TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: **January 29, 2014**

PETITION NO: **#4484**

HEARING DATE: **October 24, 2013; December 12, 2013; January 9, 2014**

PETITIONER: **Habitat for Humanity of Cape Cod, Inc.**

PROPERTY: **5 and 9 Virginia Street, Yarmouth, MA**
Map & Parcel: 0036.65 and 0036.66
Zoning District: B-1 & Aquifer Protection District (partial)
Book & Page: 23910/89

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Chuck Hart and Richard Neitz.

Notice of the hearing has been given by sending notice thereof to the Petitioner and all those owners of property as required by law, and to the public by posting notice of the hearing and publishing in *The Register*, the hearing opened and held on the dates stated above.

Procedural History

On September , 2013 Habitat for Humanity of Cape Cod Inc. ("Applicant") applied for a Comprehensive Permit from the Yarmouth Zoning Board of Appeals ("Board") pursuant to Massachusetts General Laws, Chapter 40B, §§20-23, to subdivide the property at 5 and 9 Virginia Street (Assessor's Map 36, Parcel 65 and 66) into seven lots, six of which are to each contain an affordable single family home and to be serviced by a common cul-de-sac drive, and a seventh lot which will be an un-buildable open space area. The subject property is located in a B1, Zoning District.

Prior to the submission of the application for a Comprehensive Permit, on May 28, 2013, the Applicant engaged in a Site Plan Review, pursuant to Bylaw Section 103.3, attended by representatives of the Building Department, Community Development and Planning, Fire Department and Board of Health.

The hearing was duly advertised and scheduled.

Town Departments were notified of the proposed project and were invited to make comments.

A duly advertised public hearing was opened on October 24, 2013. There was testimony and public comment.

Documents Filed in Connection with the Application

1. Application for Hearing
2. Application cover letter from the Applicant to the Board dated September 5, 2013
3. Site Plan Review Comment Sheet dated May 28, 2013
4. Preliminary plans entitled "Comprehensive Permit Application 5 & 9 Virginia Street" dated September 5, 2013 and amended through December 12, 2013 and January 2, 2014, consisting of four sheets: Layout Plan, Easement Areas, Developer's Initial Landscape Plan and Grading Plan, prepared by BSC Group and stamped by Kieran J. Healy (Site Plans)
5. Declaration of Easements, Restrictions, Rights and Reservations for Virginia Street of Yarmouth and a Declaration of Trust Establishing the Virginia Street Homeowners Association Trust (the Home Owners Association Documents dated December 5, 2013
6. Letter dated August 29, 2013 from Massachusetts Department of Housing and Community Development ("Site Eligibility Letter")
7. E-mail dated September 18, 2013 from Lt. John Sawyer, Yarmouth Fire Department, to Sandi Clark, Yarmouth Board of Appeals
8. Memorandum dated September 26, 2013 from Engineering Division to the Board of Appeals
9. Letter dated October 2, 2013 from Paul Niedzwiecki, Executive Director, Cape Cod Commission, to Steven DeYoung, Chairman, Yarmouth Zoning Board of Appeals
10. Memorandum dated October 2, 2013 from Kathy Williams, Town Planner or Tom Di Persio, Vice Chairman Yarmouth Planning Board, to Steven DeYoung, Chairman, Yarmouth Zoning Board of Appeals
11. Memorandum dated October 21, 2013 from Bruce Murphy, Health Director, to the Board of Appeals
12. Memorandum dated October 23, 2013 from Dan Mills, Yarmouth Water Department

The Hearing

Steven DeYoung, Chairman, Sean Igoe, Chuck Hart and Richard Neitz attended and considered the information provided.

The Board received information from multiple sources. Speaking in favor of the Petition were Warren Brody, Kieran Healy, Leedora Zola, Victoria Goldsmith, and Richard Carroll . Various abutters also appeared and/or provided correspondence. These included Tom Kelley of Long Pond Drive, Pierre Joseph of Virginia Street, John Chapman of Virginia Street, William Carr of Cleveland Street, Phyllis Rupnow of Virginia Street who each spoke during the initial presentation or at subsequent continued hearings on 12/12/13 and 01/09/14. The general consensus of those speaking in opposition was that the intended use would be too dense for the small lot, that the affordable aspects of the project and its site density would reduce property values in the adjacent neighborhood, that there would be additional traffic in the

neighborhood and that the view of the open space created by the lot clearing would be unsightly, particularly if existing foliage was to be removed and thinned.

The initial meeting was continued so that the Petitioner could present the appropriate documents to assure that there would be a viable homeowner's association so as to assure proper maintenance and upkeep of common areas and to provide a landscape plan. The continued hearing on 12/12/13 considered the Declaration of Trust establishing the Virginia Street Homeowner's Association Trust and the Declaration of Easements, Restrictions, Rights and Reservations for Virginia Street of Yarmouth. The Board reviewed these documents, finding that they provided adequate mechanisms to assure the maintenance of open space and plantings to be incorporated into the final constructed neighborhood. The Board also reviewed the proposed landscape plan, finding it inadequate. The matter, with Petitioner's consent, was continued to January 9, 2014 for the sole purpose of review of a more detailed landscape plan. This was reviewed on January 9, 2014 and found to be acceptable.

Only four (4) Board members sat on all three meetings, i.e. Mr. DeYoung, Mr. Igoe, Mr. Hart and Mr. Neitz. The alternate, Mr. Garnick, was not able to certify that he had reviewed the tape of the prior two meetings. The Petitioner was offered the opportunity to proceed with four members only, which it opted to do.

The hearing closed on January 9, 2014 after the Board determined that sufficient information and testimony was given by the Applicant and the public. Mr. Igoe made a Motion to approve the application with conditions. Mr. Hart seconded the motion. Motion carried 4 to 0.

Findings

1. The Board finds that the Applicant submitted the following documentation:
    a. proof that Habitat for Humanity of Cape Cod, Inc. is a "nonprofit organization" as that term is used in M.G.L., c. 40B, §21 and 760 CMR 56.04(1)(a);
    b. evidence of a subsidy as indicated by the Department of Housing and Community Development August 29, 2013 letter, "Determination of Project Eligibility under the Local Initiative Program (LIP)"; and
    c. the Applicant alleges "control of site" by virtue of a purchase and sale agreement with the present owner of the property.

2. The Board finds that the Town of Yarmouth's progress toward local affordable housing goals is as follows:
    a. The Town of Yarmouth has not achieved the statutory minima set forth in 760 CMR 56.03(3)(b) or (c);
    b. Town of Yarmouth has not been certified by the Department of Housing and Community Development as being in compliance with Housing Production Plan Goals in accordance with 760 CMR 56.03(4); and

c. The Town of Yarmouth has not made recent progress toward the Statutory Minima in accordance with 760 CMR 56.03(5).

3. The Board finds that the Applicant's project is not a large project, as set forth in 760 CMR 56.03(6) and that a related application has not been previously received (760 CMR 56.03(7)).

4. The Board finds that the Applicant's project was reviewed by the following municipal officers or agencies:

   a. Board of Selectmen
   b. Building Department
   c. Community Development and Planning
   d. Fire Department
   e. Board of Health
   f. Department of Public Works

Decision

Pursuant to Massachusetts General Laws, Chapter 40B, §§20-23 and 760 CMR 56.01 *et seq.*, the Yarmouth Zoning Board of Appeals, after public hearing and findings of fact, hereby grants a Comprehensive Permit to Habitat for Humanity of Cape Cod, Inc. to subdivide the property at 5 and 9 Virginia Street (Assessor's Map 36, Parcel 65 and 66) into seven lots, six of which are to each contain an affordable single family home and to be serviced by a common cul-de-sac drive, and a seventh lot which will be an un-buildable open space area.

Conditions

The express conditions to the grant of this application are:

1. Development of the site shall be in conformance with the preliminary plans entitled "Comprehensive Permit Application 5 & 9 Virginia Street" dated September 5, 2013and amended through December 12, 2013 and January 2, 2014, consisting of four sheets: Layout Plan, Easement Areas, Developer's Initial Landscape Plan and Grading Plan, prepared by BSC Group and stamped by Kieran J. Healy (Site Plans).

2. The dwelling units shall be constructed in conformance with the elevations and floor plans entitled "Proposed 3 Bedroom Cape 28' x 28' for Habitat for Humanity of Cape Cod", dated August 16, 2013, drawn by David F Alten, consisting of six sheets; "Habitat for Humanity 2 Bedroom Home" dated April 7, 2011, drawn by KBO Architectural Designs, consisting of four sheets; and "Proposed 3 Bedroom Ranch for Habitat for Humanity of Cape Cod", dated August 10, 2010, drawn by David F Alten, consisting of five sheets.

3. The initial provided landscaping material shall be in conformance with the landscape plan entitled "Habitat For Humanity, Comprehensive Permit Application" as prepared by the BSC Group and marked as Exhibit 1 3at the January 9, 2014 meeting.

4. The applicant shall prepare a subdivision plan suitable for endorsement by the Board and recording at the Registry of Deeds. The Zoning Board of Appeals shall endorse such plan if the Board finds it is consistent and within acceptable limits with the preliminary plan presented for the division of the land and that all applicable conditions have been met. The plan shall reference this decision.

5. The applicant shall prepare and record an Easement Plan reflecting the Easement Areas as shown on the Site Plan.

6. The applicant provided a Declaration of Easements, Restrictions, Rights and Reservations for Virginia Street of Yarmouth and a Declaration of Trust Establishing the Virginia Street Homeowners Association Trust (the Home Owners Association Documents) and shall record such documents prior to the first unit conveyance to the eligible and qualified buyers. The Home Owners Association Documents shall be in conformance with the draft documents of the same name dated December 5, 2013 and presented to the Zoning Board of Appeals.

7. All six units shall be affordable units under the Department of Housing and Community Development Local Initiative Program. Upon initial sale to eligible and qualified households Applicant shall record a Department of Housing and Community Development Local Initiative Program Affordable Housing Deed Rider. All units shall be for sale as single-family units. Ownership and Re-sale shall be as outlined in the Department of Housing and Community Development Local Initiative Program Affordable Housing Deed Rider.

8. The project shall contain a maximum six homes with a total count of sixteen (16) bedrooms. House Lot 1, House Lot 3, House Lot 5 and House Lot 6 shall each contain three (3) bedroom units; House Lot 2 and House Lot 4 shall each contain two (2) bedroom units.

9. To the extent allowable by law, 70% of the affordable units, in this case 4 (four) shall be Local Preference units. Upon approval by the Department of Housing and Community Development, current residents of the Town of Yarmouth, municipal employees of the Town of Yarmouth, Employees of businesses in the Town of Yarmouth and households with children attending Yarmouth schools will be given a preference in the initial lottery.

10. The project shall comply with all Local Initiative Program requirements and any conditions the Department of Housing and Community Development, in its role as Subsidizing Agency, may require as part of Final Approval under 760 CMR 56.04.

11. A Regulatory Agreement pursuant to the Local Initiative Program and consistent with the terms of this Comprehensive Permit, in form and content approved by the Town of Yarmouth, shall be executed by the Subsidizing Agency, the Town of Yarmouth, and the Applicant. Said Agreement shall be recorded at the Barnstable County Registry of Deeds prior to the issuance of any building permits.

12. The Applicant shall prepare an Affirmative Fair Housing Marketing Plan (AFHMP), prepared in accordance with Section III of the 40B Guidelines and approved by the Department of Housing and Community Development prior to the commencement of marketing of the units. A copy of this plan will be provide to the Yarmouth Department of Community Development prior to issuance of building permits.

13. Prior to the issuance of any permits for the development, this Comprehensive Permit shall be recorded at the Barnstable Registry of Deeds. A copy of the recorded document shall be submitted to the Zoning Board of Appeals file.

14. The applicant shall comply with all conditions set-forth in correspondence dated 8/29/13 from the Commonwealth of MA Department of Housing and Community Development, as signed by Catherine Racer, Associate Director.

15. Andrews Way shall remain as it currently is a dead end. No traffic shall be allowed to leave the site onto Andrew Way;

16. There shall be no "mounded" septic systems;

17. A fire hydrant shall be installed consistent with the Yarmouth Fire Department recommendation Site Plan Review Comment Sheet.

18. Suitable catch basins shall be installed so as to assure that water run-off from the site to Virginia Street will be minimized. These catch basins are to be monitored by the Homeowners Association.

19. The applicant shall assure that the plantings to be installed pursuant to the schedule of plants set-forth in the landscape plan referenced above will be maintained by the applicant until the sale of all units and thereafter, by the Homeowners Association.

Waivers

The Applicant's requests for the following waivers are also granted:

1. §203.5 Table of Dimensional Requirements, Minimum Lot Size, which requires a minimum lot size of 25,000 square feet of contiguous upland for each dwelling unit, as the Lot areas are as follows:

   Lot #1 contains 8,004 square feet
   Lot #2 contains 8,472 square feet
   Lot #3 contains 9,313 square feet
   Lot #4 contains 12,711 square feet
   Lot #5 contains 16,073 square feet
   Lot #6 contains 12,349 square feet

2. §203.5 Table of Dimensional Requirements, Minimum Frontage, which requires 150 feet of frontage, as the Lot areas are as follows:

   Lot #1 contains 20 feet of frontage on Virginia Street
   Lot #2 contains 20 feet of frontage on Virginia Street
   Lot #3 contains 20 feet of frontage on Virginia Street
   Lot #4 contains 20 feet of frontage on Virginia Street
   Lot #5 contains 20 feet of frontage on Virginia Street
   Lot #6 contains 28.84 feet of frontage on Virginia Street

3. §203.5 Table of Dimensional Requirements, Yard, pertaining to Side Yard Minimums of 25' and Rear Yard Minimums of 20', as the Lot set backs are as follows:

	Side	Rear
Lot 1	20' and 18'	26.5'
Lot 2	15'	14.8'
Lot 3	15' and 23'	11'
Lot 4	15'	18.2'
Lot 5	15'	15.1'
Lot 6	6' and 7.5'	15.5' and 16.1'

4. Chapter 171 – Town of Yarmouth, Rules and Regulations Governing the Subdivision of Land, generally, and specifically as listed below.

   §171-2- definitive plan requirement
   §171-4 - plan approval required
   §171-6 - requirement of preliminary subdivision plan
   §171-7 - requirement of definitive subdivision plan

5. §405.2 Special Regulations, Wetlands

In all districts, any dwelling shall be set back a minimum of one hundred (100) feet from the top of the bank of any cranberry bog.

Approval

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. This decision must be recorded at the Registry of Deeds and a copy forwarded to the Board of Appeals. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. As provided by the provisions of said c. 40B, §§20-23, or otherwise, this Comprehensive Permit shall lapse if timely use hereof is not commenced and continued.

Steven DeYoung, Chairman