 to pay for the services of legal counsel for assistance in any project of 25 units or less… | Fees for services for legal counsel are not applicable as it conflicts with 760 CMR 56.05(5) which states that “Legal fees for general representation of the Board or other Local Boards shall not be imposed on the Applicant”.  A waiver is sought for this Article in its and to the extent that they conflict with M.G.L.c. 40B and the regulations thereunder. In the event of a conflict between the requirements of these Articles and M.G.L. c. 40B and the regulations thereunder, the latter shall control. |
| Article 3.40  Approve \_\_\_\_  Deny \_\_\_\_ | Application Requirements | Technical review fees to be including with the Application | According to 760 CMR 56.05(5) a reasonable Technical Review (or Consultant Review) fee is appropriate after the Board’s review of the application and determination. According to this Article, the Technical Review Fee required would be calculated at $10,000 to be included with the application submission. The applicant seeks a waiver from this initial fee of $10,000 to be paid at the time of submission of the application until the Boards first hearing on the matter wherein an appropriately reasonable fee can be discussed. The Applicant has submitted an initial payment of $5,000 as a reasonable initial deposit for Technical Review.  A waiver is sought for this Article in its entirety and to the extent that they conflict with M.G.L.c. 40B and the regulations thereunder. In the event of a conflict between the requirements of these Articles and M.G.L. c. 40B and the regulations thereunder, the latter shall control. |
| Article 3.5  Approve \_\_\_\_  Deny \_\_\_ | Application Requirements | Acceptance of the complete application packet | Article 3.5. This Article states that “no application shall be “duly submitted” in accordance with the General Laws of Massachusetts until such time as all information required in Paragraphs 1-12 below (Complete Application Packet) has been received by the Board of Appeals . . .” (emphasis added). However, no Paragraphs 1-12 below were included in the Comprehensive Permit Rules of the Wareham Zoning Board of Appeals.  A waiver is sought for this Article in its entirety and to the extent that they conflict with M.G.L.c. 40B and the regulations thereunder. In the event of a conflict between the requirements of these Articles and M.G.L. c. 40B and the regulations thereunder, the latter shall control. |
| Article 3.6(b)  Approve \_\_\_\_  Deny \_\_\_\_ | Notification to Other Boards/Copies | In order to facilitate review by the Board and local boards, the applicant shall provide the ZBA office with twenty-five copies of the complete application. | In light of COVID 19, the movement to online application and on line hearings and in order to protect the environment, the Applicant has provided five complete copies of the application and an link to all the documents on line, in addition to an 11”x17” in set of plans. |

| **Article/Article** | **Subject** | **Requirement** | | **Waiver Requested/Applicability** |
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| **Zoning By-Laws of the Town of Wareham Revised October, 2018** | | | | |
| **Administration** | | | | |
| **142**  Approve \_\_\_\_\_  Deny \_\_\_\_\_ | Conformance | Construction or operations under a building permit or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of six (6) months after the issuance of the permit, and in any case involving construction, unless such construction is continued  through to completion as continuously and expeditiously as is reasonable. | The applicant seeks to constructten duplex style condominium townhomes for a total of 20 dwelling units pursuant to M.G.L. c. 40B and the regulations thereunder. A waiver is sought for this Article in its entirety to the extent it conflicts with M.G.L. c. 40B and said regulations. | |
| **Establishment of Districts** | | | | |
| **310**  Approve \_\_\_  Deny \_\_\_\_ | Use Regulations | 311A use listed as an allowed use in Article 320 may be permitted by right in the district for which it is specified, subject to such requirements as may be set forth in said Article and other Articles of these By-Laws……314 In addition to use regulations, uses permitted by right or by Special Permit shall be subject to such supplemental regulations as are set forth in Article 5, to such density and dimensional regulations applicable to the district within which the use is proposed as set forth in Article 6 or elsewhere, and to such other provisions as are specified in other Articles of this By-Law, in the Massachusetts General Laws, or in other governmental laws, codes and regulations. | **The property is in a MR30 district.**  The applicant seeks to construct ten duplex style condominium townhomes for a total of 20 dwelling units. It is not entirely clear reading Article 340.4 and 620 if a two-family dwelling is the same as a duplex unit or if this would be considered a cluster development, or both. To the extent the units are not considered to be a two-family dwelling and is considered a cluster development, the proposed development does not appear to be a permitted use by right in a MR 30 district. A waiver of the requirements of this Article (as well as the relevant dimensional requirements of this district) is thus sought to allow the project pursuant to M.G.L. c. 40B and the regulations thereunder. | |
| 321  Approve \_\_\_  Deny \_\_\_ |  | No land, structure or building shall be used except for the purposes permitted in the district as set forth in this Article unless otherwise permitted in this By-Law. The words used to describe each principal and accessory use contained in Article 350 are intended to be definitions of such uses. | **The property is in a MR30 district.**  The applicant seeks to construct ten duplex style condominium townhomes for a total of 20 dwelling units. It is not entirely clear reading Article 340.4 and 620 if a two-family dwelling is the same as a duplex unit or if this would be considered a cluster development, or both. To the extent the units are not considered to be a two-family dwelling and is considered a cluster development, the proposed development does not appear to be a permitted use by right in a MR 30 district. A waiver of the requirements of this Article (as well as the relevant dimensional requirements of this district) is thus sought to allow the project pursuant to M.G.L. c. 40B and the regulations thereunder. | |
| 432  Approve \_\_\_\_  Deny \_\_\_\_ | Buttermilk Bay Overlay District | Prior to the granting of Special Permits and Variances by the Board of Appeals, applicants shall demonstrate that there will be no adverse nitrogen impacts to Buttermilk Bay. | A waiver is sought for this Article in its entirety to the extent that it would apply additional local requirements to the project site or any portion thereof. Instead, all work will be permitted pursuant to M.G.L. c. 40B and the regulations thereunder, as well as all state and federal regulation which may be applicable to the project site and any portion thereof. | |
| 440, 442, 443  Approve \_\_\_  Deny \_\_\_ | Groundwater Protection District | The Groundwater Protection District is established as an overlay district whose boundaries are superimposed on all districts established by this By-Law and whose regulations are in addition to any other regulations established by this By-Law. The regulations in this By-Law are not intended to supersede or limit the protections contained in state or federal groundwater protection programs, but to supplement protections contained in other statutes and regulations, | Applicant requests a waiver from the requirement that a permitted use in the groundwater protection overlay district is a use that is permitted in the underlying zoning district. The applicant seeks to construct ten duplex style condominium townhomes for a total of 20 dwelling units which does not appear to be a permitted use in the underlying MR 30 district.  Furthermore, Table 620 indicates that there is “No Regulation” (NR) for Lot Coverage within this district. The lot coverage will be 45.9%. Applicant requests a waiver from the requirement that the maximum lot coverage not exceed 15 percent or 2,500 square feet, whichever is greater. | |
| 443.1  Approve \_\_\_\_  Deny \_\_\_ | Special Permit Requirement | Any use permitted under Section 442.1, which exceeds the maximum lot coverage permitted  under Section 442.1, provided that the lot coverage does not exceed the maximum permitted in the underlying district; and provided that mitigation for excess runoff is provided. | A waiver is sought from this procedural requirement of a special permit to the extent that it would apply additional local requirements to the project site or any portion thereof . However, the Applicant will demonstrate “that mitigation for excess runoff is provided “ All work will be permitted pursuant to M.G.L. c. 40B and the regulations thereunder, as well as all state and federal regulation which may be applicable to the project site and any portion thereof. | |
| Article 560/ Division IV Article III By Laws of the Town of Wareham 4/22/2019  Approve \_\_\_\_  Deny \_\_\_ | Earth Removal Regulations | Except as provided otherwise in this By-Law, no earth shall be removed without the issuance of a permit from the Board of Selectmen, as the permit granting authority. | A waiver is sought for this bylaw in its entirety. Instead, all aspects of the site plan and construction, including material removal, will be approved under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project, subject to any/all applicable state and federal regulations. | |
| **Dimensional Regulations Article 6** | | | | |
| Article 611 and 620  Approve \_\_\_  Deny \_\_\_ | Dimensional Regulations | All principal and accessory buildings shall be subject to the requirements outlined in Section 620. | A waiver is sought for this bylaw as noted in the Articles below. Instead, all aspects of the site plan and construction, including dimensional regulations, will be approved under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project, subject to any/all applicable state and federal regulations. | |
| Article 611  Approve \_\_\_  Deny \_\_\_\_ | Minimum Lot Area: | Required: 45,000 SF +  30,000 SF/Unit  =585,000 SF  =13.43 Acres | Proposed:  156,708 SF  3.6 Acres  Waiver requested | |
| Article 611  Approve \_\_\_\_  Deny \_\_\_\_ | Minimum Frontage | 250 Feet | Proposed: 247.66 – Waiver requested | |
| Article 611  Approve \_\_\_  Deny \_\_\_ | Minimum Font Setback | Required: 20 Feet | Proposed 20 feet – no waiver requested | |
| Article 611  Approve \_\_\_  Deny \_\_\_ | Minimum side/rear setback: | Required: 10 Feet | Proposed: 11 feet – no waiver requested | |
| Article 611  Approve \_\_\_  Deny \_\_\_\_ | Maximum Height | Required: 35 Feet | Proposed: 28-30 feet – no waiver requested | |
| Article 611  Approve \_\_\_\_\_  Deny \_\_\_  \_\_\_\_\_\_\_ | Maximum Building Coverage | Required: No regulation | Proposed: 24% – no waiver requested | |
| Article 611  Approve \_\_\_  Deny \_\_\_\_ | Minimum Impervious Surface | Required: No regulation | Proposed: 43.4% – no waiver requested | |
| Article 613  Approve \_\_\_  Deny \_\_\_ | One Principal Residence Per Building | In all districts, not more than one principal residential building with accessory structures having a residential use allowed in the respective district shall be erected, placed or converted on any lot, except where multiple family dwellings, apartments or condominiums are allowed by Special Permit, the Special Permit may provide for more than one principal building. | The applicant seeks to construct ten duplex style condominium townhomes for a total of 20 dwelling units on one existing lot. The lot may be able to be divided into 4 home lots as-of-right. A waiver is sought for this bylaw in its entirety. Instead, all aspects of the site plan and construction, including material removal, will be approved under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project, subject to any/all applicable state and federal regulations. | |
| Article 8, 813  Approve \_\_\_  Deny \_\_\_ | Alternative Residential Site Development | 812 The Planning Board may grant a Special Permit approving a Residential Cluster  Development in all Districts  813 The total number of proposed lots in the development shall not exceed the number of lots which could be developed in the underlying zoning district for single family residential development | The applicant seeks to construct ten duplex style condominium townhomes for a total of 20 dwelling units on one existing lot as-of-right. The lot may be able to be divided into 4 home lots. A waiver is sought for this bylaw in its entirety. Instead, all aspects of the site plan and construction, including material removal, will be approved under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project, subject to any/all applicable state and federal regulations. | |
| 820  Approve \_\_\_\_  Deny \_\_\_ | Multiple Family and Apartment Dwellings | A multiple family or apartment dwelling development shall comply with the following provisions, and with all other provisions of this By-Law except as specifically modified by the provisions of this Article | The applicant seeks to construct ten duplex style condominium townhomes for a total of 20 dwelling units on one existing lot. The lot may be able to be divided into 4 home lots. A waiver is sought for this bylaw in its entirety. Instead, all aspects of the site plan and construction, including material removal, will be approved under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project, subject to any/all applicable state and federal regulations. | |
| **824 Development Standards – MR-30 & Commercial Districts** | | | | |
| Article 824.1  Approve \_\_\_  Deny \_\_\_ | Development Standards – MR-30 & Commercial Districts | Minimum Lot Area For Multi-family dwelling Required: 5 acres | Proposed 3.6 acres – waiver requested | |
| Article 824.3  Approve \_\_\_\_  Deny \_\_\_ | Development Standards – MR-30 & Commercial Districts | Number of Multifamily units shall not exceed the number that would be allowed for a single-family residential development. Allowed by right: 4 units | Proposed: 20 units – waiver requested | |
| Article 824.5  Approve \_\_\_  Deny \_\_\_\_ | Development Standards – MR-30 & Commercial Districts | Screening and Buffers  from adjacent properties- Required: 20 feet in width | Proposed: 0 Feet – waiver requested | |
| Article 824.6  Approve \_\_\_\_  Deny \_\_\_ | Development Standards – MR-30 & Commercial Districts | Outdoor Recreation Area  for development over 12 Units – Required: 500 square feet/unit | Proposed: None – Waiver Requested | |
| Article 9  Approve \_\_\_  Deny \_\_\_ | 921Table of Parking Regulations | Require: 2 per dwelling unit = 40 | Proposed: 40 garage parking spaces – no waiver requested | |
| Article 10  Approve \_\_\_  Deny \_\_\_ | Landscaped buffers | This Article applies to all new non-residential development and to multi-family residential developments with more than 6 dwelling units. Expansions of any non-residential or multi-family residential project which exceed ten (10) percent of the existing gross floor area or one thousand (1,000) square feet, whichever is less, shall comply with these regulations. | The applicant seeks to construct ten duplex style condominium townhomes for a total of 20 dwelling units on one existing lot. A waiver is sought for this bylaw in its entirety. Instead, all aspects of the site plan and construction, landscape design, will be approved under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project, subject to any/all applicable state and federal regulations. | |
| Article 11  Approve \_\_\_  Deny \_\_\_ | Signs | Requirements for Signs | A waiver is sought for this Article in its entirety to allow project signage as shown on the project plans submitted herewith. The applicant requests a waiver from the requirement of obtaining a separate sign permit for any such signage. Instead, the project, including all signage, will be permitted under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project. | |
| Article 12  Approve \_\_\_  Deny \_\_\_ | Performance Standards | Land Clearing and Grading | A waiver is sought for this bylaw in its entirety. Instead, all aspects of the site plan and construction, including design standards, will be approved under M.G.L. c. 40B and the regulations thereunder as part of the Comprehensive Permit for this project, subject to any/all applicable state and federal regulations | |
| Article 14  Approve \_\_\_\_  Deny \_\_\_ | Administration |  | A waiver is sought for these Articles in their entirety and to the extent that they conflict with M.G.L.c. 40B and the regulations thereunder. In the event of a conflict between the requirements of these Articles and M.G.L. c. 40B and the regulations thereunder, the latter shall control.  Instead, all such work will be authorized as part of the M.G.L. c. 40B Comprehensive Permit for this project. Furthermore, any proposed modifications, amendments or updates would require a formal request and approval of the 40B Comprehensive Permit for the project. | |