

Decision of the Sherborn Zoning Board of Appeals  
Comprehensive Permit (M.G.L. Chapter 40B)  
34 Brush Hill Road, Sherborn, Massachusetts

**I. Project Description**

The Applicant proposes to construct a residential development off Brush Hill Road in Sherborn, Massachusetts consisting of four (4) single family, three (3) bedroom homes, each homeownership unit, with a common driveway providing access to all unit, and associated common water, septic, and other improvements to the Site (the "Project").

**II. Property Location and Owner Information**

The 5.1 acre property is located at 34 Brush Hill Road, shown on Assessor's Map 1, Lot 0, Block 18. The property is owned by Fenix Partners Brush Hill, LLC (the "Applicant").

**III. Plans, Documents, and Exhibits**

The following are identified as highly relevant, but not an exclusive list of plans, documents and exhibits that were considered by the Zoning Board in its review of the Project and in reaching its decision.

1. Site Plans entitled PERMIT SITE PLAN for BRUSH HILL HOMES at 34 Brush Hill Road in Sherborn [Middlesex County] dated June 4, 2024, prepared by DGT Associates, Framingham, MA 01701, last updated January 15, 2025.
2. Floor Plan for 3 Bedroom Cottage.
3. Board of Health Memorandum to the Zoning Board, January 31, 2025.
4. Letter from Resident Beardsley.
5. Additional correspondence and memoranda, including:
  - a. A letter from Town of Sherborn Town Administrator, dated July 6, 2017 to MassHousing,
  - b. A letter from Town of Sherborn Town Planner to the Town Administrator, dated December 14, 2016,
  - c. A Memorandum from the Board of Health to the Board of Selectmen dated December 30, 2016,
  - d. A Memorandum from Board of Health to the Zoning Board of Appeals, dated January 30, 2025,
  - e. A Memorandum from Stantec to the Board of Health, dated January 30, 2025,
  - f. Updated BOH Plan Revision 4, dated January 21, 2025,
  - g. Correspondence from Abutter's counsel, Attorney Dan Hill dated February 9, 2025 entitled Bob Murchison Comments on Dan Hill Letter of Suggested Conditions (February 11, 2025),

- h. Correspondence from Fire Chief Ward – January 7, 2025,
- i. Pump Design Calculations, December 23, 2024,
- j. Brush Hill Soil Testing Report dated November 2023,
- k. Correspondence from Tetra Tech, Dated January 21, 2025,
- l. Transportation Impact Assessment from Vanasse & Associates, dated August 5, 2024, and
- m. Numerous letters from abutters, and their representatives.

#### **IV. Procedural History**

An application (the “Application”) was submitted to the Sherborn Zoning Board of Appeals (the “ZBA”) on June 3, 2024. The Application originally sought to construct an eight (8) single family home development under M.G.L c. 40B. The Applicant subsequently revised and reduced the size of the originally proposed project, to the current four (4) single family, 3-bedroom homes proposal.

The public hearing was opened on June 26, 2024. The ZBA held public hearings for the Project on the following dates: June 26, 2024, August 6th and 22nd, 2024, September 19, 2024, October 22, 2024, November 7, 2024, November 26, 2024, December 10, 2024, January 8<sup>th</sup> and 22<sup>nd</sup>, 2025, February 3<sup>rd</sup> and 11<sup>th</sup>, 2025. The hearings closed on February 11, 2025; deliberations closed on March 21, 2025.

#### **V. Governing Law (Chapter 40B)**

- 1. The Town of Sherborn, as of the date of this Application to the ZBA, did not meet the 10% Subsidized Housing Inventory (SHI)-eligible housing unit minimum;
- 2. The Town of Sherborn, as of the date of submission of this Application to the ZBA, did not contain SHI-eligible housing unit on sites comprising more than 1.5% of the total land area in Sherborn;
- 3. The Project would not result in the commencement in any one calendar year of construction of Low or Moderate Income Housing on sites comprising more than 0.3 of 1% of the Town's land area or 10 acres, whichever is larger; and
- 4. The Town of Sherborn does not meet any of the other Safe Harbor thresholds.

#### **VI. Findings of Fact**

- 1. The Town of Sherborn does not meet the Statutory Minima as set forth in MGL c. 40B;
- 2. The Project will not exceed the Safe Harbor thresholds as set forth in MGL c. 40B;
- 3. The Project will provide the necessary minimum number of Low or Moderate Income Housing, as defined in MGL c. 40B to be considered an "Eligible Project";
- 4. The Applicant has received a letter of Project Eligibility from MassHousing for the Project, dated January 16, 2024;



5. The Project proposes to construct a residential development off Brush Hill Road in Sherborn, Massachusetts consisting of four (4) single family homeownership unit on a total land area of approximately 5.1 acres (the Site);
6. The Site is found within the Residence-B (RB) district;
7. The Site was previously undeveloped;
8. The Project will include one (1) housing unit affordable to those persons and families making less than 80% Area Median Income (AMI) as set forth in the Chapter 40B regulations;
9. The project will be served by a single access, common driveway, which will connect the project to Brush Hill Road;
10. The Project's water supply is proposed to be provided via two (2) private on-site wells, each serving two (2) unit; and
11. Wastewater will be treated using a traditional gravity system that will discharge septic flows to a shared soil absorption system.

## **VII. Waivers Requested**

### **A. Zoning By-Law:**

1. Prohibited Uses – any building not expressly allowed is prohibited. (Section 1.6)
2. Basic Requirements – dimensional requirements – construction of four (4) single family homes on a single lot in an RB zone. (Section 3.1)
3. Schedule of Use Regulations – Multi dwelling unit in RB district prohibited (Section 3.2)
4. Schedule of Dimensional Requirements - allow minimum frontage reduction from 200 to 50 feet, side yard setback reduction from 40-feet to 30-feet and building height (Section 4.2)
5. Number and location of Dwellings on One Lot — to allow multiple dwellings on one lot (Section 4.3.6)
6. Parking Area Plans - allow parking layout as proposed without Planning Board Review prior to building permit. (Section 5.1.3)
7. Screening of Parking Areas - allow parking layout as proposed without any additional planting or screening other than as proposed. (Section 5.1.5)
8. Allowed Permanent Signs - allow project monument sign, directional and identification signs as proposed. (Section 5.2.6a)
9. Material Removal (Section 5.4)

### **B. Driveways and Scenic Road By-Law**

1. Prohibition to alter stone walls, cut trees, without the express approval of the planning board.
2. *Construction of Driveways*

### **C. Wetlands Regulation:**

1. No Waivers requested.

D. Stormwater Management:

1. Waiver requested of the entire Chapter 25.

E. Groundwater Protection

1. Waiver requested from the section in its entirety.

F. Board of Health Regulations - Domestic Water Supply:

1. Well Protective Area – protective area around semi-public wellhead
2. Well-Protection Area – distance to driveway
3. Number of Wells - allow project to proceed as planned with two (2) separate wells that will each supply potable water to four (4) separate housing unit all of which are located upon one single lot. (Section 7.0).

G. Board of Health Regulations – Waste Disposal:

1. Vertical Grades and Clearances – 5-foot depth to groundwater

H. Board of Health Regulations – Other:

1. Environmental Health and Impact Report
2. Bedrock Disruption
3. Earth Removal Standards

## VIII. Decision

Therefore, on motion duly made and seconded, the Sherborn Zoning Board of Appeals hereby APPROVES the proposed development at 34 Brush Hill Road, and most waivers heretofore requested as detailed above are granted, with the exception of Board of Health Regulations Domestic Water Supply – Well Protective Area (distance to driveway) and the Scenic Road Bylaw, construction of Driveways, as detailed herein, subject to the following CONDITIONS (No. 1-91):

### Regulatory Conditions

1. The total number of unit that may be constructed at the Premises shall be limited to 4 single family 3-bedroom homes, with a maximum of 12 bedrooms for the entire project and locus, substantially as shown on the Plan of Record.
2. As a condition of any approval hereunder, at least 25% of the dwelling unit shall be and shall remain affordable and shall be marketed and leased to eligible households whose annual income may not exceed 80% of area median income, adjusted for household sized, as determined by the United States Department of Housing and Urban Development (the "Affordable Unit"); and, subject to approval by EOHLIC, the Affordable Unit shall be and shall remain eligible to be included in the Town's Subsidized Housing Inventory, as maintained by EOHLIC.
3. The Applicant shall notify the ZBA and the Town Administrator when building permits are issued for Affordable Unit and cooperate with the preparation of request forms to add the Affordable Unit to the Town's SHI. The Applicant shall notify the ZBA and the Town



Administrator when occupancy permits are issued for the Affordable Unit and cooperate with the preparation of request forms to add the unit to the Town's SHI permanently. The Affordable Unit shall permanently remain affordable unit, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Unit shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, § 20-23. The Affordable Unit shall be deed restricted to remain affordable as detailed herein, for so long as the Project does not comply with the underlying zoning requirements.

4. A springing affordable restriction and regulatory agreement shall be signed with the Town and recorded at the Registry of Deeds as set forth below.
5. The Affordable Unit and the market rate unit shall be constructed on substantially the same schedule. The Affordable Unit shall not be readily identifiable as such and shall be constructed so as to integrated compatibly among the market rate unit.
6. The Applicant shall execute a Regulatory Agreement that shall be countersigned by the Subsidizing Agency as required under G.L. c.40B and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement. The Affordable Unit shall be confirmed before building permits are sought and the Affordable Unit shall not be segregated from the market rate unit.
7. The Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the ZBA, the Applicant and their counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex South Registry of Deeds and shall be conditionally enforceable against one unit of the Property (the "Town Regulatory Agreement Affordable Unit"), prior to issuance of any building permit for the Project and signed by all necessary parties, including all mortgagees and lien holders of record.
  - a. The Town Regulatory Agreement: (i) shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that the Town Regulatory Agreement Affordable Unit(s) shall remain affordable so long as the Project does not conform to local zoning; (iii) shall require that the Town Regulatory Agreement Affordable Unit shall be affordable and owned by low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23
  - b. The Town Regulatory Agreement shall constitute a restrictive covenant and shall encumber the Town Regulatory Agreement Affordable Unit, shall be enforceable by the Town, and shall require that the Town Regulatory Agreement Affordable Unit shall remain affordable unit in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws or for the longest period allowed by law, whichever period is longer.
8. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency or other authorized agent shall

be responsible to monitor compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency 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.

9. When the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee, to the full extent allowed by M.G.L. Chapter 40B, Sections 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010) or any other relevant decisional law or amendment to G.L. Chapter 40B, § 20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee.
10. The Applicant shall submit to the ZBA a report on marketing activity at the Project during the initial sale of the Project demonstrating compliance with the plan approved by the subsidizing agency as set forth below.
11. The Applicant shall develop a marketing plan for the Affordable Unit 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.
12. If at any time it appears that the Applicant is in violation of an affordable housing restriction, then the ZBA may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.
13. 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.
14. The Applicant shall provide the ZBA with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency or its designated auditor of the Applicant's costs and revenues for informational purposes.
15. The Town, by and through the ZBA or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
16. 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 Official and the ZBA.



## General Conditions

17. The Applicant shall comply with all local by-laws, rules and regulations of the Town of Sherborn and its boards, officers and commissions, unless expressly waived hereunder.
18. The Project shall conform to all applicable state and federal laws, codes, regulations, and standards including, but not limited to, the following:
  - a. Massachusetts Building, Plumbing, and Electrical Codes;
  - b. The Massachusetts Wetlands Protection Act (M.G.L. c. 131 540) and the associated Regulations 310 CMR 10.00;
  - c. Massachusetts Department of Environmental Protection Title 5 Regulations; and
  - d. Massachusetts Anti Idling Law. MGL Ch. 90, Section 16A and 310.
19. All utilities within the Premises shall be installed underground.
20. The interior and exterior of all buildings and structures shall be constructed substantially as represented in the Application, as revised, and on the Plan of Record.
21. All utility work and other roadwork within any public right of way shall be performed and conducted in conformance with the regulations of the Town, including requirements for street opening permits. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with current engineering and construction standards.
22. All site improvements within the Project site shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, sewer and water infrastructure and the Applicant and then the Condominium Association shall bear the cost of maintenance, repairs, replacement, snow plowing and trash removal for same in perpetuity.
23. The Applicant shall equip each unit with water saving plumbing fixtures in every bathroom, kitchen, and laundry area, and all underground water pipes shall have water tight joints.
24. All infrastructure (utilities, roads, and stormwater management, sewer and water) shall be constructed as shown on the Plan of Record, prior to issuance of a certificate of occupancy for the first building. The road may be to binder course until after all building is completed, provided that proper surety is provided to secure the work when the first occupancy permit is issued. A building permit for foundation, or a foundation permit, may be issued at the time that the Project is qualified to do so under the State Building Code.
25. No stormwater pond or other water collection area to be constructed by the Applicant as part of the Project shall hold water for more than 72 hours, to prevent the breeding of mosquitoes. The Applicant shall implement any necessary mosquito control measures to protect residents of the Project and nearby residents in the event that water collects for longer than 72 hours.

26. The Project shall comply with all requirements of the Operations and Maintenance Plans submitted to the ZBA, as required in Condition 58, herein.
27. Road salt shall not be used for vehicular areas.
28. Dumping of landscape debris, including leaves, grass clippings and brush, within 50 feet of any wetland shall be and is expressly prohibited.

### Project Specific Conditions

#### General

29. The Applicant shall provide the ZBA with a final set of stamped plans prior to the issuance of a building permit.
30. The Applicant shall restrict, by deed, all units as three (3)-bedroom units and noting that the proposed basement areas, as shown in certain floor plan designs submitted as part of the Application, shall not be used as bedrooms. The Applicant shall grant to the Town a "Grant of Title 5 Bedroom Count Deed Restriction" in the form provided by the Department of Environmental Protection, Bureau of Resource Protection, Wastewater Management, limiting the number of bedrooms on the Property to 12, which restriction shall be recorded at the Middlesex South Registry of Deeds superior to any mortgages on the Property. This Deed Restriction shall be so recorded prior to the issuance of any building permit for the Project. The Condominium Master Deed shall also include a restriction limiting the total number of bedrooms allowed on the Property to 12 bedrooms.
31. The Applicant has not proposed phasing of the Project. If the Applicant desires to phase the project, it must return to the ZBA with a specific phasing plan, which shall be reviewed in accordance with 760 CMR 56.05(11). Unless a phasing plan is approved, once construction of the Project commences, it shall continue uninterrupted until completed.
32. Prior to the issuance of a Certificate of Occupancy for the first unit, the Applicant shall submit a detailed management plan indicating the organization and funding mechanism for a Condominium Association or other organization that will be responsible for maintaining the on-site parking, access, utilities, and landscaping, and for contribution to the ongoing maintenance of the shared wastewater facility, which is to be determined satisfactory by the ZBA.
33. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. During construction, the Applicant shall provide means to secure the front entrance to the Site at appropriate times to protect against unauthorized entry or vandalism, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.



34. The Applicant, and any contractors for the Project, shall not enter onto anyone else's property without obtaining the necessary permission or legal right to do so, in advance.

#### Site Design

35. Prior to the issuance of a certificate of occupancy for the first unit, the Applicant shall provide a final design to the ZBA.

#### Water and Wastewater

36. Prior to the issuance of a Certificate of Occupancy for the first unit, the Applicant shall provide evidence to the ZBA that the on-site wells do not contain measurable amounts of Toluene, in conformance with the Board of Health's No Tolerance policy.
37. Prior to the issuance of a Certificate of Occupancy, the domestic water supply for the project shall be supplied by two wells, for which the pump tests shall be performed simultaneously, to ensure that the wells are not interacting in a manner that would compromise expected yield from each well, and such wells shall comply with the local regulations regarding quantity and quality for the total number of bedrooms each well supplies.
38. Prior to the issuance of a Certificate of Occupancy for the first unit, the Applicant shall test and provide evidence to the ZBA of the presence of PFAS (polyfluoroalkyl substances), and if such PFAS substances are present the Applicant shall provide for the disclosure to the purchasers of each unit.
39. Prior to the issuance of a Certificate of Occupancy, the site shall be constructed to ensure that there exists twenty (20) feet of separation from of any well supplying domestic water supply to any driveway or traveled way.
40. Prior to the issuance of the Certificate of Occupancy for each of the four (4) unit, the Applicant shall provide evidence to the ZBA that water from a water tap/faucet within the subject unit has been tested and approved, in conformance with the existing Board of Health Regulations.
41. Prior to the issuance of the Certificate of Occupancy for any of the four (4) unit, the Applicant shall demonstrate that the wastewater soil absorption system (SAS) is installed and compliant with Title 5 with the added protection afforded by having adjusted the system's separation (i.e., raising the system) to mounded groundwater to achieve at least 4 feet of separation during high groundwater conditions, by raising the SAS by 1-foot above the elevation indicated on the January 15th, 2025 plan.
42. Prior to the issuance of the Certificate of Occupancy, the Applicant shall demonstrate that runoff from the roofs of the four unit shall be directed away from the SAS, with drywells or other suitable methods, so as not to cause additional hydraulic loading of the SAS and

to mitigate the likelihood of erosion (e.g. daylighting a gutter pipe downslope) from such concentrated runoff.

#### Coordination with Other Boards/Town Officials

43. Prior to the issuance of a Certificate of Occupancy for the first unit, the Applicant shall receive a written confirmation from the Sherborn Fire Chief or other most senior official that the 20,000 water tank for firefighting is installed and functional.
44. No construction activity shall occur on the Project, and no building permit shall be issued, until the Applicant shall have:
  - a. Executed and recorded the standard form Regulatory Agreement as proscribed by the Subsidizing Agency, and provided evidence of same to the ZBA and the Building Inspector. The Regulatory Agreement shall be subject to review, as to form and consistency with this Decision, by Town Counsel prior to execution.
  - b. Obtained a Disposal Works Construction Permit under Title 5 of the State Environmental Code, and any appeals have been finally adjudicated, if applicable.
  - c. Submitted to the ZBA and the Building Inspector a Construction Management Plan (CMP), as well as a Construction Management Schedule (CMS); that generally conforms to industry standard practice and addresses all construction-related conditions specifically set forth in this Decision. Additional copies of the proposed CMP shall be provided to the Planning Board, Board of Health, Conservation Commission, DPS, Fire Chief and Police Chief.
  - d. Obtain a driveway permit from the Department of Public Works.

#### Landscaping

45. Prior to the issuance of any building permit, the Applicant shall prepare a detailed landscaping plan stamped and signed by a Landscape Architect registered in the Commonwealth of Massachusetts that shows fencing and suitable on-site landscaping and screenings, shade trees as well as the type and number, size and location of all proposed landscaping materials

#### Condominium Association

50. There shall be a Condominium Association and the necessary documents to establish the Condominium Association (the "Condominium Documents") shall be provided to the ZBA for its review and approval before the first occupancy permit is issued, including the Master Deed, Condominium Trust, form of deed for individual condominium unit, documents for the control and maintenance of each well, exclusive control and maintenance easements for each well and the budget.



51. The Condominium Association shall be responsible for owning, maintaining, and repairing and replacing the roadway and drainage systems and recreational areas, and to provide for sufficient access for fire, police and emergency vehicles during all seasons and weather conditions, including the removal of snow and ice and the clearing of brush and foliage.
52. The Condominium Association shall be responsible for regulating the prohibition of garbage disposals (or similar device) in unit, including the application of under-sink labelling stating that both (a) the installation of these types of devices and (b) the removal of such labels are prohibited.
53. The Condominium Association shall be in place and the Condominium Documents shall be recorded at the Middlesex South Registry of Deeds before any unit may be sold.
54. The access roadway and stormwater control system shall remain private and shall be maintained by the Condominium Association.
55. The Condominium Association shall include funds in its annual budget to conduct all routine repair and maintenance of the wastewater management system, including annual inspections of the sewage disposal systems and regular pumping of the septic tank in accordance with local regulations, and shall provide annual funding to create a savings reserve so as to provide for the timely replacement of failed system components.

#### Construction and Bonding Conditions

56. There shall be no exterior construction activity on the Premises before 7:00 a.m., or after 6:00 p.m., Monday through Friday and before 8:00 a.m. or after 5:00 p.m. on Saturday. There shall be no construction on the Premises on the following days unless a special approval for such work has been issued by the Police Department: Sundays or the following legal holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and Christmas. The Applicant agrees that the hours of operation shall be enforceable by the police department.
57. At least fourteen (14) days preceding the commencement of construction activities, the Applicant shall provide written notice to the abutting contiguous neighbors ("Neighbors") of the anticipated construction start date and the anticipated construction schedule, along with contact information for an individual, other than the Project Manager, who will be available on site to address all concerns that may arise during construction. Any significant changes (e.g., 15 or more days, changes in phasing) shall require the Applicant to provide notice to the Neighbors of the changes. The Applicant shall provide the Neighbors with a 24 hour, seven days per week, emergency contact number for the Project Manager.
58. Once construction has commenced, if there is an anticipated or actual delay in the construction of the project for more than thirty (30) days, the Applicant shall immediately take all necessary steps to ensure the site is stabilized.

59. Portable toilets on the Project Site shall be located in an area that is west of the proposed home construction.
60. The Applicant shall ensure that nuisance conditions do not exist in and around the site during construction. The Applicant shall at all times use all reasonable means to minimize the inconvenience to the Neighbors.
61. During construction, no run-off shall be directed down the driveway onto Brush Hill Road or onto abutting properties. The following conditions shall be implemented by the Applicant during construction: Maintain the construction site free of dust that would create a hazard or nuisance to adjacent properties.
62. The Applicant shall provide the ZBA with authority to enter the Property during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard hat, safety glasses and work boot requirements), with prior notice to determine conformance with this Decision.
63. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. A consulting engineer shall be used. All fees for ZBA consultants including fees incurred prior to the date of this decision shall be paid by the Applicant within 30 days of the receipt by the Applicant of the consultant's bill for services. Any outstanding fees owed for consulting services incurred by the ZBA before this decision was rendered shall be paid forthwith and before any building permit issues. Thereafter, no occupancy permit shall issue if an outstanding fee bill is 30 days overdue.
64. The Applicant shall abide by orders issued by the Building Inspector in conformance with applicable law in conjunction with construction of the Project, subject to the Applicant's rights of appeal under applicable law.
65. No area within 50 feet of any wetland shall be used for stockpiling of earth or construction materials, for storage or overnight parking of construction vehicles and equipment, refueling and maintenance of construction vehicles or equipment, or for storage of diesel fuel or hazardous materials.
66. Prior to the commencement of construction, which for the avoidance of doubt includes clearing the site of trees and vegetation, the Applicant shall install and maintain a six-foot tall privacy construction fence along the shared property boundaries with the contiguous adjacent properties located on Brush Hill Road.
67. Prior to construction, physical barriers as required under the tree protection provisions of the construction documents shall be installed along the limit of clearing line. Erosion controls and tree protection measures shall be continuously maintained throughout the course of construction. Adjacent public streets shall be swept as needed to remove sediment and debris. Disturbed areas shall be brought to final finished grade and stabilized



permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures.

68. With respect to the work to be done by Applicant on private ways within the Property, no certificates of occupancy shall be issued by the Town until the Applicant has fully completed all site drainage and utility work appurtenant to any portions of the site for which an occupancy permit is to be issued and has installed a binder course of pavement on driveways and parking areas within the Property.
69. Landscaping and lighting shall be as shown on the final plans. To the extent that landscaping for the Project is not completed prior to the issuance of the first certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the ZBA in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.
70. In addition, the Applicant shall provide surety sufficient to loam and seed any disturbed areas which are yet to be developed as per the final plans.
71. Project surety shall be held by the Town Treasurer until the Treasurer is notified by the ZBA to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the completion of the landscaping work.
72. Prior to the issuance of any building permit, the final plan set, finalized as necessary to comply with this Decision, shall be signed and sealed by a Massachusetts Professional Engineer and, as appropriate, a Registered Land Surveyor and a Massachusetts Registered Landscape Architect and filed with the ZBA and the Building Inspector, and shall include the following:
  - a Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes;
  - b Details of any temporary construction signs.
  - c Landscaping plans as described herein.
73. A surety instrument, that shall not expire until it is satisfactorily replaced or released, in an amount to be determined by the ZBA in consultation with Town boards and officials and other consultants shall be given to the Town by the Applicant prior to starting any activity authorized by this approval ("Authorized Activity") within a public way, on Town property or in any Town easement to ensure the proper and timely completion of all such work that shall be held by the Town Treasurer until the Treasurer is notified by the ZBA to release the surety.

74. Requests to reduce the surety may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The surety retained shall be based on the work remaining.
75. Prior to starting any Authorized Activity, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Inspector, Conservation Agent, and Community Maintenance and Development Director, and Board of Health Agent and/or representatives to review this approval.
76. Prior to starting any Authorized Activity, the Applicant shall provide to the Building Inspector:
- a The company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site;
  - b A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the premises have been paid;
  - c Certification from the applicant that all required federal, state and local licenses and permits have been obtained;
  - d Proof that "dig-safe" has been notified at least 72 hours prior to the start of any site work;
  - 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.
77. During construction, at the end of each work day, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the ZBA shall be notified in writing of the final disposition of the materials.
78. Blasting, if any, shall be performed in a manner approved by the Fire Department and Building Department so as to prevent injury or property damage to the residents of the Town and proper evidence of insurance shall be provided to the Building Inspector before blasting begins.
79. Blasting, if any, shall require the Applicant to provide for a pre-blast survey, which shall include video documentation of abutters' foundations; with copies of the survey and videos to the ZBA and fire department.
80. Blasting, if any, shall not include the use of perchlorate.
81. The Applicant shall provide the owners of abutting property within 300 feet of the Site, or at least fourteen (14) days notice prior to any blasting. The Applicant shall perform



Notification shall be via phone or in person, U.S. Mail, and email as available, and shall comply with all Massachusetts laws, regulations, and local regulations pertaining to any blasting activity.

82. Within ninety days of completion of the activities authorized under this permit, the Applicant shall submit to the ZBA two sets of as-built plans for all infrastructure improvements and, if applicable, evidence of compliance with this comprehensive permit and any other permits required for the construction of the improvements contemplated by this comprehensive permit. The site engineer of record shall provide a written description of any material deviations from the Building Permit plans.
83. The ZBA, in consultation with a certified engineer determined to be acceptable by the ZBA, shall approve the as-built plans when determined to be in compliance.
84. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the site's storm-water management system, as applicable, in accordance with generally accepted practice, as the same may, from time to time, change.
85. A plan to implement adequate erosion and sedimentation control measures in compliance with the Order of Conditions for the Project shall be submitted by the Applicant to the Building Inspector for approval that such measures comply with the Order of Conditions, prior to the start of any Authorized Activity. Said measures shall be maintained throughout the Project and until all disturbed areas have been permanently stabilized with either an adequate vegetative or asphalt cover in accordance with the Plans of Record.
86. During construction, the location of any and every stormwater disposal area shall be protected to prevent compaction by heavy equipment and to prevent contamination of the area with soils and material that may reduce infiltration rates for the existing soils.
87. The Applicant and the Condominium Association shall be permanently responsible for the following at the Project:
  - a All plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the final plans or alternate locations acceptable to the Fire Chief. In the event that snow impairs roadways such that the travel area is less than the boundaries of the paved roadway surfaces, and all designated snow removal locations have been exhausted, at the direction of the Fire Chief, the Applicant shall cause snow to be transported from the Project to an off-site location for the legal disposal thereof;
  - b All site maintenance and establishing a regular schedule for site maintenance;
  - c Repairing and maintaining all on-site roadways, including drainage structures and utilities therein;
  - d Conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;
  - e Maintaining all easements shown on the final plans; and
  - f Site lighting.

88. Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of the locations for mail boxes and parcel areas.
89. Prior to commencing Authorized Activity, the Applicant's final construction plans shall provide that the construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control and blocking of Town roads and the Applicant shall install aprons at entry points and provide for dust control in the form of sweeping and spraying of water whenever necessary.
90. No stumps or construction debris shall be buried or disposed of at the Property.
91. The Applicant shall use all reasonable means to minimize inconvenience to residents in the general area, during construction.
92. This permit 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 ZBA, as required by 760 CMR 56.05(12)(b) or any successor regulation.
93. Any changes to the Project after issuance of this permit shall be reviewed and approved by the ZBA in accordance with 760 CMR 56.05 (11) or any successor regulation.
94. Building construction may begin simultaneously with the commencement of construction of the infrastructure, but no occupancy permit shall issue unless and until all of the infrastructure necessary for the occupancy permit shall be fully permitted and completed and have any necessary final sign offs.

## **IX. Lapse, Authorization, and Appeal**

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 recorded before the three year period elapses and unless construction on the Project has commenced within such period. In addition, construction in accordance with this comprehensive permit shall be completed within three years of the commencement of construction. The Applicant may apply to the ZBA for reasonable extensions of these deadlines for good cause, but shall do so before any lapse occurs.

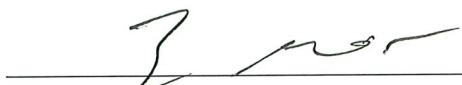
This comprehensive permit shall not be valid until it is duly recorded with the Middlesex South Registry of Deeds and evidence of such recording is provided to the Building Inspector and the ZBA. Any modification of this comprehensive permit shall be subject to 760 CMR 56 or any successor regulation thereto.

On March 22, 2025, the ZBA voted to authorize the Chairman, Zachary F. McBride, to sign this decision on behalf of the ZBA.

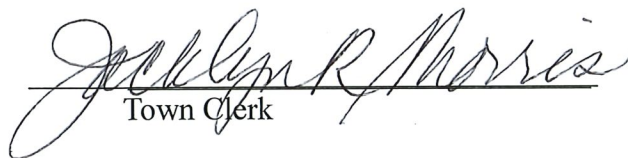


This decision may be appealed to the Massachusetts Housing Committee within 20 days pursuant to M.G.L. c. 40B, § 22 and 760 CMR 56.06, or to a court of competent jurisdiction pursuant to M.G.L. c.40A, § 17, as applicable.

SHERBORN ZONING BOARD OF APPEALS

  
By: Zachary F. McBride, Chairman

Filed with the Town Clerk on April 3, 2025.

  
Town Clerk

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



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