**TOWN OF WAREHAM**

**Zoning Board of Appeals**

**54 Marion Road**

**Wareham, MA 02571**

**DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT**

**G.L. c. 40B, §§ 20-23**

APPLICANT: PENNROSE, LLC (“Applicant”)

PROPERTY: 4 Littleton Drive, Wareham (the “Property”)

ASSESSORS’ MAP: Map 56, Parcel 1

DEVELOPMENT NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE: January \_\_, 2021

I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was received by the Town of Wareham Zoning Board of Appeals (“Board”) on or about November \_\_, 2020. The Application proposes the development of ninety-three (93) mixed-income rental housing units consisting of a forty-nine (49) unit non age-restricted component in ten (10) residential town-home style structures and a forty-four (44) unit age-restricted component in a single structure (the “Project”).
2. The Board’s public hearing on the Application was duly opened on December 9, 2020, and was continued to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The public hearing was closed on January \_\_, 2020.
3. The Project is located on the Property, which is located at 4 Littleton Drive Wareham, Massachusetts.

1. The Property is located in the MR-30 Zoning District. Nearby uses consist of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Property is the former site of an approved residential subdivision that was never completed.
2. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application.
3. During the public hearing, the Applicant was assisted primarily by its counsel, Paul Haverty and Mark Bobrowski, of Blatman, Bobrowski & Haverty, LLC, its project engineer \_\_\_\_\_\_\_\_\_\_\_\_\_\_, P.E., of Horsley Witten Group, its architect The Architectural Team, Inc., its traffic engineer Jeffrey Dirk, P.E., PTOE, Vanasse & Associates, Inc., and Charlie Adams and Ryan Kiracofe of Pennrose.
4. The Board utilized the services of its review engineer Charles Rowley, P.E., to review civil engineering and stormwater issues, its traffic engineer \_\_\_\_\_\_\_\_\_\_\_ to review traffic issues, list any other peer review consultants.
5. During the public hearing, there was significant public input. The Board heard input from abutters and other interested persons throughout the hearing process.

II. JURISDICTIONAL FINDINGS

1. The Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
   1. The Applicant is a limited liability company, and has indicated in its application that it will conform to the limited dividend requirements of G. L. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 50 Milk Street, 16th Floor, Boston, MA.
   2. The Applicant has received a written determination of Project Eligibility from the Department of Housing and Community Development (“DHCD”) dated December \_\_, 2020 under the Low Income Housing Tax Credit Program, a copy of which was provided to the Board.
   3. The Applicant provided a copy of a Land Disposition Agreement with the Wareham Redevelopment Authority that provides for a ground lease of the Property for a term of ninety-nine (99) years to allow for the construction of the Project. Thus, the Applicant has shown evidence of site control sufficient to qualify as an applicant for a Comprehensive Permit.
   4. The Applicant has agreed to execute a Regulatory Agreement that limits its annual distributions in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by DHCD.
2. The Town of Wareham (“Town”) does not meet the statutory minima set forth in G. L. c. 40B, § 20 or 760 CMR 56.03(3) to 56.03(7):
   1. At the time of the filing of the Application, the number of low or moderate income housing units in the Town constituted \_\_% of the total year-round housing units in the Town, based on the most recent publicly available copy of the DHCD Subsidized Housing Inventory, dated September 14, 2017. Thus, the Town does not meet the ten percent (10%) statutory minimum.
   2. The Town does not have information that there are existing affordable housing units that are on sites that comprise more than one and one half percent (1.5%) of the total land area of the Town that is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof).
   3. The granting of this Comprehensive Permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
   4. The Town has an approved Housing Production Plan pursuant to 760 CMR 56.03(4), but is not currently within (or eligible for) certification.
   5. The Town has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5).
   6. The Project does not constitute a Large Project pursuant to 760 CMR 56.03(6).
   7. The Applicant’s Comprehensive Permit Application does not constitute a Related Application pursuant to 760 CMR 56.03(7).

III. FACTUAL FINDINGS

Location of Project

1. The Project is located at 4 Littleton Drive, Wareham, Massachusetts. The Property has frontage on Littleton Drive, and is located within the MR-30 Zoning District.

Civil Engineering, Site Design, and Stormwater Impact

1. The Board engaged in review of potential civil engineering, site design, and stormwater impacts of the Project.
2. The Project will connect to the Wareham municipal sewer system. The Project also proposes to connect to the Onset Fire and Water District for connection to the municipal water system. Independent reviews, with input from both the Wareham Sewer Commissioners and the Onset Fire and Water District were undertaken to ensure sufficient capacity exists to allow connection to the municipal systems.
3. The Applicant proposes to construct 128 parking spaces for the Project, which is not in compliance with the Wareham Zoning Bylaw, which requires 133 parking spaces.
4. On-site amenities will include an outdoor recreational area and a community building/clubhouse as shown on the Approved Plans, referenced below.
5. Approximately eighteen and one-tenth’s percent (18.1%) of the site will consist of impervious surface with the remainder consisting of pervious surface. The Board finds that the total amount of impervious area is acceptable.
6. The Board finds that the landscaping proposed by the Applicant is sufficient in light of the site disturbance that the Project will entail. The landscape design objective for the proposed development will be to enhance the built environment through the creation of a sustainable landscape that blends into the site’s natural surroundings. The overall design will emphasize the use of low maintenance, native plantings and strive to integrate the proposed development’s needs into the site’s surrounding environment. The proposed landscape is compliant/ consistent related to quantity and quality compared to other similar developments.
7. Stormwater management has been designed in compliance with the Mass Stormwater management standards in accordance with 310 CMR 10.05(6)(k) through (q) and defined in detail in the MassDEP Stormwater Management Handbook. The system incorporates BMP’s to facilitate TSS removal, infiltration and detention of stormwater flows.
8. The Project, as conditioned herein, will address the lack of affordable rental units in the Town.
9. The Board heard testimony from the Applicant and the Board’s traffic consultant, including the Applicant’s Traffic Impact Study prepared by Vanasse & Associates, that the Project is expected to result in approximately thirty-three (33) vehicle trips during the weekday morning peak hour and approximately forty-two (42) vehicle trips during the weekday afternoon peak hour.
10. The Board finds that the conditions imposed in Section IV of this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the project uneconomic. To the extent that such conditions may render the project uneconomic (as defined in 760 CMR 56.02), the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
11. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting waivers may have an adverse impact on Local Concerns. The Board finds that the conditions imposed below address local and regional housing needs while properly protecting valid issues of local concern.
12. The Board finds that the construction of the Project, as conditioned, will be consistent with local needs.

IV. CONDITIONS

1. **General**

A.1 The holder of this Comprehensive Permit is Pennrose, LLC. The Property is defined as the property located at 4 Littleton Drive, Wareham, Massachusetts, shown on a plan entitled “Littleton Drive, Wareham, Massachusetts”, prepared by Horsley Witten Group. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit.

A.2 Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project (“Approved Plans”). 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 Director of Planning and Community Development who shall have the authority to approve such changes as immaterial changes. If the Director of Planning and Community Development determines that the proposed changes do not conform to the requirements of this Comprehensive Permit, 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 56.05(11). The Approved Plans consist of the following plan set from BSC Group:

“**Title of Plan Set” \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, and consisting of the following sheets:

Survey and Site Plan

Drawings and Floor Plans

Renderings

A.3 The Applicant shall be a Limited Dividend Entity as required by Chapter 40B and its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.

A.4 The Project shall consist of not more than ninety-three (93) rental apartment units, located in eleven (11) residential structures, and other related residential amenities, all as shown on the Approved Plans. The Project shall consist of no more than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_) one-bedroom apartments, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) two-bedroom apartments and \_\_\_\_\_\_\_\_\_\_ (\_\_) three-bedroom apartment units for a total of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) bedrooms.

A.5 There shall be a minimum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) parking spaces (inclusive of required handicap spaces).

A.6 Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, those waivers from the Wareham Zoning Bylaw and other local by-laws and regulations as specified therein. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of permit or inspection fees has been granted. Any subsequent revision to the Approved Plans, including but not limited to revisions in the Final Plans, referenced below, that require additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).

A.7 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Director of Planning and Community Development or other Town Departments, the Director of Planning and Community Development or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission. For submissions that require assistance from an outside consultant, as determined by the Director of Planning and Community Development or applicable Department Head, the thirty-day time period shall not begin until the consultant’s fee has been fully funded by the Applicant.

A.8 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan financing terms as set forth in the financing entity’s Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph.

A.9 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The applicable limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.

A.10 The sidewalks, driveways, roads, utilities, drainage systems, and all other on-site infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town and Onset Fire and Water District shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal, landscape maintenance, and hydrant maintenance. In this regard, the proposed site access road within the Project shall not be dedicated to or accepted by the Town.

A.11 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board’s behalf subsequent to this Decision.

**B. Affordability**

B.1 Except as may otherwise be allowed by the Subsidizing Agency DHCD or other Subsidizing Agency, as proposed by the Applicant, pursuant to the applicable subsidy program, a minimum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) of the rental units shall be reserved for income-eligible households, meaning that they shall be rented to and occupied by households, as proposed by the Applicant, whose income (adjusted for household size) is not more than sixty percent (60%) of the Area Median Income (“AMI”), as determined by the United States Department of Housing and Urban Development (“HUD”) and the Subsidizing Agency (the “Affordable Units”). Affordable Units shall be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency, except for fluctuations based on changes of household eligibility income allowed by the Regulatory Agreement. The Applicant shall be responsible for maintaining records sufficient to comply with the Subsidizing Agency guidelines for the location of Affordable Units in the Project and occupancy of such Affordable Units by income-eligible households.

B.2 All of the Project’s Affordable Units shall be restricted for rental to households earning no more than the maximum allowable household income, adjusted for household size, as determined by DHCD or any substitute Subsidizing Agency. The Affordable Units shall be maintained as affordable in perpetuity, which for the purposes of this Decision shall mean for so long as the Property does not comply to applicable zoning requirements without the benefit of this Comprehensive Permit.

B.3 The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan (“AFHMP”) prior to the rental of any Affordable Units, and shall ensure that the Project complies with the Subsidizing Agency’s Fair Housing requirements.

B.4 For the initial rent-up of the Project, 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 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 and/or the Project’s Monitoring Agent to effectuate this local preference, with an approved secondary lottery for all other Applicants. The Applicant shall assist the Town in the submittal of any evidence required by the Subsidizing Agency to support this local preference requirement. 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.

**C. Submission Requirements**

C.1 Prior to any construction or site development activities (including site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit (except as allowed by the Director of Planning and Community Development, as noted below), the Applicant shall:

* 1. Deliver to the Board a check in a reasonable amount determined by the Director of Planning and Community Development to be used for staff to retain outside experts, if necessary, for technical reviews and inspections required under these conditions but at inception shall not exceed ten thousand ($10,000) dollars unless an alternate amount has been agreed upon by the Board and the Applicant. Said funds shall be deposited by the Board in an account pursuant to G. L. c. 44, § 53G and shall only be used for technical reviews and inspections associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Said funds may be used by the Board to hire civil engineering, traffic engineering, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof.
  2. Obtain and file a copy of a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA), if necessary. The Board shall also be provided a copy of the Stormwater Pollution Prevention Plan (SWPPP) submitted along with the NPDES filing.
  3. Submit to the Board for review and administrative approval Final Engineering Drawings and Plans (“Final Plans”), such approval to be that the plans conform to the requirements of this Comprehensive Permit and incorporate the conditions herein. The Final Plans shall also 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 Professional (Civil) Engineer of record, and a Registered Landscape Architect. Final Architectural Plans shall be stamped by a Registered Architect. The Final Plans shall be submitted to the Board at least forty-five (45) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the “Final Site Plan Submission Date”).
  4. Submit to the Board for its administrative approval, a landscaping plan with the Final Plans, signed and sealed by a Registered Landscape Architect, depicting the following:

i. Overall planting plan that includes a demarcation of clearing and the limits of work;

ii. Planting plans for drives showing shade trees and lighting fixture locations;

iii. Plans of walkways in open space and recreation areas;

iv. Prototype planting plans for each building that include shade trees (minimum caliper 3”), ornamental trees (minimum caliper 3”), shrubs, and groundcovers;

v. Prototype screening plans for dumpsters, depicting plantings and fencing;

vi. Planting details for coniferous and deciduous shade trees (minimum caliper 3”), ornamental trees (minimum caliper 3”), and shrubs;

vii. Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;

viii. Tree protection and preservation plans

ix. Construction fencing along abutting property lines; and

x. Construction details.

All plantings shall consist of non-invasive, drought-tolerant species. Plantings installed along drives and walkways shall also be salt-tolerant. The final landscaping plans shall preserve the existing perimeter tree cover to the greatest extent practicable. Twelve (12) months after completion of plantings, the Applicant shall remove and replace any dead or diseased plantings and trees serving as screening. The contract with the Management Company shall address ongoing maintenance of landscaping features.

* 1. Submit to the Director of Planning and Community Development a construction mitigation plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Director of Planning and Community Development, no other construction of units shall commence and no building permits shall be issued under this Comprehensive Permit until the Director of Planning and Community Development and other applicable staff has approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Building Commissioner and/or Zoning Administrator concerning the Final Site Plans within forty-five (45) days after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.
  2. The Applicant must submit an application to the Town of Wareham E-911 committee for address and unit numbering through its coordinator, the Town Clerk.

C.2 Prior to the issuance of any building permits, the Applicant shall:

1. Record this Comprehensive Permit with the Plymouth Registry of Deeds, at the Applicant’s expense, and provide proof of such recording with the Board.
2. Submit to the Board and the Director of Planning and Community Development evidence of Final Approval from the Subsidizing Agency (DHCD), as required by the Project Eligibility letter and the Chapter 40B regulations.
3. Submit to the Board a copy of the Regulatory Agreement and Monitoring Services Agreement (per Phase) for the Project. Execution and recording of such Regulatory Agreement with DHCD shall be complete prior to the issuance of any building permit. It is understood and agreed that Monitoring provisions may be included with the Regulatory Agreement, in lieu of a separate Monitoring Services Agreement.
4. Submit to the Building Commissioner final Architectural Plans prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts (“Architectural Plans”). The Architectural Plans shall be submitted in such form as the Building Commissioner may request pursuant to the State Building Code.
5. An automatic sprinkler system conforming with NFPA 13 and a fire alarm system conforming to NFPA 72 shall be required in all buildings. Both systems shall be monitored by a UL approved central station monitoring service.
6. Obtain and file with the Building Commissioner a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.
7. Obtain all necessary building, electrical, plumbing, and associated permits required to begin construction of the Project required by state law.
8. The Applicant will be responsible for all applicable sewer permit, capacity impacts and privilege fees, including a one-time $5.00 per gallon for Inflow & Infiltration mitigation.
9. The Applicant will be responsible for all applicable water system development fees as per officially promulgated fee schedules uniformly applicable to all other Town of Wareham projects.
10. The Applicant shall provide surety for the completion of project infrastructure consistent with G. L. c. 41, § 81U. The surety shall be kept in place and shall be automatically renewable until such time as construction of the aforesaid driveway and related infrastructure is completed and funds are released.

**D. Construction Completion/Certificate of Occupancy**

D.1 Prior to issuance of a certificate of occupancy for the Project, the Applicant shall:

a. Submit engineer’s interim certification of compliance with utilities plan and profiles for such Phase (as applicable) to the Building Commissioner.

b. Provide a letter to the Board, signed by the Applicant’s civil engineer, certifying that the Project has been constructed in compliance with the Final Plans in all material respects.

c. Obtain acceptance from the Onset Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the Phase.

d. Obtain a sewer connection sign-off from the Wareham Sewer Commission.

D.2 Prior to issuance of the certificate of occupancy for the last residential building to be constructed in each Phase, the Applicant shall:

a. 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 file format shall be in AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.

b. The Applicant shall provide to the Board evidence of a property management plan (if property management will be done in-house), or shall provide a copy of a contract with a Management Company if property management will be conducted by a third-party. The Applicant shall submit to the Board all information relating to the issues of building security, public access, pet policy, staffing, trash removal, and smoking policies, and other issues addressed in the conditions herein.

**E. Project Design and Construction**

E.1 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall attend a preconstruction conference with the Onset Fire and Water District Water Department, Director of Planning and Community Development and other Town staff and consultants as may be determined.

E.2 The Applicant shall permit representatives of the Board to observe and inspect the Property and construction progress until such time as the Project has been completed and the final occupancy permit issued.

E.3 The proposed construction shall be in accordance with applicable Federal and State laws, rules and regulations.

E.4 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.

E.5 During construction, the Applicant shall conform to all local, State, and Federal laws regarding noise, vibration, dust, and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project.

E.6 Appropriate signage shall be shown on the Final Plans. The Applicant has requested a waiver from the Town of Wareham Zoning Bylaws regarding signs, which shall be subject to the submittal and review of Final Plans depicting the proposed signage.

E.7 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.

E.8 The Applicant shall use natural gas for the Project, if reasonably available at the time of the submission of Final Plans. Gas service locations shall be included on the Final Plans.

E.9 The Applicant shall install lighting on the site that conforms to the Town of Wareham’s Zoning Bylaw. Lighting shall be down-lit/shielded to prevent light spillover onto surrounding properties. Management of outdoor lighting shall be the responsibility of the Applicant.

E.10 Utilities, including but not limited to telephone, electric, and cable, shall be located underground. The contract with the Management Company shall note that no satellite dishes shall be allowed.

E.11 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Geotechnical Engineer to the Building Commissioner as meeting design specifications, as applicable.

E.12 The Applicant shall test the soil during construction to confirm soil types in the areas of the infiltration system. Such testing shall be witnessed by the Board’s designee. All unsuitable material, if any, discovered in excavation for the infiltration system shall be removed and disposed of in accordance with State and local regulations.

E.13 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. Parking of all vehicles and equipment must be on the Property during construction.

E.14 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. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.

E.15 No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.

E.16 All dumpsters serving the Project shall be enclosed and covered (with the exception of construction dumpsters used during construction). The Board shall review the dumpster location as part of the approval of the Final Plans if different from what has been shown on the Approved Plans.

E.17 All retaining walls visible from a public way or direct abutters, as determined by the Director of Planning and Community Development based upon the time of year when such walls would be most visible, shall be constructed in an aesthetic manner. Specifically, retaining walls shall avoid the use of exposed concrete to the greatest extent practicable.

E.18 Snow shall be stored within the areas of the Property designated on the Approved Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site.

E.19 The Applicant shall comply with all applicable state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP’s Noise Policy contained in DAQC Policy 90-001. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements.

E.20 The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways and driveways providing access to both the residents of the Project and emergency vehicles.

E.21 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris deposited due to such use during the duration of construction.

E.22 The Applicant shall comply with DPW requirements regarding curb-cut permits, and shall obtain a State Highway Access Permit, as necessary, from MassDOT.

E.23 To the extent earth removal is necessary, the Applicant shall prepare an earth removal plan, showing all necessary cuts and fills, and describing the number of truck trips necessary for the earth removal.

E.24 To the extent the Applicant needs to bring fill onto the Property, such fill shall be clean in nature, and the Applicant shall ensure that it has not been brought from any contaminated source. Any material brought onto the site shall not contain any construction debris, stumps, wood chips, other decomposable organic material, winter treated sand or sand/salt mixtures or parking lot sweepings. No hazardous materials shall be used as fill. No processing of material shall be done onsite.

E. 25 All catch-basins shall have oil/water separators as shown on the Approved Plans.

E. 27 Project sidewalks and pathways/walkways shall be compliant with the requirements of the Americans With Disabilities Act (“ADA”) and the requirements of the Architectural Access Board (“AAB”).

E. 28 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 bylaws, including but not limited to building permits, inspections, water and sewer connections, and curb cuts.

**F. Traffic/Traffic Safety Conditions / Sidewalks**

F.1 Access and egress to the Project shall be via Littleton Drive, consistent with the Approved Plans.

F.2 The Applicant shall ensure that adequate snow storage is provided at the site, and that trash bins and pick-up activity will not block on-site parking or circulation.

F.3 The Applicant shall ensure that emergency vehicles can adequately maneuver through the site. The Onset Fire Department shall review the Final Plans to ensure compliance with this condition.

F.4 **ADD ANY ADDITIONAL TRAFFIC CONDITIONS NECESSARY.**

F.5

F.6

**G. Police, Fire, and Emergency Medical Conditions**

G.1 The Applicant shall provide professional property management and maintenance personnel on the premises during normal daytime hours and an emergency contact name and number for tenants and the Wareham Police Department and Onset Fire Department.

**H. Water, Sewer and Utilities**

H.1 The Applicant shall be responsible for the design and installation of the utilities servicing the Project.

H.2 All water infrastructure shall be installed in conformance with the Onset Fire and Water District’s technical requirements. The Applicant shall consult with Onset Fire and Water District prior to the commencement of construction.

H.3 Fire hydrants shall be placed as shown on the Approved Plans in locations approved by the Onset Fire and Water District Fire Department. If the Onset Fire and Water District Fire Department approves different hydrant locations, such modification shall be accepted as an insubstantial change pursuant to 760 CMR 56.05(11).

H.4 The service size for the domestic water service should be verified by the Onset Fire and Water District and information on the fire service size and requirements should be verified by the Onset Fire and Water District Fire Department. 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 and Water District.

H.5 The water and sewer utilities servicing the buildings in the Project shall be installed and tested in accordance with applicable Town and Onset Fire and Water District requirements and protocols, except as may be waived herein.

H.6 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 and the like.

H.7 The Applicant shall be responsible for all trash and recycling removal from the Property. The Town of Wareham shall not have any responsibility for trash and recycling pickup at the Property.

H.8 **ADDITIONAL WATER/SEWER CONDITIONS**

H.9

**I.** **Wetlands/Environmental Conditions**

I.1 The Applicant proposes work within the one hundred foot (100’) buffer zone to a bordering vegetated wetland. The Applicant shall be required to obtain an Order of Conditions from the Wareham Conservation Commission, or a Superseding Order of Conditions from the Department of Environmental Protection, to authorize such work within jurisdictional areas.

I.2 There will be no storage of any organic matter such as grass clippings, wood chips, stumps, dirt, loam, gravel, sand and/or sand and salt mixture for winter use, or any chemicals, either organic or non-organic, within the 100’ Buffer Zone, if applicable.

**J.** **Other General Conditions**

J.1 This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later, as per 760 CMR 56.05(12)(a). 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 construction authorized by 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.

J.2 The Applicant shall comply with all local regulations of the Town and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.

J.3 The Applicant shall copy the Board on all correspondence 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.

J.4 This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction.

J.5 In the event that the Applicant (or its Management Company) fails to maintain the stormwater management system for the Project in accordance with its operation and maintenance plan, the Town may conduct emergency maintenance and/or repair, as it deems necessary, and the Applicant shall, prior to the issuance of any certificates of occupancy, convey such easement or other rights in a form mutually acceptable to the Town and the Applicant as may be reasonably necessary to complete such repair and/or maintenance. In the event the Town is required to perform such maintenance, the Applicant shall reimburse the Town within forty-five (45) days for all of its reasonable expenses related to such work.

J.6 The Project entrance way and interior roads, and drainage systems associated therewith shall remain private, and the Town shall not have any legal responsibility for the operation and maintenance of such. The Town shall also have no obligations relating to the proposed recreational area on the Property, the construction and operation of which shall be the sole responsibility of the Applicant.

J.7 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (b) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys’ fees and expenses incurred in connection with such claim.

J. 8 There shall be no seasonal rentals allowed.

J. 9 Each residential building shall provide laundry facilities as shown on the Approved Plans.

J. 10 **ADDITIONAL CONDITIONS**

**DECISION**

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit for the construction of ninety-three (93) rental apartment units pursuant to Chapter 40B, §§ 20-23, for the development described above.

**RECORD OF VOTE**

The Board of Appeals voted \_\_\_\_\_\_\_, at its public meeting on January \_\_, 2020, to grant a Comprehensive Permit subject to the above-stated Conditions, with this Decision as attested by the signatures below.

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| --- | --- |
| \_  \_  \_    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

Dated: January \_\_, 2021

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

Town Clerk

**Notice**: Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Wareham, Massachusetts. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.

**EXHIBIT A - WAIVERS**

**TOWN OF WAREHAM BYLAWS**

COMPREHENSIVE PERMIT RULES OF

THE WAREHAM ZONING BOARD OF APPEALS

(Adopted February 8, 2006)

Section 3.01 (j). Financial information such as a pro forma is not applicable as it is in conflict 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.

**BOARD ACTION: WAIVER GRANTED**

Section 3.03 (b). Fees for services for legal counsel are not applicable as it is in conflict 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”.

**BOARD ACTION: WAIVER GRANTED**

Section 3.40. This section requires a peer review payment to be made at the time of the filing of the comprehensive permit application. The Applicant request a waiver to allow a peer review deposit to be made, if required, as directed by the Board during the course of the public hearing.

**BOARD ACTION: WAIVER GRANTED**

Section 3.5. This Section 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 [.]” The Applicant requests a waver to accept the application as submitted.

**WAREHAM ZONING BYLAW**

Note that pursuant to 760 CMR 56.05(7), waivers are not needed from special permit provisions of a zoning bylaw, but only from the requirements of the underlying as of right zoning provisions.

Article 3: Use Regulations

Section 311 – Permitted Uses

Applicant requests a waiver from the requirement that only those uses as allowed in Section 320 may be permitted by right in the district for which it is specified.

Applicant requests this waiver to allow for the construction of the Project as proposed.

**BOARD ACTION: WAIVER GRANTED**

Section 320 and 321– Table of Principal Use Regulations

Applicant requests a waiver from the requirement of conformance to the Table of Principal Use Regulations as follows:

Residential uses – The Applicant requests a waiver from the requirement prohibiting more than four (4) dwelling units in a structure in the MR-30 Zoning District.

**BOARD ACTION: WAIVER GRANTED.**

Section 354 – Table of Principal Use Regulations. The Applicant requests a waiver of the requirement that in a five (5) or more family dwelling unit building, each dwelling unit shall contain a minimum of 650 square feet of livable floor space, exclusive of closets and bathrooms, in order to allow for a minimum square footage of 600 square feet, inclusive of closets and bathrooms.

**BOARD ACTION: WAIVER GRANTED.**

Article 4: Overlay Districts

Section 442.1 – Groundwater Overlay District. This section allows any permitted use in the underlying district provided that maximum lot coverage of the total ground area by all structures, paved areas, and other impervious surfaces does not exceed fifteen percent (15%) or 2,500 square feet, whichever is greater. The Applicant requests a waiver to allow a maximum lot coverage of 18.1%.

**BOARD ACTION: WAIVER GRANTED.**

Article 6: Density and Dimensional Regulations

Section 611 – Lot Area, Frontage, Setback and Height Requirement. A waiver is required from the lot area requirement of 2,775,500 square feet to allow for a lot area of 711,334.8. A waiver is required from the lot frontage requirement of 250’ to allow for lot frontage of 100’ (Swift Beach Road), 51.16’ (Dennis Lane), 50.16’(Nicholas Drive, Camardo Drive). A waiver is required from the maximum height requirement of 35’ to allow a maximum height of 47’.

**BOARD ACTION: WAIVER GRANTED.**

Section 613 – One Principal Residential Building Per Lot

Applicant requests a waiver from the requirement that not more than one principal residential building with accessory structures per lot, in order to allow the construction of the Project as proposed, with multiple principal structures on a single lot.

**BOARD ACTION: WAIVER GRANTED.**

Section 620 – Table of Dimensional Regulations

Section 621- Residential Districts – MR-30

The Applicant requests a waiver of the following dimensional requirements for the MR-30 Zoning District contained in Section 621:

Minimum Lot Area of 45,000 square feet of lot area for two (2) units, plus 30,000 square feet for every unit in excess of two (2) units. This would require a lot area of 2,775,000 for ninety-three (93) dwelling units. The Applicant requests a waiver to allow ninety-three (93) units on 711,334.8 square feet of lot area.

Minimum Frontage of two hundred and fifty feet (250’), to allow a minimum frontage of 100’ (Swift Beach Road), 51.16’ (Dennis Lane), 50.16’ (Nicholas Drive and Camardo Drive).

Maximum height of thirty-five feet (35’). The Applicant requests a waiver to allow for a maximum height of forty-seven feet (47’).

Article 9: Parking

Article 10: Landscaping

Section 1020 – Applicability (Section 1020 through and inclusive of Section 1070)

Applicant requests a waiver from the applicability of this section of the bylaw (Section 1020 through and inclusive of Section 1070) in its entirety to the extent necessary to construct the proposed project as shown on Approved Plans.

**BOARD ACTION: WAIVER GRANTED.**

Article 11: Signs

Applicant requests a waiver from the applicability of this section of the bylaw in its entirety to allow for the construction and placement of signs as provided for in Condition E.6 to be determined and approved by the Zoning Board of Appeals. Appropriate signage shall be shown on the Final Plans.

**BOARD ACTION: WAIVER GRANTED.** The signs shall be subject to the review and approval by the Board as part of the review of Final Plans