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June 12, 2016

David Ryer, Chair
Harwich Zoning Board of Appeals
Harwich Town Hall
732 Main Street
Harwich, MA 02645

RE: Habitat for Humanity Cape Cod, Inc.
93 and 97 Main Street, Harwich, Massachusetts
Application for Comprehensive Permit

Dear Chair Ryer:

This office has been retained by Habitat for Humanity Cape Cod, Inc., (the “Applicant”) with regard to the comprehensive permit application filed for property located at 93 and 97 Main Street, Harwich, Massachusetts. It is my understanding that the Board has expressed certain concerns regarding matters unique to the comprehensive permit process pursuant to G. L. c. 40B, §§ 20-23. I have substantial experience relating to development pursuant to Chapter 40B, and have been retained to address these matters.

The first issue of concern the Applicant has expressed to me relates to the zoning compliance of the lots to be created as part of the Applicant’s development. The Board has the authority to approve subdivision and Approval Not Required (“ANR”) plans as part of the issuance of a comprehensive permit. See, G. L. c. 40B, § 20 (including approvals by a planning board within the definition of “Local Board”). A part of such approvals, the Board is authorized to grant waivers of local rules, including waivers to make what would otherwise be an unbuildable lot a buildable lot. See, Zoning Bd. of Appeals of Lunenburg v. Housing Appeals Comm., 464 Mass. 38, 54 (2013) (stating “a zoning or planning board violation is a local concern, not a violation of State law that the HAC has no authority to override[.]”). Accordingly, the Board has the authority to grant waivers for the Project that would result in legally buildable lots that do not comply with otherwise applicable zoning requirements, if the Board grants the necessary waivers as requested by the Applicant. Upon the grant of such waivers, the question of whether the existing lots constitute nonconforming lots pursuant to G. L. c. 40A, § 6 becomes irrelevant, as the lots become conforming lots pursuant to the waivers granted under the authority of G. L. c 40B.

The second issue that has been raised is whether the Board has the authority to grant waivers authorizing a use which would not otherwise be allowed in the applicable zoning district. This type of waiver is very common, and is absolutely within the Board's authority pursuant to G. L. c. 40B, §§ 20-23. See, Jepson v. Zoning Bd. of Appeals of Ipswich, 450 Mass. 81, 93 (2007) (authorizing a mixed-use 40B development in a commercial zone, and allowing waiver of local setback requirements even for the commercial use).

The Applicant has also indicated that the Board has expressed concern regarding the structure of the proposed conveyance, with two of the lots being conveyed back to the Seller. The Applicant understands the Board's concern regarding this structure, but it is fully compliant with applicable Chapter 40B regulations. The Applicant is required to provide at least twenty-five percent (25%) of the units in the Project as affordable units. The Applicant proposes that all six (6) of the lots that it retains will be restricted as affordable. The Applicant's proposal also includes deeding back the other two lots, with the existing six (6) units, to the Seller. Thus, the total percentage of affordable units will be fifty percent (50%), well within compliance with applicable requirements. Furthermore, the Department of Housing and Community Development, as the Subsidizing Agency for the Project, will confirm the appropriateness of this conveyancing structure as part of its review when the Applicant seeks Final Approval for the Project pursuant to 760 CMR 56.04(7).

Please let me know if you have any additional questions regarding this issue.

Very Truly Yours,



Paul J. Haverly

Cc: Leedara Zola
Andrew Singer
Warren Brodie