

Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
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COMMONWEALTH OF MASSACHUSETTS ZONING BOARD OF APPEALS OF THE TOWN OF SCITUATE

Pursuant to G.L. c. 40B, the Zoning Board of Appeals of the Town of Scituate (the “**Board**”), after a public hearing and findings of fact, hereby grants a Comprehensive Permit to Salt Meadow Development at Scituate, LLC (“**Petitioner**” or “**Applicant**”) pursuant to Massachusetts General Laws, Chapter 40B, Sections 20 through 23, as amended, and 760 CMR 56, to allow the construction of twenty-four (24) dwelling units, at least six (6) of which will be restricted for low and moderate income for the development of affordable housing (the “**Project**”), at the property known and numbered as 279-281 Old Oaken Bucket Road, Scituate, MA, (the “**Locus**”), subject to the conditions set forth herein.

The Locus

The Locus consists of approximately 11.22 acres of land and located in the Residence R-1 zoning district, and the Water Resources Protection overlay zoning district. A small portion of the Locus is also located in the Flood Plain & Watershed Protection overlay zoning district. The Locus is presently improved with a two-family dwelling having a total of five bedrooms constructed in 1849, according to the Tax Assessor, which is documented in the MCRIS system, but is not on the State or Federal Register of Historical Places, and is not otherwise located in a local historical district.

The Locus is owned by the Applicant and has an address of 279 through 281 Old Oaken Bucket Road, and consists of three assessor parcels 44-1-3-D, 44-1-3-0 and 41-1-3-A. The Applicant’s deeds of record are recorded with Plymouth County Registry of Deeds (hereinafter, the “**Registry**”) at Book 56372, Page 143 and at Book 57342, Page 148, respectively.

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The Locus is laid out and shown on two record plans as follows:

- (i) Lot 4A and Lot 5A, respectively, on a plan entitled, “Plan of Land in the Town of Scituate, Massachusetts, Old Oaken Bucket Road, Prepared for Allen H. Lester” dated August 10, 1976 and recorded with the Registry in Plan Book 19, Page 119, and
- (ii) Lot 1 on a plan entitled, “Plan of Land Land [sic] Off of Winter Street, Scituate MA” dated November 5, 2021 and recorded with the Registry at Plan Book 65, Page 938.

Prior to filing the application with the Board, an application for a determination of Project Eligibility was submitted to MassHousing (Mass Housing ID. No. 1112) and filed with the Scituate Select Board in March of 2021. Following a site visit and comments submitted by the Town by and through the Select Board, on August 10, 2021, MassHousing issued a letter approving Site Eligibility. MassHousing will act as the subsidizing agency, and a contract was executed with SEB Housing LLC to consult and oversee compliance aspects of the regulations, such as deed restrictions, marketing, lottery, and the like.

The Locus has frontage on Old Oaken Bucket Road, and is bounded on the west and south by considerable wetlands, natural vegetation, and open space. To the east, the Locus abuts a property containing a single-family dwelling at 275 Old Oaken Bucket Road, and a single-family dwelling at 271 Old Oaken Bucket Road. The Scituate Conservation Commission previously issued an Order of Resource Area Delineation confirming the location of the jurisdictional resource areas on or near the Locus. An intermittent stream is located on land to the east of the Locus, and bordering vegetated wetlands (BVWs) are located on the Locus to the south and west of the proposed improvements. There are no buildings proposed within 25 feet of any resource area, and only portions of six proposed buildings plus a minimal amount of the proposed access road and driveway are located within 50 feet of the BVW (the Scituate Conservation Rules and Regulations are stricter than the state regulations insofar as they contain a 50-foot “no-build” buffer strip). While the Board of Appeals acts as the comprehensive permit granting authority under the Scituate Wetland Regulations, the Applicant will nonetheless be required to file a Notice of Intent application with the Scituate Conservation Commission seeking an Order of Conditions under the Wetlands Protection Act and the regulations of the Massachusetts Department of Environmental Protection.

In acting as the comprehensive permit granting authority, the Board exercised jurisdiction over all local aspects governing the Town of Scituate regulations, which, in this case, include the Town of Scituate’s (1) Zoning Bylaws, (2) Wetland Protection Rules and Regulations, (3) Supplemental Rules and Regulations for Disposal of Sanitary Sewerage, (4) Stormwater Regulations, and (5) Demolition Review By-law. The Applicant does not propose to subdivide the Locus.

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The Project

The Project is more particularly described and set forth in that certain Comprehensive Permit Application dated as of March 31, 2022 (the “Application”). The application was completed and complied with the requirements of Section 3.01 of the Comprehensive Permit Rules of the Scituate Zoning Board of Appeals (the “**Local Rules**”) and with 760 CMR 56.05(2).

The Applicant proposes a single access roadway entrance to the Locus from Old Oaken Bucket Road. The access roadway is shown as mostly 22 feet in width, and in one small area narrows to 17 feet in width. The access roadway is bounded by sidewalks on both sides, except for the portion which is 17-feet wide, and driveways. The access roadway generally loops around to allow a continuous flow for pedestrians and vehicles. Any portion of the access roadway that is a dead end, or which is a driveway, contains a hammerhead turnaround. The road meets the safety requirements for fire truck and emergency vehicle access according to the fire department.

The Applicant’s layout and design is appealing insofar as each dwelling unit is its own building and contains a garage and sufficient area for parking of extra vehicles within the driveway to each dwelling unit. Access to each dwelling unit shall be to and from the access road or driveway, such that, other than the access road, there will be no curb cut along Old Oaken Bucket Road. The Applicant proposes to raze the existing two-family dwelling, and the site distances in both directions for vehicles existing the proposed development is adequate.

Over the course of the many hearings, the project significantly evolved; notably the Applicant revised its proposal to decrease the number of total dwelling units by 25% from its initial application request, such that the most recent revised plan set sought approval for 24 three-bedroom dwelling units, of which 6 dwelling units would be restricted for low and moderate income for the development of affordable housing (the “**Revised Requested Relief**”). The materials and design of the various dwelling units nicely assimilate with the design and materials of typical new England styles and other homes in the neighborhood, and the 6 “affordable” dwelling units are appropriately spaced throughout the development. The Applicant proposes a shared Title 5 compliant septic system to service the various dwelling units, and makes provision for a reserve area as required by law. The Board’s peer review consultants were satisfied that the soils were appropriate for this proposed shared system and that there would be no undue pollution or toxicities introduced which could adversely affect drinking water quality. The drainage and stormwater design encouraged infiltration and were sufficient to meet minimum state standards in the opinion of the Board’s peer review engineers.

The Petitioner is requesting waivers from the following provisions of the Zoning by-laws, as set forth in **Appendix A**.

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I. SUMMARY OF PROCEEDINGS

Notice was given to abutters deemed affected as shown on the latest tax rolls of the Town Board of Assessors, and by publication in Scituate Mariner on April 14, 2022, and April 21, 2022.

The Select Board, Town Administrator, Building Commissioner, Planning Board, Town Engineer, Department of Public Works, Board of Health, Conservation Commission, Police Department, and Fire Department were notified of this hearing. Comments were received from:

1. Amy Walkey of the Conservation Commission dated April 25, 2022;
2. Karen Joseph, Town Planner dated April 26, 2022 and March 8, 2023;
3. Mark Donovan, Deputy Fire Chief dated November 1, 2022 and December 15, 2022.

Sitting on the hearing, were Anthony J. Bucchere, Acting Chairman, Susan Harrison and George Xixis and alternate members Justin M. Marks and Christopher Carchia. Members and alternate members were present at the Public Hearings throughout the proceedings, with three (3) exceptions. In each of those instances, the absent member executed a certification in accordance with G. L. c. 39, § 23D.

The Applicant was represented at the public hearing by its manager, Daniel Lovendale, as well as its professional team which consisted of the following: (i) its attorney, Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, (ii) its engineers and land surveyors, Mark Casey, Principal and Anthony A. Esposito, P.E. of South Shore Survey Consultants, Inc., (iii) its architects, Jeremy R. Lake and Donald W. Powers of Union Studio Architecture & Community Design, (iv) its traffic consultants, Jeffrey S. Dirk and Daniel LaCivita of Vanasse & Associates, Inc., and (v) its landscape architect, Tricia Van Buskirk. The Decision in this matter is based upon the petition and supporting documentation, public records of the Town, and testimony and evidence as set forth at the hearing, all of which are incorporated by reference.

Public Hearing Dates:

April 27, 2022 – opened hearing

06/22/2022

08/23/2022

10/04/2022

11/01/2022

01/11/2023

03/08/2023

04/26/2023 - closed hearing

On April 26, 2023, the Board determined that it received all public testimony and all information pursuant to requests by the Board that it is entitled to receive. Therefore, pursuant to 760 CMR 56.05(8) and Section 5.02 of the Local Rules, on April 26, 2023, the public hearing was terminated and closed.

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The hearing was conducted in accordance with 760 CMR 56.05(4) and Section 5.00 of the Local Rules.

II. SUBMITTALS FROM APPLICANT¹

The Application for Comprehensive Permit dated, March 31, 2022, included the following materials:

1. Union Studio Architecture & Community Design Architectural Plan entitled "Preliminary
2. Site and Architectural Package, dated October 14, 2021, depicting building elevations,
3. floor plans, and architectural details;
4. Patricia Van Buskirk Landscape Architectural Plan dated September 29, 2021;
5. Drainage Calculations and Stormwater Management Plan dated January 18, 2022 (one
6. copy);
7. Traffic Impact Assessment dated;
8. Preliminary List of Waivers and/or Variances;
9. Check in the amount of \$1,700.00 to the order of Town of Scituate for the filing fee; and
10. Check in the amount of \$105.00 to the order of Town of Scituate to obtain Abutter's lists
11. pursuant to public notice requirements.

Final Plans

The final plan sets for the proposed 24-dwelling unit project (collectively, the "**Final Plans**") are as follows:

1. Plan entitled "THE COTTAGES AT OLD OAKEN BUCKET ATA #279-281 OLD OAKEN BUCKET ROAD SCITUATE, MA" dated February 16, 2023, revised on March 2, 2023, consisting of 16 sheets, prepared by South Shore Survey Consultants, Inc., Scale 1" = 50' (the "**Engineering Plans**");
2. Plan entitled "THE COTTAGES AT OLD OAKEN BUCKET ATA #279-281 OLD OAKEN BUCKET ROAD SCITUATE, MA AFFORDABLE UNIT DESIGNATION PLAN" dated February 16, 2023, revised on February 17, 2023, consisting of 1 sheet, prepared by South Shore Survey Consultants, Inc., Scale 1" = 50' (the "**Affordable Unit Plan**");
3. Plan entitled "THE COTTAGES AT OLD OAKEN BUCKET REVISED SITE AND ARCHITECTURE PACKAGE" dated January 11, 2023, consisting of 8 sheets, prepared by Union Studio Architecture & Community Design (the "**Architectural Plans**");
4. Plan entitled "THE COTTAGES AT OLD OAKEN BUCKET OLD OAKEN BUCKET ROAD SCITUATE, MA" dated February 7, 2023, Landscape Plan, consisting of 1 sheet, prepared by Patricia Van Buskirk Landscape Architecture (the "**Landscape Plans**").

¹ This list is not necessarily exhaustive. The entire record of this matter, as held by the Town of Scituate and/or the Zoning Board of Appeals, is incorporated herein.

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5. A **Drainage and Stormwater Plan** (“Drainage Stormwater Management Plan”), that shall comply with the Order of Conditions to be issued by the Town of Scituate Conservation Commission under the state Wetlands Protection Act.

As indicated above, the Board retained the consulting services of Merrill Engineering to review the Applicant’s various plans and drainage calculations. In addition, the Applicant’s traffic analyses, which were submitted on behalf of the Applicant by its traffic engineers and planners, Vanasse & Associates, Inc., were reviewed by the Town’s traffic engineers and consultants, Ron Müller & Associates. As is required, the Board shared copies of the Applicant’s plans and other materials with Town of Scituate boards, departments, and committees, and during the pendency of the many hearings, the Board in rendering its decision took into consideration input from various of these bodies and persons, including, but not limited to, the Scituate Department of Public Works, the Town Planner, the Conservation Agent, the Fire Department, Water Resources Commission, the Building Commissioner and Zoning Enforcement Officer, and the sewer and water divisions. In addition, the Board and the Applicant heard and took into consideration comments from abutters. Based on all of these comments, as well as input from the Town’s said peer review consultants, plans and analyses were modified and refined during the course of the public hearing. Notably, upon the conclusion of the public hearing, the Board’s peer review consultants at Merrill Engineering and Ron Müller & Associates reported that all their comments and concerns had been satisfactorily addressed by the Applicant.

III. FINDINGS AND DECISION

A. Factual Findings.

1. The Property is located in Residence R-1 zoning district, and the Water Resources Protection overlay zoning district. A small portion of the Locus is also located in the Flood Plain & Watershed Protection overlay zoning district.
2. The Project consists of twenty-four (24) dwelling units, at least six (6) of which will be restricted for low and moderate income for the development of affordable housing.
3. The Project will be completed substantially as shown on the Final Plans.

B. Legal Findings

1. A local need for affordable housing exists in the Town of Scituate.
2. The Department of Housing and Community Development (“DHCD”) has issued a Site Approval letter, approving the project under the Housing Stabilization Fund (“HSF”) program, and creating a presumption of fundability under 760 CMR 56.04.
3. The Applicant has demonstrated sufficient “control of the site” as that term is used in 760 CMR Part 56 in that in that is owns the Locus.

4. Therefore, the Board finds that the Applicant meets the jurisdictional requirements under Chapter 40B to receive a Comprehensive Permit.

After reviewing the evidence and extensive testimony, the Board votes to **GRANT** the Comprehensive Permit under the Provisions of M.G.L. Chapter 40B and the regulations promulgated pursuant to said Chapter 40B with the waivers as requested by the Applicant, as set forth in Appendix A, subject to the Conditions set forth below. The Board finds that the conditions as approved strike the appropriate balance between protecting health, safety and welfare of the residents of the Town, the Project, and the abutters, and providing for additional affordable housing in Scituate.

IV. CONDITIONS TO THE COMPREHENSIVE PERMIT

The Board's approval of the Comprehensive Permit for the Project is premised on the Applicant's and Project's compliance with the following conditions listed below. All requirements imposed by these conditions or this Permit shall be applicable to any and all successors in interest to the Applicant or other entity responsible for the administration of the Project regardless of whether the condition specifically identifies the Applicant.

A. Regulatory Conditions

1. The total number of dwelling units that may be constructed at the Premises shall be limited to twenty- four (24), as shown on the Final Plans.
2. Six (6) of the dwelling units in the Project shall be and shall remain affordable in perpetuity and shall be marketed to Income Eligible Households, as that term is defined in 780 CMR 56.02 with individuals with developmental disabilities, whose annual income may not exceed 80% of area median income (AMI), adjusted for household sized, as determined by the United States Department of Housing and Urban Development (the "Affordable Units").
3. The Applicant shall notify the Board and the Town Administrator when building permits are issued and cooperate with the preparation of request forms to add the units to the SHI.
4. The Applicant shall notify the Board and the Town Administrator when occupancy permits are issued and cooperate with the preparation of request forms to add the units to the SHI.
5. The Affordable Units shall remain affordable in perpetuity, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.
6. The Applicant shall execute the Commonwealth's Department of Housing and Community Development ("DHCD") Regulatory Agreement that shall be countersigned by the Subsidizing Agency as required under G.L. c. 40B and shall adhere to all requirements thereof.
7. While the original Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor

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compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency, and may take any steps allowed under G.L. c. 40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.

8. The preceding conditions shall not be used or construed or otherwise exercised in conflict with any relevant decisional law or amendment to G.L. Chapter 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee. Said monitoring fee shall be reasonably consistent with the monitoring fees required by the Subsidizing Agency.
9. The Applicant shall submit to the Board a report on marketing activity at the Project .
10. The Applicant shall develop a marketing plan for the Affordable Units for review and approval of the Subsidizing Agency, said plan to conform to any and all affirmative action requirements or other requirements as imposed by federal or state regulation and shall conform with the local preference requirement set forth above.
11. If at any time it appears that the Applicant is in violation of the affordable housing restriction with the Town when said restriction is in effect as described above, following a hearing of which the Applicant has been given prior notice, then the Board may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.
12. Profits from the Project in excess of those allowed under applicable law and regulations shall be utilized as provided in the regulatory agreement with the Subsidizing Agency and as required and provided for under G.L. c. 40B and 760 CMR 56.00.
13. The Applicant shall, upon request of the Board, provide the Board or its designee with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency relative to the Project not more than thirty (30) days after the request is made.
14. The Town, by and through the Board or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Comprehensive Permit and Decision.
15. Prior to receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Commissioner and the Board.
16. The Applicant will file a Notice of Intent application with the Scituate Conservation Commission seeking an Order of Conditions under the Wetlands Protection Act and the

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regulations of the Massachusetts Department of Environmental Protection, and will comply with all such final orders, after departmental action or appeal if such is made.

B. General Conditions

1. The Applicant shall construct the Project as provided on the approved Final Plans referenced herein.
2. In approving the Final Plans, the Board, as the Comprehensive Permit Granting Authority, is granting all waivers of town bylaws, codes, and regulations necessary to construct the work shown on the Final Plans. Specifically, the Board grants the waivers requested in Appendix A. To the extent that the Applicant identifies a need for additional waivers during construction, the Board shall entertain a request for, and grant, a minor modification of this Comprehensive Permit so long as such additional waivers are substantially consistent with the Project shown in the Final Plans.
3. The Applicant shall design and manage drainage and stormwater management in substantial compliance with the "Drainage Calculations and Stormwater Management Plan in Support of a Comprehensive Permit for: The Cottages at Old Oaken Bucket 279-281 Old Oaken Bucket Rd. Scituate, MA Submitted to Town of Scituate Zoning Board of Appeals" dated February 16, 2023 prepared by Anthony A. Esposito, P.E., South Shore Survey Consultants, Inc. (the "**Drainage and Stormwater Plan**"), including during construction the "Construction Phase Pollution Prevention and Erosion and Sedimentation Plan" dated February 13, 2023.
4. The Applicant shall obtain the approval of the Building Commissioner if minor changes from the Final Plans for building construction, but not for site work, are desired. The Applicant shall obtain the approval of the Board's peer review engineer ("Merrill Engineering") at the Applicant's sole cost and expense if minor changes from the Final plans for site work are desired. This provision does not replace the process set forth in 760 CMR 56.05 (11). If approval is sought from the Building Commissioner and/or Merrill Engineering, and the Building Commissioner and/or Merrill Engineering determines that the request should be submitted pursuant to 760 CMR 56.05 (11), then the Building Commissioner and/or Merrill Engineering shall notify the Applicant of their determination.
5. No permanent structures shall be placed in the access way to the reserve area shown on the Final Plans in a manner as to prevent such access.
6. The Applicant shall create documentation establishing a Homeowners Association, approved by Town Counsel, and shall record said documentation at the Plymouth County Registry of Deeds, and shall include provisions for upkeep and maintenance of common areas, including septic, water, drainage, sidewalks, site distance on Old Oaken Bucket Road, open spaces, and roadway infrastructure. Post occupancy, the Homeowner's Association shall assume management of the ongoing responsibilities set forth in the

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Drainage and Stormwater Plan, and the Applicant shall incorporate in the Homeowners Association the "Post-Construction Phase Best Management Practices Operation and Maintenance Plan & Long Term Pollution Prevention Plan" dated January 4, 2022, which is appended as part of Exhibit D to the Drainage and Stormwater Plan, and any other obligations required to be included therein set forth elsewhere in this Decision.

7. The Applicant shall execute and record all documents, following review and approval by Town Counsel, which are required by the Commonwealth of Massachusetts to properly deed restrict the affordable unit shown in in the Final Plans.
8. The Applicant shall install radar speed feedback signs on Old Oaken Bucket Road at two locations, east and west of the Locus access roadway, to moderate travel speeds along Old Oaken Bucket Road and enhance safety thereon. The Applicant shall seek the written approval from the Scituate Police Department as to the specific locations of such signs.
9. The Building Commissioner and Conservation Agent shall be notified when construction begins and when construction is completed. All clearing and earth moving operations shall only occur while erosion and sedimentation control measures shown on the Final Plans are in place.
10. Construction of the private access driveway, drainage systems and all utilities shall be supervised by a registered professional engineer who shall certify in writing that the driveways, access roads, grading, drainage structures, utilities and dwellings were constructed in accordance with the Final Plans. This certification shall be accompanied by as-built plans, signed and stamped by a registered professional land surveyor and the supervising professional engineer.
11. A pre-construction conference shall be held with the Applicant, its representatives, its engineer, the site contractor(s), the Building Commissioner, and other representatives of the Town as the Building Commissioner feels are necessary, including, but not limited to, representatives from the Fire Department, Police Department, Conservation Commission, Department of Public Works, and the Water Department at least two (2) weeks before construction begins. A list of all contractor contacts, including names and telephone numbers, shall be provided to the Building Commissioner at least 24 hours before the pre-construction conference. At least one telephone contact shall be available 24 hours per day in the event of an emergency.
12. A stabilized construction entrance must be installed prior to any earth disturbing activities on site including but not limited to clearing and grubbing.
13. The hours of construction shall be limited to 7AM to 7PM weekdays and 8AM to 7PM or sunset, whichever is earlier on Saturdays. No construction is permitted on Sundays or legal federal or state holidays. All construction shall be performed in accordance with the Town's construction regulations.

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14. Construction activities shall be conducted in a workman like manner. Noise mitigation and proper dust controls shall be used, with clean-up of all areas of the site as needed. All equipment that emits sounds shall be kept in proper working order through regular maintenance by the Applicant. Blowing dust or debris shall be controlled by the Applicant through stabilization, wetting down or other proper storage and disposal methods.
15. Limits of clearing to be staked in the field under the direction of a surveyor and inspected prior to start of any tree clearing and maintained throughout construction. Notification must be given to the Building Commissioner 5 days prior to start of construction. All landscaping performed on the Project shall be carried out substantially as shown in the Final Plans.
16. Parking, idling or unloading on Old Oaken Bucket Road or adjacent public roads shall not be permitted during construction, unless specifically authorized by the Scituate Police Department.
17. The Homeowner's Association Agreement shall contain a provision prohibiting the use of non-organic pesticides and fertilizers at the Locus, and the Applicant shall not apply such products at the Locus at any time.
18. Signage identifying house numbers served by the private access driveway and for each house shall be provided to the Town for approval. Signage must meet 911 requirements. Signage must be in place prior to issuance of an occupancy permit.
19. No permanent Certificate of Occupancy shall be issued until the Building Commissioner is satisfied that access, construction of the private access road, and installation of the necessary utilities are in full compliance with the Final Plans.
20. This comprehensive permit shall be recorded at the Plymouth Registry of Deeds prior to the commencement of any work at the Locus.
21. Except as specifically waived by this decision, the Project shall conform to all applicable state and federal laws, codes, regulations, and standards including, but not limited to, the following:
 - a. International and Massachusetts Building, Plumbing, Fire Protection, Elevator, Access and Electrical Codes;
 - b. The Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and the associated Regulations 310 CMR 10.00;
 - c. Massachusetts Department of Environmental Protection Wastewater Regulations;
 - d. EPA and DEP Stormwater requirement and accepted industry best management practices for construction of the drainage infrastructure; and

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- e. M.G.L. Chapter 21E (if applicable), the Massachusetts Oil and Hazardous Material Release Prevention Act (“21E”), and its regulations, 310 CMR Part 40, the Massachusetts Contingency Plan (“MCP”).
- 22. The interior and exterior of all buildings and structures shall be constructed substantially as represented in the Final Plans.
- 23. The Board hereby requires that all water and wastewater infrastructure facilities shall be constructed and fully operational prior to the issuance of the occupancy permit for the building.
- 24. All lighting for the Project shall be installed in accordance with Scituate bylaws and regulations in effect, if any, at the time of installation. That shall include so-called “cut-off” fixtures. No light shall spill over the property lines.
- 25. Landscaping required by the Final Plans shall be installed no later than six (6) months after the issuance of the first certificate of occupancy, unless the Building Commissioner agrees to extend this timeframe due to circumstances prevalent at the time.
- 26. All utility work and any other roadwork within Old Oaken Bucket Road shall be performed and conducted in conformance with the regulations of the Town, including requirements for street opening permits and trench permits (if necessary). Contractors shall be duly licensed and insured as required by the Town of Scituate. All such work shall be performed in accordance with the approved Final Plans.
- 27. Any internal sidewalk and street trees to be planted adjacent to the sidewalk shall be installed before issuance of the final of the twenty-four permanent occupancy permits for the Project.
- 28. All structures and site improvements within the Locus shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, sewer and water infrastructure necessary to connect to the public water and sewer line in the public way, and landscaping, and the Applicant shall bear the cost of maintenance, repairs, replacement, snow plowing within the Project Site for same in perpetuity.
- 29. The Applicant shall ensure that all underground water pipes shall have water-tight joints.
- 30. No permanent Certificate of Occupancy for any building shall be issued until the infrastructure or common improvements specified in this decision and set forth on the Final Plans are constructed and installed, except unless the Applicant posts adequate security reasonably acceptable to the Building Commissioner and approved as to form by Town Counsel, to ensure the completion of such common improvements. No such performance guarantee shall be requested until drainage facilities and the base course of the pavement have been installed that service or provide access to any such building which is the subject of the requested Certificate of Occupancy. The choice of performance guarantee, and the reduction and/or release of such performance guaranty, shall be governed by the provisions of G.L. c. 41, § 81U.

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31. Final as-built drawings showing on-site water distribution system and wastewater system shall be submitted to the Department of Public Works and the Town Engineer.
32. Prior to issuance of Building Permits, the Applicant shall:
 - a. Provide to the Building Commissioner and the Conservations Commission a final Stormwater Pollution and Prevention Plan (SWPPP) to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system, in accordance with all order issued by the Conservation Commission.
33. Prior to issuance of any building permit, the Applicant shall conduct, or submit a report if completed, a hydrant flow test to determine available flow and pressure to fight a fire and provide the results of such test to the Board and Scituate Fire Chief.
34. Dumping of landscape debris, including leaves, grass clippings and brush, within 100 feet of any wetland shall be prohibited.
35. Except for work and activities of the Project which are necessary to perform the work shown in the Final Plans, no disturbance or construction, work shall be done, and no portion of any building or pavement shall be placed any closer to any wetland than as depicted on the Final Plans, and any future proposal to alter this condition shall require advance approval by the Board of a modification to the plans and this permit.
36. Upon application for an Occupancy Permit for each unit, as-built foundation plans detailing the relationship of the unit to property lines and adjacent units shall be provided to the Building Commissioner.
37. If the Board votes to determine that material deficiencies exist in the final as-built plans, the Board shall notify the Applicant of the specific deficiencies, and the Applicant shall be afforded a reasonable opportunity to cure the noticed deficiencies prior to commencement of any enforcement actions that are available to the Board, and appealable by the Applicant, pursuant to applicable law.
38. Prior to the issuance of any occupancy permit, the Applicant shall provide the Board of Health with an operations plan for any proposed common storage and collection of trash and recycling, to make sure that odor and nuisance problems are avoided. The hours for trucks to collect or otherwise service the trash and recycling containers shall occur only during weekday daylight hours between the hours of 7:00 a.m. and 4:00 p.m.
39. Prior to the issuance of any occupancy permit, the Applicant shall provide the Board of Health with an operations plan for the sewage treatment and disposal system.

C. Construction and Inspection Conditions

1. The Applicant shall provide the Building Commissioner (or his designee) and his agents and any enforcement agent for the Town with authority to enter the Premises during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard hat, safety glasses, reflective vests and work boot requirements), with prior and reasonable notice to determine conformance with this Decision.
2. The Applicant shall abide by orders issued by the Building Commissioner in conformance with applicable law in conjunction with construction of the Project, subject to the Applicant's rights of appeal under applicable law.
3. Work and operations within wetlands and/or with the buffer zones within the MassDEP jurisdiction from wetlands, and any other jurisdictional areas, shall be subject to the Order of Conditions to be issued by the Conservation Commission.
4. Prior to the issuance of any building permit, the Site and Engineering Plans, finalized as necessary as provided in this Comprehensive Permit and Decision, shall be signed and sealed by a Massachusetts Professional Engineer and/or a Massachusetts Registered Landscape Architect and filed with the Board and the Building Commissioner.
5. Prior to starting any activity authorized under the Comprehensive Permit, the Applicant shall provide to the Building Commissioner with the following:
 - a. the company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site;
 - b. a copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Site have been paid, if deemed necessary by the Building Commissioner;
 - c. certification from the Applicant that all required federal, state and local licenses and permits have been obtained;
 - d. proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work;
 - e. proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services to protect and secure the site and construction personnel; and
 - f. at least 48 hour written notice. If activity on site ceases for longer than one month, 48 hour written notice prior to restarting work.
6. During construction the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to submission of as-built plans, all construction debris and materials shall be removed and disposed of in accordance with state laws and regulations.

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7. Blasting, if any, shall be performed in accordance with applicable laws and regulations in a manner approved by the Fire Department and Building Department.
8. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant shall be responsible for maintaining the site's storm-water management system in accordance with the Final Plans and the Stormwater Management Plan.
9. The Applicant, and eventually the Home Owner's Association, shall be permanently responsible for the following aspects of the Project:
 - a. all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Approved Plans or alternate locations acceptable to the Fire Chief;
 - b. all site maintenance and establishing a regular schedule for site maintenance;
 - c. maintaining all any and all easements shown on the Plans;
 - d. landscaping;
 - e. and, site lighting.
10. No stumps or construction debris shall be buried or disposed of at the Property.
11. The Applicant shall use all reasonable means to minimize inconvenience to residents in the general area, during construction.
12. Any permit granted hereunder is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b).
13. Proposed substantial changes to the Final Plans shall be submitted to the Board for review and authorization in accordance with applicable regulatory provisions.
14. Building construction may begin simultaneously with the commencement of construction of the infrastructure.
15. Final plans shall be reviewed by the Fire Department with regard to hydrant locations and access to buildings.

Final plans shall be reviewed by the Fire Department showing the locations of smoke detectors and carbon monoxide detectors.

V. LAPSE

Any Comprehensive Permit granted hereunder shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)), unless the Comprehensive Permit is duly

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recorded before the three year period lapses and unless construction on the Project has substantially commenced within such period.

VI. WAIVERS

A. The Applicant shall comply with the State Building Code and the Town of Scituate Zoning Bylaw as of the date this Application was filed with the Board, and all other local development controls as of the date of this Application, except as expressly waived and provided for herein. Any waiver not expressly granted or not shown on the approved Plan of Record is hereby not granted. Grant of the Comprehensive Permit and the Waivers is expressly conditioned upon compliance with all of the conditions of approval as set forth in Section IV of this Comprehensive Permit.

B. The Waivers in APPENDIX A are hereby granted.

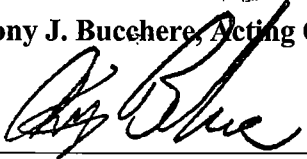
VII. VALIDITY OF PERMIT

This permit shall not be valid until recorded with the Registry of Deeds and evidence of such recording is provided to the Building Commissioner and the Board. Any modification of this permit shall be subject to 760 CMR 56.07(4) or any successor regulation thereto. Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by G.L. c. 40A, § 17 or G.L. c. 40B, §20 et seq., as applicable.

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SCITUATE ZONING BOARD OF APPEALS

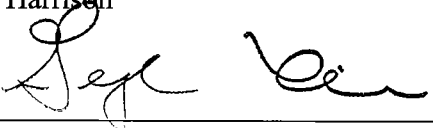
By: Anthony J. Bucchere, Acting Chairman



Anthony J. Bucchere



Susan Harrison



George Xixis

Filed with the Town Clerk on: _____

5/30/2023

This Comprehensive Permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds after the appeal period of twenty (20) days.

Appeal of any decision of the Board of Appeals may be made pursuant to M.G.L. Ch. 40, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.

Sent to Applicant, certified mail, on: _____

5/30/2023

Notices to interested parties mailed on: _____

5/30/2023

APPENDIX A – WAIVERS

Zoning Bylaw:

The table of uses in the zoning chart (Section 420), site plan (Section 770), and parking (Section 760) requirements of the Zoning Bylaw are addressed and approved through the issuance of the comprehensive permit and approval of the Final Plans. Therefore, waivers from those provisions are not necessary. In addition, the Applicant seeks waivers from the following specific by-right zoning bylaw requirements: (i) Section 610.1A required lot width, and (ii) Section 620.3 required front and side yard setbacks, and (iii) Section 520 Design and Operations Guidelines.

With respect to lot width, Section 610.1A of the Zoning Bylaw prohibits the construction of dwellings on a lot having less than the required lot width. This particular tract of land is oddly shaped such that in its middle there is a narrowing to a point which is slightly less than the required 175 linear feet. In this particular narrowest area the only notable improvement is the access right-of-way, which traverses the narrowest portion of the lot approximately midway. The obvious purpose for required lot width is to ensure safe and adequate access to the livable portion of the lot. In this case, the fire chief has signed-off in favor of this project and the existing residential use is pre-existing, nonconforming. It is appropriate to grant this waiver.

With respect to dimensional setbacks, the tract has frontage on Old Oaken Bucket Road at the northerly property line. The opposite lot line, on the southerly portion of the tract, constitutes the rear property line, and all other lot lines are considered side yards. In this case, Units 2 and 5, respectively, are less than 30 feet from the layout of Old Oaken Bucket Road, which is the required front yard setback. However, the road is an unusual “bowed” shape directly adjacent to these units, and the layout of the pavement of the roadway in these areas is much further than 30 linear feet in distance. Thus, the imposition of the front yard setback for Units 2 and 5 would serve no obvious benefit. Additionally, with respect to side yard setbacks, Units 9, 11, and 18 are all less than the required 15 feet from the side yards. Each of these units are a great distance from the nearest dwelling and are separated from such nearest dwelling by existing natural vegetation. It is appropriate to grant this waiver.

The Locus is not located within a Zone A surface water protection zone or within a Zone II wellhead protection area to a drinking water supply. However, the property generally is within the Water Resources Protection District (the “WRPD”). Sections 520.5.D and 520.5.E of the Zoning Bylaw authorize Scituate DPW or Scituate Conservation Commission, and their agents, to oversee and direct runoff from impervious areas and erosion & sedimentation control measures. Since this is a comprehensive permit the Board of Appeals steps into their shoes and has reviewed and approved the project from this perspective. In addition, Section 520.5 of the Scituate Zoning Bylaw sets forth design and operations guidelines within the WRP District. These design requirements require treatment of stormwater runoff, prohibit the use of drywells, prevent disturbance of land or vegetation on slopes exceeding 50%, and limit new slopes to 25%.

However, the Applicant has designed this project to meet all state requirements concerning the protection of Scituate's water supply, and the appropriateness of that design has been extensively reviewed and approved by the Board's peer review engineers. Due to the contour of the Locus, in some instances disturbance of slopes greater than 25% was necessary, and the Applicant's introduction of features such as infiltration chambers to capture, treat, and infiltrate water, and the use of retaining walls to create and stabilize slopes greater than 25% are proper techniques to achieve the objectives of the WRPD bylaw. Thus, it is appropriate to grant the waivers from the design requirements set forth in Section 520.5 of the Zoning Bylaw.

Wetlands Protection Bylaw and Rules and Regulations:

The Scituate Conservation Commission has adopted local Wetland Protection Rules and Regulations that implement the Town's Wetland Protection Bylaw (the "Wetland Regulations"). Insofar as the Wetland Regulations are stricter than the state regulations, the Commission ordinarily would exercise dual jurisdiction; it would act as the permit granting authority in two respects (i) under the regulations adopted pursuant to the state's Wetland Protection Act, and (ii) under those regulations which are more strict than are contained within the Wetland Regulations. The comprehensive permit process will require the Conservation Commission to review and approve the project under its authority as the permit granting authority for said state regulations. However, in all respects in the Wetland Regulations that confer authority on the Conservation Commission or other town boards or departments as they relate to the stricter standards set forth in the Wetlands Regulations, the Board of Appeals has acted in their stead during the process of this comprehensive permit. As it concerns this project, the Wetland Regulations are stricter than the state because Section 10.05(10) establishes additional standards and limitations for work within 50 feet of an area subject to protection, whereas the state regulations have uniform standards and limitations for work within 100 feet of a resource area. Section 10.05(10)(b) requires that said 50-foot buffer strip be continuous and undisturbed, except that the Commission, or, in this case, the Board, may carve-out exceptions to account for site specific variables. Additionally, Section 10.61 of the Wetland Regulations authorizes the Commission, or, in this case, the Board, to issue waivers from any of the regulations of the Wetland Regulations if the Board determines that the proposed work will not "adversely affect" any area subject to protection.

In this case, the areas subject to protection are an intermittent stream and bordering vegetated wetlands (the "BVWs"). In particular, there is no activity proposed within the 50-foot buffer to the intermittent stream. For the most part the Applicant is respecting the 50-foot buffer to the BVWs. However, small portions of lawn, impervious area, retaining wall, and portions of six units immaterially encroach into the proposed within this buffer strip. The Final Plan does not depict any structure within 25 feet of the BVWs. These minimal intrusions into the buffer strip were necessary to account for site specific variables, and were engineered to protect the BVWs from undue stormwater runoff, materials or pollutants. Additionally, the Board's peer review engineer has confirmed that the site adheres to the BMPs required by the Commonwealth of Massachusetts. The Board is of the opinion that the proposed activities would therefore not adversely affect the BVWs and thereby meets the standard of said Section 10.61 and grants all

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appropriate waivers necessary for the construction of the project as shown on the Final Plans. It is appropriate to grant a waiver from Section 10.05(10) of the Wetland Regulations.

Rules and Regulations Governing the Subdivision of Land:

As noted in the decision, these regulations are inapplicable because the Applicant does not propose to subdivide the Locus; therefore, the Applicant did not request, and the Board did not consider, any waivers from these regulations.

Stormwater:

The Applicant provided a detailed Drainage Calculations and Stormwater Management Plan, which were extensively reviewed by the Board's peer review engineers. The project was designed to meet or exceed the Commonwealth of Massachusetts' stormwater regulations and standards. There is no proposed increase in the rate or volume of stormwater runoff to abutting properties. The comprehensive permit regulations require that the Board steps into the shoes of the Conservation Commission and/or the Planning Board for purposes of compliance with Scituate's Stormwater Bylaw and Rules and Regulations. The Board is satisfied that the Final Plans satisfy the criteria set forth in said stormwater bylaw and regulations.

Board of Health Supplementary Rules and Regulations for Disposal of Sanitary Sewerage:

The Applicant proposes a Title 5 compliant septic system. The Board of Health has enacted Supplementary Rules and Regulations for Disposal of Sanitary Sewerage (the "Board of Health Rules"). The Board of Health Rules set forth additional regulations so as to ensure compliance with Title 5. Section XI of the Board of Health Rules enable the Board of Health (or, in the case of a comprehensive permit, the Board of Appeals) to issue variances from the Board of Health Rules. The Applicant has designed a Title 5 system as shown on the Final Plans, and thus approval of this comprehensive permit, and the Final Plans, constitute either compliance with the Board of Health Rules, or of a variance pursuant to said Section XI. Nonetheless, the Board has been requested to issue the following waivers.

Section IV of the Board of Health Rules pertain to retaining walls utilized in connection with septic systems. In this case, the proposed septic system and any retaining walls are not within 15 feet of a property line, have been designed by the Applicant's certified engineers to adhere to Title 5 requirements, and will be certified on an final as-built plan. The retaining wall regulations set forth in Section IV require that all changes in retaining walls be reviewed and approved by the Board of Health, and that abutters be notified in writing of the design. Abutters have been notified by way of the notice requirements of this comprehensive permit, and any changes will be reviewed and approved in accordance with the comprehensive permit regulations. The Board is satisfied that Section IV has otherwise been complied with.

Section V of the Board of Health Rules concern shared septic systems. The Locus is a single tract of land. Therefore, there is no easement proposed and the Homeowners Association will have full access to, and will maintain, the system. The Board's peer review engineer is

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satisfied that the shared system design complies with Title 5. Paragraph numbered 4 of said Section V indicates that any lot used for a shared system shall not be considered buildable. It is impossible for this system to be on a separate lot, and the Applicant is not proposing a subdivision. Therefore, the Board waives Section V of the Board of Health Rules.

Paragraph Number 6 of Section VI of the Board of Health Rules requires a chain link or other fence of minimum criteria enclosing all detention/retention areas. This project is not a subdivision. The Board is satisfied with the design and safety of the stormwater management infrastructure. It is appropriate to waive this regulation.

Demolition Delay Bylaw:

The existing two-family dwelling on the Locus is of an age that it is jurisdictional to the Scituate Historical Commission. The Historical Commission had ample opportunity to comment on this application and the proposed demolition and did not do so. The Board has acted on behalf of the Historical Commission in the review of the comprehensive permit application. The Board has determined that said existing dwelling is not historically significant and thereby waives the imposition of a demolition delay on the razing of that structure.