

DECISION
BREWSTER ZONING BOARD OF APPEALS
Millstone Road Comprehensive Permit Application

Decision Number: 23-04

Date Application Filed: December 22, 2022

Applicant: Preservation of Affordable Housing, Inc./Housing Assistance Corporation

Premises Affected: 0 Millstone Road, Assessor's Map 98 Lot 12

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

Public Notice: January 20, 27, 2023

Public Hearing(s) held: February 7, 2023; March 14, 2023; April 11, 2023; May 9, 2023

Decision of the Board: Approved with Conditions

Members participating: Brian Harrison (Chair), Jeff Carter (Vice Chair), Patricia Eggers, Bruce MacGregor and Trish Metz

Date of Decision: June 13, 2023

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I. FINDINGS

The Zoning Board of Appeals hereby finds as follows:

Procedural History

1. On December 22, 2023, Preservation of Affordable Housing, Inc. and Housing Assistance Corp. ("Applicant") submitted a Comprehensive Permit application to construct 45 rental units ("Project") in eleven buildings on approximately 16.6 acres of land at 0 Millstone Road in Brewster (Tax Assessor's Map 98 Lot 12) ("Site"). Thirty-five units will be affordable for households with incomes at or below 60 percent of Area Median Income (AMI), and ten units will be affordable for households with incomes at or below 80 percent AMI. Upon receipt of the application, Brewster Planning Department staff distributed copies of the application to Local Boards and town departments for review and comment.
2. The Zoning Board of Appeals ("Board") opened and held a duly-noticed public hearing on February 7, 2023, and continued the hearing to March 14, 2023; April 11, 2023; and May 9, 2023. The Applicant consented in writing to extend the opening of the hearing. The Board closed the public hearing on May 9, 2023. The Board reviewed a draft written decision and deliberated on the Project at its duly-noticed public meeting on June 13, 2023, and voted unanimously, five votes in favor, none opposed, to grant the Comprehensive Permit with Conditions.
3. At its hearing on February 7, 2023, the Board received presentations from the Applicant's development team. Attorney Peter Freeman provided an overview of the Project and the basic requirements of G.L. c. 40B, §§ 20-23 ("Chapter 40B") for the Board. He described the proposed development as a "friendly 40B" because the project is on land owned by the Town of Brewster and which will be ground-leased to the Applicant as a result of a Request for Proposals (RFP) process involving the Brewster Affordable Housing Trust and Select Board. After designating the Applicant as the developer of the Site, the Select Board supported a Low-Income Housing Tax Credits (LIHTC) Project Eligibility Application to the Department of Housing and Community Development (DHCD) by letter dated August 10, 2022, and on August 17, 2022, DHCD issued a Project Eligibility Letter to the Applicant. The Applicant's design team, including Joseph Henderson, P.E., from Horsley Witten Group, and Paul Attemann, AIA, from Union Studio Architecture and Community Design., presented information about the building plans, site design, stormwater, wastewater disposal, wetlands, traffic, and other information within the Board's purview under Chapter 40B.
4. When the hearing continued on March 14, 2023, the Applicant's traffic consultant, Jeffrey Dirk, P.E., of Vanasse & Associates, Inc., presented the Traffic Impact Assessment (TIA) for the project.

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5. To evaluate the plans, documents, and testimony submitted by the Applicant's development team, the Board sought technical assistance and comments from Town staff and other boards and commissions. The Board received comments and recommendations from the DPW Director, Planning Board and Planning Department, Housing Coordinator, Health Department, Assistant Town Manager, Fire Department, and Cape Cod Commission.
6. Abutters presented several questions and comments to the Board during the course of the public hearing. Their concerns covered the following topics:
 - (a) Whether the Project would disturb wildlife habitat;
 - (b) Adequacy of the proposed parking;
 - (c) Buffering and fencing as related to claimed visual, noise and privacy impacts;
 - (d) Traffic impact on Millstone Road;
 - (e) Building height;
 - (f) Project cost; and
 - (g) Whether Brewster needs more affordable housing.
7. The Board also questioned several aspects of the Project during the public hearing, specifically:
 - (a) Adequacy of the proposed parking;
 - (b) The affordability levels and income ranges to be served by the Project;
 - (c) Whether a financial impact analysis should be conducted; and
 - (d) Whether portions of the Site not currently proposed for development could be proposed for additional development in the future.
8. To respond to these questions and comments, the Applicant provided the following:
 - (a) The Site is not within a state-designated Priority Habitat Area, as noted both by the Applicant's engineering consultant and the report from the Cape Cod Commission;
 - (b) The proposed number of parking spaces was increased by the Applicant during the course of the hearing, and the plans were revised to show the additional parking, larger parking spaces, and to allow for reserve parking;
 - (c) Fencing and additional landscaping was provided where needed and as appropriate, and the plans were revised accordingly;
 - (d) The addition of vehicular traffic on Millstone Road will be a *de minimis* impact on existing traffic volumes, as reported in the TIA, and safe sight lines for the Project's access drive would be provided with the necessary clearing within the Millstone Road layout.
9. The Assistant Town Manager, the Town's Housing Coordinator, Town Planner, and Brewster Housing Partnership provided other comments as well:
 - (a) The size of the proposed Project represents what is authorized under the Town's land Disposition Agreement with the Applicant, and any additional development would violate the terms of that agreement;
 - (b) Seventy-two percent of the Site will remain undeveloped open space;

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- (c) Affordable housing lottery information from the past two Chapter 40B developments in Brewster indicates there is a continuing regional need for affordable housing. For Brewster Woods and Serenity, 81 percent of the qualified applicants were residents of Cape Cod communities, including Brewster.
- 10. Sitting for the Board and present for the public hearing process were Brian Harrison, Chair, Bruce MacGregor, Pat Eggers, Jeff Carter, and Trish Metz. The first hearing session was held virtually; all subsequent public hearing and meeting sessions were held in person. Mr. MacGregor missed the first hearing session but subsequently reviewed all evidence from that missed session. Mr. MacGregor's affidavit certifying the same, pursuant to MGL Ch 39, Section 23D, has been accepted into the hearing record.
- 11. All documents received in connection with this application and the public hearing process are on file with the Brewster Board of Appeals.

Governing Law

- 12. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Massachusetts Department of Housing and Community Development ("DHCD"), 760 CMR 56.00 et seq. (the "Regulations").
- 13. The Act promotes regional distribution of low- or moderate-income housing by preventing individual cities and towns from using exclusionary zoning to block construction of such housing. Toward these ends, the purposes of the Act are satisfied if: (a) a town has low or moderate income housing in excess of 10 percent of the total number of year-round housing units reported in the latest decennial census or (b) which is on sites comprising 1.5 percent or more of the town's total land area zoned for residential, commercial, or industrial use, or (c) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3 percent of such total area or 10 acres, whichever is larger, in one year.
- 14. DHCD's Regulations expand the definition of what constitutes satisfaction of the statute to include such methods as "recent progress" toward the statutory minima or compliance with a DHCD-approved Housing Production Plan (HPP), all as described in 760 CMR 56.03(1). The Town of Brewster has an approved HPP, and as of the date of the Application, the Town's HPP was certified for one year (expiring on May 15, 2023). Accordingly, the Board issued a Reservation of Rights letter to the Applicant within 15 days of opening the public hearing. Nevertheless, the Board (and Applicant) proceeded with the public hearing process. DHCD acknowledged receipt of a copy of said letter in writing.
- 15. The Board's decision on a comprehensive permit must balance the regional need for low- or moderate-income housing against the Town's long-range planning goals, local requirements and regulations to the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the

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proposed housing, the surrounding neighborhood, or the Town as a whole. A board of appeals may approve a project subject to reasonable conditions to mitigate its impacts.

16. At present, the Town of Brewster does not meet the statutory minima set forth in G.L. c. 40B § 20 or 760 CMR 56.03(3).

Jurisdictional Findings

17. The Applicant meets the jurisdictional requirements under Chapter 40B. The Subsidizing Agency for the Project is DHCD. 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). Specifically:

- (a) Applicant's Status. The Applicant is a partnership of Preservation of Affordable Housing, Inc. (POAH, Inc.) and Housing Assistance Corp. ("HAC"), both of which are non-profit organizations, and the partnership agrees and intends to enter into a Regulatory Agreement with DHCD under the Federal Low Income Housing Tax Credit ("LIHTC") Program (the "LIHTC Regulatory Agreement"). Therefore, as found by DHCD in the Project Eligibility Letter described below, the Applicant is an eligible Applicant pursuant to 760 CMR 56.04(1)(a).
- (b) Fundable Project. The Applicant has submitted a Project Eligibility Letter from DHCD dated August 17, 2022, which confirms the project's eligibility for receiving a governmental subsidy under the LIHTC Program and the suitability of the site. Therefore, the Applicant fulfills the requirement of 760 CMR 56.04(1)(b), which states: "The project shall be fundable under a subsidizing agency under a low- and moderate-income subsidy program."
- (c) Site Control by Applicant. Housing Assistance Corporation and Preservation of Affordable Housing LLC, an affiliate of Preservation of Affordable Housing, Inc., have entered into a Land Disposition Agreement dated 8/25/22 with the Town of Brewster and Brewster Affordable Housing Trust to develop the Site. Therefore, the Applicant controls the site as required by 760 CMR 56.04(1)(c).

Findings of Fact

18. The Site is in the Residential Low Density (R-L) Zoning District with lot frontage on and direct access from Millstone Road. The Site meets the zoning bylaw's minimum lot width and frontage requirements.
19. The Project consists of 45 rental units with a mix of one-, two-, and three-bedroom units (80 total bedrooms) in ten multifamily residential buildings, a community building with laundry facilities and other amenities, and supporting infrastructure such as driveways, parking, and wastewater and stormwater facilities, depicted and described in the application materials, as revised and supplemented ("Project").
20. The Project will provide 45 units of affordable housing, consistent with needs identified in the Town of Brewster Housing Production Plan, which was approved by the Brewster Select Board and Planning Board in July 2022.

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21. The Site is owned by the Town of Brewster, previously acquired and designated for community housing purposes by Brewster Town Meeting, and the Town administration together with the Affordable Housing Trust and the Town's Housing Coordinator, and other Town departments, spent considerable time developing a Request for Proposals (RFP) which called for the type of development that the Applicant is proposing. The Town received and used an MHP Technical Assistance grant to help develop the RFP. A robust, professionally facilitated community engagement process preceded drafting of the RFP. The Town had prepared a Watershed Study and Due Diligence Report by Bohler Engineering to assess and inform future development of the Site pursuant to the RFP.
22. In response to the RFP, the Applicant submitted a proposal and the Town selected the Applicant to develop the site for affordable housing consistent with the RFP.
23. The Applicant is proceeding under a Land Disposition Agreement (LDA) with the Town. The Project as described in the application, including as revised and supplemented, is consistent with the material terms of the LDA.
24. Consistent with the terms of the RFP, the Applicant intentionally clustered the proposed buildings and infrastructure on approximately 4.7 acres of the 16.6 acres of the Site in order to preserve as much undisturbed area as possible.
25. The Site is not in an Area of Critical Environmental Concern nor is it in or does it include any other environmentally sensitive areas, including without limitation a water recharge area/ Zone II, special flood hazard zone, wetlands or wetland buffer zones, and it is not upgradient of a nitrogen sensitive tidal embayment and not upgradient of any freshwater ponds.
26. The Site has no Priority Habitat Area designated by the Natural Heritage and Endangered Species Program on the Site and is not subject to any regional or state filings or determinations with respect to habitat protection.
27. The Applicant had prepared by its consultant Horsley Witten and submitted with its application an Existing Conditions Report/ Natural Resource Analysis, a Stormwater Analysis and Drainage Report, and a Phase 1 Environmental Site Assessment, all dated December 2022. The Town has a Stormwater Management Bylaw and corresponding regulations; the Applicant's Stormwater Analysis and Drainage Report complies with said bylaw and regulations, without Waiver.
28. The Site is not located in an historic district, though Millstone Road is a locally designated Scenic Road. Millstone Road is a public (town) way.
29. The Project is not located in the "District of Critical Planning Concern" Groundwater Overlay District of the Zoning Bylaw, and thus no Water Quality Certificate or review by

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the Water Quality Review Committee is required for the Project, and no Waiver is required relative thereto.

30. The Project completed formal staff review (Brewster Code Ch. 83) prior to filing the comprehensive permit application. The Town Planner issued a staff review report to the Applicant, a copy of which was provided to the Zoning Board of Appeals for the hearing record.
31. The Project is subject to the Scenic Roads Act and Shade Tree Act, and the approval of this Comprehensive Permit includes approval of tree clearing within the Millstone Road layout as shown on the Applicant's plans.
32. The Applicant has communicated with the Cape Cod Regional Transit Authority (CCRTA) about on-call, off-route service that will be available to the Project, and the potential for a future fixed route stop at the Site.
33. The Town of Brewster Planning Board heard a presentation from the Applicant at its January 25, 2023 meeting, and the Planning Board "voted unanimously to communicate to the Zoning Board of Appeals its support of the project and of the requests for waivers relating to matters within the Planning Board's purview" (citation from Planning Board Memorandum to the Board dated January 30, 2023).
34. There is an acute rental housing shortage in the Town of Brewster and the Cape Cod region.
35. The Applicant has complied with all rules and regulations of the Board of Appeals as they pertain to the application for a Comprehensive Permit, except as waived in this decision.
36. The Applicant requested certain Waivers from the Town's applicable requirements, bylaws and regulations in the application, and revised and supplemented its request throughout the hearing process. A list of said Waivers and Board's corresponding Findings about the Waivers is attached hereto as Exhibit B.
37. No fee waivers are granted hereunder. Should the Applicant desire to pursue fee waivers related to building permits, disposal works construction permits or municipal water service, it shall pursue the same with the Select Board, Board of Health and Water Commission, respectively. The Select Board has adopted a Fee Waiver Policy, revised 12/21/20, which specifically exempts Town-sponsored projects including affordable housing development from certain applicable permit and license fees.
38. The Select Board will consider and it is anticipated that the Select Board will pursue approval of "local preference" for initial lease-up of the Project from DHCD, potentially up to a maximum 70% permitted under DHCD guidelines. The Select Board will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the

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level of local preference requested and to obtain approval of the categories of persons qualifying for the same. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence, as requested. In no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves local preference or any aspect thereof.

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

II. 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 under Chapter 40B for the development described herein, subject to the Conditions set forth below. The Board notes that the Applicant has not identified any of the following conditions as requirements that will render the Project uneconomic. Said Conditions are consistent with Local Concerns.

The Board also grants the Waivers substantially as requested by the Applicant, a list of which are attached hereto and incorporated herein by reference as Exhibit B. The Waivers are Consistent with Local Needs and are required to permit the construction and operation of the Project.

III. CONDITIONS

General

1. The holder of this Comprehensive Permit is the Applicant, Preservation of Affordable Housing, Inc., and the Housing Assistance Corporation. The Applicant, its successors and assigns shall comply with this Decision and all applicable requirements of Chapter 40B and the regulations adopted thereunder. The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the Applicant and the successors and assigns of the Applicant, and the obligations shall run with the land, as set out in this Condition. 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. Prior to substantial completion of construction, this Decision may be transferred pursuant to the provisions of 760 CMR 56.05(12)(b), subject to approval of the Subsidizing Agency with notice to this Board. After substantial completion, this Decision shall be deemed to run with the land pursuant to 760 CMR 56.05(12)(b).
2. Except as may otherwise be provided in the following Conditions, the Project shall be constructed substantially in conformance with the plans, documents and drawings listed in Exhibit A attached hereto and incorporated herein by reference, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project ("Approved Plans"). The Project includes all features shown on the Approved Plans or as otherwise required by this Comprehensive Permit.

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3. Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Building Inspector who shall have the authority to approve such changes as immaterial changes. If the Building Inspector determines that the proposed changes do not conform to the requirements of this comprehensive permit, s/he shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this decision or seek modification in accordance with 760 CMR 56.05(11).
4. The Project shall consist of not more than 45 units with a mix of one-, two-, and three-bedroom units in ten multifamily residential buildings as shown on the Approved Plans.
5. There shall be 79 off-street parking spaces, as well as a reserve area for possible future additional parking spaces which would result in a net gain of 8 spaces (87 in total), all as depicted in the Approved Plans (5 accessible spaces are proposed as part of the 79 spaces).
 - (a) Three years after the issuance of the last/ final Certificate of Occupancy for the Project, or earlier if identified by the Building Inspector and communicated to the Applicant, the Applicant shall submit to the Building Inspector an assessment as to whether the 79 constructed parking spaces are adequately serving the parking needs of the Project; such assessment shall include the number of vehicles owned by the tenants, the number of spaces that are assigned to the units, the number of spaces available to guests; and the average number of vacant spaces, if any.
 - (b) If in the Building Inspector's opinion additional parking spaces are needed, then the Building Inspector shall so notify the Applicant in writing and inform the Applicant of how many of the reserve parking spaces must be constructed in the area denoted for reserve parking in the Approved Plans; and the Applicant shall do so within three (3) months of such notice, subject to reasonable extension due to weather conditions or the like.
 - (c) Such construction may include any necessary grading or drainage facilities; the reserve parking area may be constructed of pervious surface adequate for parking purposes.
 - (d) Further review by the Board or modification to this Decision shall not be required to construct the reserve spaces if consistent with this Condition.
6. All dwelling units approved under this Comprehensive Permit shall be rental units.
7. The Applicant shall comply with all local regulations of the Town of Brewster and its boards and commissions unless specifically waived herein or as otherwise addressed in these conditions.
8. The Applicant shall copy the Building Inspector on all correspondence by and between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.

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9. Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Building Inspector or other Town Departments, the Applicant shall pay all permit application fees normally charged by the Town. The Building Inspector or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission and payment of application fees. For submissions that require assistance from an outside consultant, as determined by the Building Inspector or applicable Department Head, the thirty-day time period shall not begin until the consultant's fee has been fully funded by the Applicant.
10. Nothing herein shall affect the Applicant's obligations to the Town under the LDA.
11. The sidewalks, driveways, roads, utilities, drainage systems, wastewater disposal systems, water system, and all other infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity unless otherwise agreed to and accepted in writing by the Town, consistent with all applicable laws and regulations. Subject to the foregoing, the Town of Brewster 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, trash removal, recycling, and landscape maintenance.
12. Unless the language of a Condition suggests that it is intended to have shorter duration, all Conditions in this Comprehensive Permit shall be "in perpetuity" and remain in full force and effect for the life of the Project.
13. Prior to commencement of any Project construction, the Applicant shall record this Comprehensive Permit with the Barnstable County Registry of Deeds, at the Applicant's expense, and provide proof of the same to the Building Inspector. The Board reserves the right to cause this Decision to be recorded at the Barnstable County Registry of Deeds at any time.

Affordability Requirements

14. All of the units on the Site shall be affordable in perpetuity: of the forty-five (45) total units, thirty-five (35) units shall be affordable to and occupied by households with incomes at or below 60 percent of AMI (the "Low Income Households") and the remaining ten (10) units shall be affordable to and occupied by households with incomes at or below 80 percent of AMI (the "Moderate Income Households"). All units required to be affordable to and occupied by Low Income Households or Moderate Income Households are referred to herein as "Affordable Units." Notwithstanding the foregoing, in the event of foreclosure, a minimum of 45% of the units on the Site shall be and remain Affordable Units: 25% of the units shall be permanently affordable to and occupied by Moderate Income Households, and an additional 20% of the units shall be permanently affordable to and occupied by Low Income Households. However, in the event of a conflict between this condition and the DHCD requirements under the LIHTC Program, the DHCD requirements shall control, including without limitation the provisions of the LIHTC Program and Regulatory Agreement concerning foreclosure.

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15. All Affordable Units shall be eligible for inclusion in DHCD's Subsidized Housing Inventory ("SHI") in accordance with 760 CMR 56.02(2).
16. To comply with the requirements of the LIHTC Program, the Affordable Units shall be available to and restricted for rent and occupancy as required by the LIHTC Program and as approved by DHCD (which currently requires the Affordable Units to be available to and restricted for rent and occupancy to eligible households, as determined by HUD, provided that the average household income does not exceed 60 percent HUD area median income).
17. The Applicant and the Town shall enter into a Local Regulatory and Use Agreement, incorporating the provisions of Conditions 14 and 15 hereof, in form and substance reasonably acceptable to Applicant and the Town, and approved by DHCD under the relevant provisions of the Massachusetts General Laws and DHCD's regulations and Guidelines (the "Local Regulatory Agreement"), sufficient to include all the Affordable Units in the SHI, which Local Regulatory Agreement shall be recorded with the Barnstable Registry of Deeds prior to the issuance of a building permit. Notwithstanding the foregoing, the terms of the LIHTC Regulatory Agreement and any applicable rent restrictions of the federal low-income housing tax credit program under Section 42 of the Internal Revenue Code of 1986, as amended, set forth in the LIHTC Regulatory Agreement, shall take precedence over the Local Regulatory Agreement until such time as the LIHTC Regulatory Agreement expires, terminates or is otherwise no longer in effect and there is no other substitute regulatory agreement in effect. Any reference herein to a Regulatory Agreement herein shall refer to the LIHTC Regulatory Agreement or substitute regulatory agreement for so long as the same is in effect, after which all references to a Regulatory Agreement shall mean the Local Regulatory Agreement. Execution and recording of a "Restriction" approved by the Town in accordance with the LDA will satisfy the foregoing requirement for a Local Regulatory Agreement.
18. The Affordable Units shall be dispersed throughout the Project in accordance with the DHCD's Comprehensive Permit Guidelines (it being understood that the location of Affordable Units can change over time as provided in the Regulatory Agreement).
19. The Applicant shall be responsible for maintaining records sufficient with DHCD guidelines for the rental of such Affordable Units by income-eligible households.
20. The Applicant shall obtain the Subsidizing Agency's approval of an Affirmative Fair Housing Marketing Plan prior to making any of the Affordable Units available for rent. The Plan approved by the Subsidizing Agency shall be provided to the Planning Department and Brewster Housing Partnership for informational purposes.
21. The Subsidizing Agency is responsible for regulating, monitoring, and enforcement in accordance with the LIHTC Regulatory Agreement. The Applicant and successors and assigns as owners of the Project, shall pay, in perpetuity, any reasonable fees charged by the Subsidizing Agency's monitoring agent and any subsequent monitoring agent retained by the

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Town when the LIHTC Regulatory Agreement is no longer in effect, as set forth in the Local Regulatory Agreement. The Town of Brewster shall not be responsible for paying such fees or for monitoring the Project's compliance with the Regulatory Agreement.

Submission Requirements

22. Prior to any construction on the Site, whether or not pursuant to a building permit, the Applicant shall:
 - (a) Submit Final Engineering Drawings and Plans that conform to the requirements of this Comprehensive Permit and incorporate the conditions herein ("Final Plans") to the Building Inspector for review and approval as to conformity with this Decision. The Final Plans shall incorporate all conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record, the Registered (Civil) Engineer of record, the Registered Landscape Architect of record, or the Registered Architect of record. No construction of buildings, structures, or improvements shall be performed on the Site unless they are substantially in accordance with the Approved Plans and the Final Plans;
 - (b) Submit a final landscaping plan consistent with the Approved 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; including areas where the existing vegetated buffer will be enhanced with additional plantings;
 - 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, ornamental trees, shrubs, and groundcovers;
 - v. Planting details for coniferous and deciduous shade trees, ornamental trees, and shrubs;
 - vi. Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;
 - vii. Tree protection and preservation plans;
 - viii. Construction details; and
 - ix. Location of fencing on southeast property line near the Site's access to Millstone Road, designed to shield the neighboring property from vehicular headlights in the driveway area.
 - x. All plantings shall consist of non-invasive, drought-tolerant species. Plantings installed along drives and walkways shall be salt-tolerant as well.
 - (c) If the Project is to be phased, provide a Phasing Plan, in form and substance satisfactory to the Building Inspector, showing, among other things, construction of the access drives and utilities sufficient to serve the current phase(s) proposed, and protection of landscaping, plantings and improvements. The Phasing Plan shall be provided to the Building Inspector at least seven days prior to the start of construction;
 - (d) Obtain approval of proposed fire hydrant locations from the Brewster Fire Department.
23. The Applicant and the site general contractor shall attend a preconstruction conference with the Building Inspector and other Town department heads as the Building Inspector may determine.

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24. Prior to the issuance of a building permit for the Project, the Applicant shall:
- (a) Submit the Final Plans for administrative review by the Board (no public hearing required) as to conformity with this Decision;
 - (b) Submit the Final Plans and specifications for the wastewater treatment facilities to the Board of Health for review and approval as to conformity with this Decision prior to the issuance of a foundation permit;
 - (c) Submit to the Building Inspector final Architectural Plans prepared and sealed by an architect with a valid registration in the Commonwealth of Massachusetts. The Architectural Plans shall be submitted in such form as the Building Inspector may require pursuant to the State Building Code;
 - (d) Obtain and file with the Building Inspector a written review from the Brewster Water Department of the Applicant's construction plans and engineering details to tie into the public water distribution system, and to undertake any work and improvements within public ways, all in a manner consistent with the Approved Plans and the Conditions of this Comprehensive Permit; provided, however, permission is granted by this Decision for the project to connect to the municipal water system;
 - (e) Submit to the Building Inspector a copy of the fully executed LIHTC Regulatory Agreement for the Project; provided, however, due to the fact that such Regulatory Agreement is not executed by DHCD until the funding closing for the Project, this Condition shall be deemed satisfied if the Building Inspector issues a "will issue" letter as to the Building Permits indicating that they will be issued upon submission by the Applicant of the fully executed LIHTC Regulatory Agreement and the payment of the applicable fess for the Building Permits;
 - (f) Submits to the Building Inspector a copy of the Local Regulatory Agreement duly signed by the Applicant, the Town, and DHCD and recorded with the Barnstable Registry of Deeds and/or the Barnstable Registry District of the Land Court. All mortgages and other liens on the Site shall be subject to the Local Regulatory Agreement.
 - (g) Obtain and file with the Building Inspector a copy of all federal, state, and local permits and approvals required for the Project;
 - (h) Obtain all necessary building, electrical, plumbing, and associated permits for the Project required by state law.

Construction Completion; Certificate of Occupancy

25. Prior to issuance of the first certificate of occupancy or certificate for any portion or phase of the Project, the Applicant shall:
- (a) If the Project is built in Phases, submit interim as-built utilities plan and profiles for each Phase as completed, showing actual-in ground installation of the utilities and stormwater management systems, to the Department of Public Works;
 - (b) Obtain acceptance from the Fire Department of testing of all smoke and carbon monoxide detectors within the dwelling units, for the portion or phase as applicable;
 - (c) Provide evidence in a form satisfactory to the Building Inspector that the Applicant complies with the Traffic Safety conditions listed under the Section below.
26. Prior to issuance of the last/ final certificate of occupancy for the Project, the Applicant shall:

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- (a) Submit to the Department of Public Works (DPW), in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all utilities, roadway, sidewalk and associated construction, and stormwater management systems. The file format shall be in accordance with the DPW's requirements. 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 (or Meters, as required by the Town);
- (b) Submit to the Building Inspector as-built plans for all buildings in the Project;
- (c) Complete all items on a site construction "punch list" that might be developed by the Department of Public Works.

Project Design and Construction

- 27. The Applicant shall allow the Board and Town employees, agents, and representatives to observe and inspect the Site and construction progress until such time as the Project has been completed.
- 28. The Applicant shall ensure that nuisance conditions do not exist in and around the Site during construction operations. The Applicant shall at all times use reasonable means to minimize inconvenience to businesses and residents in the surrounding area.
- 29. Soil material used as backfill for pipes, access drives, infiltration beds, porous pavement areas, and other underground drainage structures shall be certified by the Design Engineer to the Building Inspector as meeting design specifications.
- 30. Construction activities shall only be conducted between the hours of 7:00 AM., and 6:00 PM., Monday through Friday, and between 9:00 AM and 3:00 PM on Saturday. For purposes of this Condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; 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 Department of Public Works and shall not be subject to the timing restrictions set forth above. Finish work inside a structure once fully enclosed (walls, doors, windows and roof) is not restricted by this condition. Parking of all vehicles and equipment must be on site during construction.
- 31. 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.
- 32. No building areas shall be left in an open, unstabilized condition longer than sixty (60) days.

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33. As set out in more detail in Section 5 of the Applicant's Stormwater Analysis and Drainage Report, temporary stabilization on the Site shall be accomplished by hay bales, hay coverings or matting; final stabilization shall be accomplished by loaming and seeding exposed areas.
34. Exterior lighting on the Site shall be downlit, full cut-off and fully shielded in order to minimize glare or trespass onto or into any adjacent property.
35. During the pendency of construction, the Applicant shall erect barriers to prevent turtles from entering the limit of work for the Project, and conduct sweeps to remove any found turtles and move them elsewhere on-site outside said limit of work.

Traffic Safety Conditions

36. The Applicant shall provide a bus stop area or bench on-site and continue to work with the CCRTA on serving the Site.
37. The Applicant shall implement the "Recommendations" of Vanasse & Associates, Inc., in its Traffic Impact Assessment Report dated January 2023 (as revised by letter dated March 31, 2023) concerning on- and off-site traffic mitigation for safe, multi-modal travel into and out of the Site. Specifically:
 The Project site driveway should be a minimum of 20-feet in width where parking will not be permitted and designed to accommodate the turning and maneuvering requirements of the largest anticipated responding emergency vehicle. If the minimum driveway width is used, "No Stopping Any Time" signs shall be installed along both sides of the driveway.;
 - (a) Where perpendicular parking is proposed, the drive aisle behind the parking should be a minimum of 22 feet in width in order to facilitate parking maneuvers;
 - (b) Vehicles exiting the Project site should be placed under STOP-sign control with a marked STOP-line provided;
 - (c) All signs and pavement markings to be installed within the Project site should conform to the applicable standards of the Manual on Uniform Traffic Control Devices (MUTCD);
 - (d) A sidewalk and marked crosswalks are provided within the Project site that connect the proposed buildings to the amenity building and parking area, and extend along the driveway to Millstone Road where a future sidewalk is to be constructed by the Town. It is recommended that a widened sidewalk area be provided at Millstone Road to serve as a school bus waiting area;
 - (e) Existing trees and vegetation located along the west side of Millstone Road within the sight triangle areas of the Project site driveway shall be selectively trimmed and/or removed as necessary in order to provide the required sight lines to and from the driveway. The Applicant should continue to communicate with Brewster DPW and coordinate the Project with work that will be required to complete the proposed Millstone Road improvements, which includes sidewalks, that is being advanced by the Town independent of the Project. The Applicant shall not, pursuant to this Decision, be responsible to construct or pay for the construction of any portion of the Town's said Millstone Road improvements program;

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- (f) Signs and landscaping to be installed as a part of the Project within the intersection sight triangle areas of the Project site driveway should be designed and maintained so as not to restrict lines of sight;
- (g) Snow accumulations (windrows) within the sight triangle areas of the Project site driveway will be promptly removed where such accumulations would impede sight lines.
- (h) Approval of the foregoing measures are granted by this Decision, provided however, the Applicant shall comply with technical requirements of the Town of Brewster DPW.

Water, Wastewater Disposal, Stormwater Management, and Utilities

- 38. Utilities shall be installed underground by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit, stormwater management systems, and the like.
- 39. The water, wastewater, drainage, and stormwater management systems servicing the buildings shall be installed and tested in accordance with applicable Town of Brewster standard requirements and protocols, except as Waived by this Decision.
- 40. The Stormwater design shall function consistent with the Approved Plans, as revised, and the Applicant's Stormwater Analysis and Drainage Report. Specifically, without limitation, the Applicant shall comply with the construction period erosion and sedimentation controls set out in Section 5 of said Report, and Appendix G- the Operation and Maintenance Plan.
- 41. The Applicant shall comply with the following as to the wastewater system:
 - (a) The Leach Facility shall be pressure dosed per Title 5 requirements for flows greater than 2000 gpd unless a state approved technology is used that eliminates the requirement for pressure dosing;
 - (b) Installation of an I/A Technology under DEP General Approval;
 - (c) Quarterly effluent sampling and field testing for pH, dissolved oxygen, turbidity, and color;
 - (d) Quarterly effluent sampling for settleable solids and total nitrogen to be analyzed at a certified laboratory;
 - (e) Annual measurements of depth ponding in the soil absorption system and thickness of scum layer in the septic tanks and other process tanks;
 - (f) Preparation of annual summary reports to be submitted to the Brewster Board of Health and presented to same once per year by the system operator/consultant or more frequently as needed for noncompliance.
 - (g) After the first year of system operation, the frequency of sampling can be reduced upon written request and approval by the Board of Health, or its designated agent, without the requirement for further review by the ZBA or modification to this Decision.

Other Conditions

- 42. Upon submission of any documents or plans that must be submitted to the Board for administrative approval, the Board shall notify the Applicant in writing within thirty (30) days of submission either that such documents and/or plans have been approved by the Board or its designee, or that they are not approved (with a statement of the specific reasons

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why they are not approved). If the Board does not so notify the Applicant within said thirty (30) days, such documents and/or plans shall be deemed approved.

43. 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. In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.
44. This Comprehensive Permit prohibits the parking or storage of any unregistered vehicle on the Site, and likewise prohibits the service of any vehicles on the Site.
45. 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; (b) have access to, and inspect, examine and make copies of all of the books and records of the Applicant pertaining to the Project; or (c) 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.

CONCLUSION

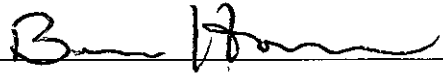

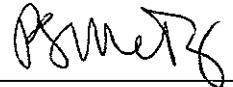

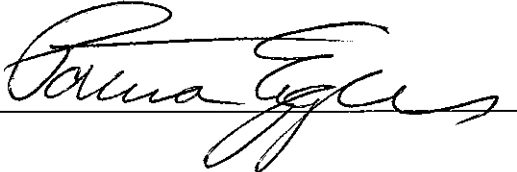
For all the reasons stated above and pursuant to the Board's authority found in G.L. c.40B, §§ 20-23, the comprehensive permit application from Preservation for Affordable Housing, Inc., and Housing Assistance Corporation for the residential Project at 0 Millstone Road, Brewster, Massachusetts is hereby APPROVED WITH CONDITIONS, along with Waivers substantially as requested.

(Signature Page Follows)

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SIGNATURES

Approving ZBA Members:

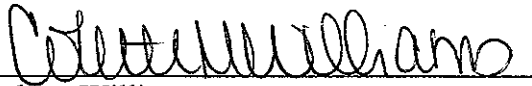
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NOTICE

Appeals, if any, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within 20 days after the filing of the decision in the Office of the Town Clerk, Town Hall, 2198 Main Street, Brewster, Massachusetts 02631.

CERTIFICATION

The foregoing decision has hereby been filed with the Town Clerk of the Town of Brewster, Massachusetts on this 14th day of June, 2023.



Colette Williams
Town Clerk
Brewster, Massachusetts

I, Colette Williams, do hereby certify that twenty days have elapsed since the above-referenced decision of the Board of Appeals, which was filed in the office of the Town Clerk on June 14, 2023, and that no appeal has been filed with the Town Clerk.



Colette Williams
Town Clerk
Brewster, Massachusetts

7/6/2023
Date

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EXHIBIT A

The following are the civil engineering and architectural plans submitted to the Board; to the extent that certain plans were modified since submission to the Board, the latest date of such plans constitute the "Approved Plans" per Condition (General) 3:

Civil Engineering Plans

Wet-stamped plan set entitled, "0 Millstone Road Comprehensive Permit Set, Brewster, Massachusetts, December 20, 2022, Revised: May 2, 2023," prepared by Horsley Witten Group, Inc. for Preservation of Affordable Housing, Inc., consisting of the following sheets:

Sheet List Table	
Sheet Number	Sheet Title
C-1	COVER
C-2	GENERAL NOTES
C-3	PROPERTY LINE PLAN
C-4	EXISTING CONDITIONS
C-5	DEMOLITION & EROSION CONTROL PLAN
C-6	OVERALL SITE PLAN
C-7	SITE PLAN (1)
C-8	SITE PLAN (2)
C-9	GRADING PLAN (1)
C-10	GRADING PLAN (2)
C-11	UTILITY PLAN (1)
C-12	UTILITY PLAN (2)
C-13	DETAILS (1)
C-14	DETAILS (2)
C-15	DETAILS (3)
C-16	DETAILS (4)
L-1	PLANTING PLAN (1)
L-2	PLANTING PLAN (2)
L-3	PLANTING DETAILS

Architectural Plans

Wet-stamped Floor Plans and Exterior Elevations Buildings 1 through 11, prepared by Union Studio for Preservation of Affordable Housing and Housing Assistance Corporation, 0 Millstone Road Comprehensive Permit, consisting of 11 sheets, dated 12/20/2023.

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EXHIBIT B

The following are Waivers approved by the Board, revised and supplemented through the review process, substantially as requested by the Applicant. Associated Board Findings accompany the Waivers, below.

Brewster ZBA Comprehensive Permit Regulations

The Board waives the following provisions of its Chapter 40B Regulations:

- Section 3.01(k): The Subsidizing Agency will file a Project Notification Form with the Massachusetts Historical Commission ("MHC") in compliance with the state MHC regulations.
- Section 3.01(l): The Project does not require review by the Natural Heritage and Endangered Species Program ("NHESP") because none of the Project locus falls within a Priority Habitat of Rare Species or an Estimated Habitat of Rare Wildlife.
- Section 3.01(m): Financial information such as a pro forma is not applicable as it is in conflict with 760 CMR 56.05(6); a pro forma is more properly within DHCD's purview.
- Section 3.01(o) and (q): Submission of an analysis of impacts on town services is not necessary. All town boards and staff have had an opportunity to comment on the Applicant's plans.

Brewster Zoning Bylaw

The Board grants the following waivers of Chapter 179 (Zoning) of the Code of the Town of Brewster:

- Sections 179-10 and 179-11, Applicability of Use Regulations and Table 1 (Article IV, Use Regulations): The Applicant proposes eleven buildings for multifamily development. Strict compliance with the Zoning Bylaw would prohibit the proposed multifamily dwellings because they are not allowed in the R-L district.
- Section 179-16, Table 2, Area Regulations, R-L zoning district, minimum side yard setback and footnote 1 (generally, only one principal structure shall be permitted on a lot):

	Required	Proposed
Side Yard Setback	25 feet	17 feet

The proposed project will consist of 10 residential buildings and a one community building to be permitted under a Comprehensive Permit. The proposed (south) side yard setback abuts undevelopable open space for the neighboring cluster subdivision development.

- Section 179-16, Table 3, Height and Bulk Regulations. 30' maximum height limit in the R-L district. Ten of the eleven proposed buildings will exceed 30' in height, including the tallest "Building C" which is to be constructed with a maximum height of approximately 36 feet. This height is necessary, among other things, to reduce the development footprint of the Project and to allow the proposed elevator in Building C.
- Section 179-23, Off-Street Parking and Loading. Some of the proposed parking spaces are to be 9' by 19' and the drive aisle width is 22', both as shown on the Approved Plans,

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where the required parking space dimension is 10' by 20' and drive aisle width is 24'. The reduction in parking space size and drive aisle width allows the total development footprint of the Project to be reduced.

- Section 179-34. Multifamily Dwellings not a use permitted in the R-L district. The proposed multi-family development is permitted under a Comprehensive Permit.
- Section 179-64, Site Plan Review applicability. As this is a Comprehensive Permit, all local approvals, including Site Plan Review, fall within the jurisdiction of the Zoning Board of Appeals.

Brewster Board of Health Regulations

Water Quality Report Regulation (Effective January 15, 1988)

The Board grants a waiver from the applicability of this Water Quality Report Regulation. The proposed wastewater system is designed and sited to comply with Title V requirements and Board of Health requirements. The Project Site is not in a well recharge area, not upgradient of a nitrogen sensitive tidal embayment, and not upgradient of any freshwater ponds. The Applicant prepared a nitrogen loading report and submitted it as part of its application. Site-wide nitrogen loading at 3.8 ppm is substantially lower than required under any federal, state or local standard.

Design, Operation, and Maintenance of Small Wastewater Treatment Facilities (Effective March 15, 2007)

The Board grants a waiver from the applicability of this regulation pertaining to the Design, Operation, and Maintenance of Small Wastewater Treatment Facilities. The proposed wastewater system design flow is less than 10,000 gpd and is not regulated under MassDEP groundwater discharge permit regulations. The proposed wastewater system is designed and sited to comply with Title 5 requirements and Board of Health requirements. The Project Site is not in a well recharge area, not upgradient of a nitrogen sensitive tidal embayment, and not upgradient of any freshwater ponds. Without limiting the Waiver, certain sections are described below:

1.00 Disposal Works Construction Permit. Applicant will apply for a Disposal Works Construction Permit under Massachusetts DEP Title 5 and the I/A Technology DEP General Use Approval.

4.00 SWWTF Financial Assurance Mechanism. The Applicant should not be required to establish and maintain a financial assurance mechanism to provide for repair and replacement of the septic system.

5.00 SWWTF Effluent Test Frequency Parameters and Limits. The I/A system is designed to meet an effluent Total Nitrogen concentration of 19 mg/L. Rather than monthly testing, Applicant agrees to quarterly effluent field testing of pH, dissolved oxygen, turbidity, total nitrogen and color and laboratory testing of settleable solids. Annual measurements of ponding depth in the soil absorption system and thickness of scum layer in the septic tanks and other process tanks will also be performed.

6.00 Groundwater Monitoring Installation. The Applicant should not be required to install groundwater monitoring wells.

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7.00 Reporting of all SWWTFs and Wastewater Treatment Facilities that discharge over 10,000 gallons per day. Not applicable; however, the Applicant has agreed to file an annual report with the Board of Health concerning the operations of the septic system.

8.00 Variances. Not applicable; the Board of Appeals is the permit granting authority under M.G.L. c. 40B, §§20-23.

9.00 Enforcement. Not applicable for the reason stated above. The Board of Health retains enforcement authority under Massachusetts DEP Title 5; and the Applicant agrees that the Board of Health may enforce the modified effluent testing requirement under Section 5.00 that the Applicant has agreed to as described above.

Town of Brewster General Bylaws

Scenic Road Act and Public Shade Tree Act

The Board grants a waiver from obtaining approval from the Planning Board of any tree cutting within the Millstone Road public right of way.