



Town of Truro
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Tel: 508-349-7004 Fax: 508-349-5505

ZONING BOARD OF APPEALS

Agenda

DATE OF MEETING: Thursday, December 17, 2020
TIME OF MEETING: 5:30 pm
LOCATION OF MEETING: Remote Meeting
www.truro-ma.gov

Open Meeting

This will be a remote meeting. Citizens can view the meeting on Channel 18 in Truro and on the web on the "Truro TV Channel 18" button under "Helpful Links" on the homepage of the Town of Truro website (www.truro-ma.gov). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream.

Citizens can join the meeting to listen and provide public comment via the link below, which can also be found on the calendar of the Board's webpage along with the meeting Agenda and Packet, or by calling in toll free at [1-877-568-4106](tel:1-877-568-4106) and entering the following access code when prompted: [190-332-381](tel:190-332-381). Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/live stream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide written comment via postal mail or by emailing the Town Planner at planner1@truro-ma.gov.

Meeting link: <https://global.gotomeeting.com/join/190332381>

Hearing materials can be found at the following web address:

www.truro-ma.gov/zoning-board-of-appeals/pages/cloverleaf-40b-application

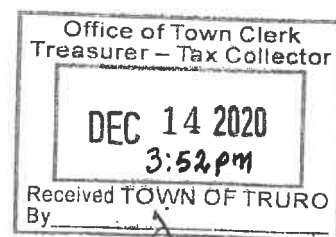
Public Comment

The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

Public Hearing – Continued

2019-008 ZBA – Community Housing Resource, Inc. seeks approval for a Comprehensive Permit pursuant to G.L. c. 40B, §§20-23 to create 40 residential rental units, of which not less than 25% or 10 units shall be restricted as affordable for low or moderate income persons or families, to be constructed on property located at 22 Highland Road, as shown on Assessor's Map 36 and Parcel 238-0 containing 3.91 acres of land area.

Adjourn



WATER

What we are doing here is playing with the idea that it's OK to contaminate our sole-source aquifer...a little bit, here and there.

It's not OK.

This is a stance that will lead us to tragedy. Today I read that the Select Board, at its next meeting on Tuesday, December 15th, will consider an engineering study of Pond Village for town water. This is an *action item*, first on the agenda.

Can we all agree that water is our most precious resource? ...and it's free! Perhaps for that very reason we tend not to value it as what it is: the only reason we are able to survive on this sand bar given to us by a melting glacier and being taken away by the salty sea.

We stick our straws down into the precious lens and take what we want, when we want, with no limitation or thought. We expect, and deserve, to think that our officials are at work protecting the purity of our sole source, not abandoning it.

Our freshwater lens is really all we have. But we seem bent on destroying it, death by a thousand flushes.

The ZBA has a narrow, and very specific mandate: they must address what is on their plate, and only that. They chafe at the time that has been spent in mulling over the Cloverleaf project, nearly a year, but don't seem able to recognize the enormity of the risk they seem willing to take with our treasured resource.

The number of units at Cloverleaf is far too great for the site, 39 units, 68 bedrooms, on less than 4 acres of challenged terrain. The septic system they propose is in pilot use at one site, for only 16 months, in a town with different hydrological conditions.

A down-hill corner of the site actually sits within the zone of contribution to a neighbor's well.

The facts about the high level of nitrates in many of the wells of Pond Village were known to officials, though not to the residents, years ago.

The 'safe' level of nitrates for drinking water, a number established in 1968 at 10 mg/L, is now woefully outdated. Based on irrefutable evidence in the past two decades, scientists recommend 3 to 5 mg/L to reduce the risk of many forms of cancer.

There needs to be a town-wide comprehensive study made of every well, every septic system and cesspool, mapped. There needs to be testing of every well. The town should be mounting a search for grants to help pay for the study, and the testing.

There is a committee listed on the town website: The Water Resources oversight Committee. Its members are appointed by the Select Board. It has been allowed to wither. ZBA members, questioned at their last meeting, seemed barely aware of its existence. *It should be the most important committee in town*. It needs to be populated and chaired. This is the responsibility of town government. If the town can manage to orchestrate a state grant of \$1.5 million to bring piped water to the Cloverleaf site it can surely do the same for such a worthy effort.

I recommend that everyone read the mission statement of December 2, 2010 for this moribund committee available online at the town website. It is a voice that has been sorely missing throughout the entire Cloverleaf process.

The town voted to accept the gift of the Cloverleaf site with the clear understanding that it could sustain 12 to 16 units. The town should now have the opportunity to vote on the grossly increased size of the proposed development.

I ask that the ZBA not bring the comprehensive waiver to a vote at its Thursday, December 17th meeting. I urge every Truro citizen who gives a damn to attend, and speak up.

Pamela Wolff

Elizabeth Sturdy

From: Dan Katz <trurodan@gmail.com>
Sent: Monday, December 14, 2020 2:19 PM
To: Elizabeth Sturdy
Subject: Clover Leaf

Ms. Sturdy,

Pam Wolfe suggested I send this email to you to be read at the Thursday meeting I cannot attend as I am in CT. Also, she suggested I request that this note be sent to select board members, planning board members and board of health...is all that possible?

Many thanks and be well,
Dan Katz (18 Old King's Highway)r

A zoning board of appeals is a land use body in place to grant relief from *land* irregularities that may place an undue hardship on the use of that land, should the land use regulations in place be imposed. Relief from such "shall not be primarily financial" and such relief granted, runs *with the land*.

In the "Clover Leaf Case", such relief is being granted to an individual who will, granted such relief, foul the water that serves an entire community....the system he will put in place is ill tested and needs constant monitoring which *will not be done* and, were it done and failure noted, such failure would simply not be corrected in time to stop pollution of the water lens.

Therefore, without question, granting this applicant relief from regulations put in place to *protect the community from over development of properties*, is, de facto, granting financial relief to one person at the considerable risk to the community that the ZBA must protect.

Sincerely,
Dan Katz
18 Old King's Highway
203-858-6078

CLOVERLEAF

APPENDIX B – DECISION ON WAIVERS

The Board GRANTS and DENIES the requested waivers as follows:

Board of Health Regulations

Applicant's request: Relief from specific requirements of Article 14 of the Truro Board of Health regulations in excess of MA DEP Title 5 regulations. Article 14 provides:

Article 14: Nitrogen Loading Requirements

“The Truro Board of Health hereby requires that all properties within the Town of Truro meet the loading restrictions set forth in 310 CMR 15.214 and contain at least ten thousand (10,000) square feet of Buildable Upland (as defined in Article 1 hereunder) for every 110 gallons per day of design flow and that all systems designed to serve said facilities meet the same restrictions and requirements contained in Title 5 as the “Nitrogen Sensitive Areas” defined in 310 CMR 15.215 irrespective of whether the properties are located within Nitrogen Sensitive Areas as so defined.”

The Board's peer reviewer, Mark Nelson of Horsley Witten Group, has noted that this regulation limits wastewater flow to 440 gallons per day per acre. The Cloverleaf site contains a total of 3.91 acres or 170,320 square feet. Under Article 14, the maximum wastewater discharge permitted would be 1,874 gallons per day. The proposed system for this project has a design flow of 7,480 gallons per day. Waiver of Article 14 is required to allow this discharge in excess of the 1,874 gpd limit for a parcel of this size.

Mr. Nelson found that the Applicant's original wastewater disposal system did not comply with Title 5 or Article 14 of the Truro Board of Health regulations. The Applicant then submitted a revised proposal utilizing the BioMicrobics treatment system, an Innovative/ Alternative technology system. Mr. Nelson reviewed the system in several reports to the Board.

In his November 30, 2020 letter, Mr. Nelson recommended that the Board require the Applicant to adjust design of wastewater treatment system to achieve higher level of nitrogen removal, in particular, to meet goal of achieving average nitrogen concentration of 5 mg/L and should not, after first six months of operation, exceed a nitrogen concentration of 10 mg/L. Designing the system to meet a 5 mg/L average concentration and setting a maximum threshold of 10 mg/L provides added protection to downgradient private wells.

Mr. Nelson concluded that where the enhanced BioMicrobics system treatment is anticipated to reduce nitrogen concentration to these levels, waiver of Article 14 is appropriate, conditioned on an Operation and Maintenance Agreement; monthly sampling of wastewater effluent for one year (reduced to quarterly if warranted); a contingency plan; and groundwater monitoring downgradient of the leaching field.

The Board GRANTS/DENIES this waiver.

Article 9: Innovative/Alternative Technology

The proposed BioMicrobics treatment system for the project is an Innovative/Alternative technology certified for enhanced nutrient removal by the Department of Environmental Protection. Article 9 limits the use of I/A Technology treatment systems to “Remedial Use Situations” arising from failed or nonconforming systems:

“(2) Standards. Innovative/alternative (hereinafter, “I/A”) technologies, as defined herein, will only be permitted in Remedial Use situations, and as defined herein (see article 3). I/A technology will not be permitted in any other situations.”

Use of the I/A BioMicrobics system for the project, which is not a Remedial Use Situation, requires a waiver from this Bylaw.

The Board GRANTS/ this waiver

Zoning Bylaw

Section 30: Use Regulations

30.1(A): General Requirements

Allows “single-family dwelling or single-family dwelling with accessory apartment use” only. Waiver required to allow multi-family and two-family use.

30.2 Use Table. Does not allow two-family or multi-family use. Waiver required to allow these as principal uses.

30.2. Use Table. Does not allow on-site management office, community room or storage as accessory uses. Waiver required to allow these uses as accessory uses in conjunction with multi-family use.

The Board GRANTS the above waivers.

Section 40.6: Growth Management

B. Residential Development Limitation

“1. There shall be no more than forty (40) building permits for new single family dwelling units authorized within any calendar year, beginning January 1 and ending December 31. . .”

Other portions of Section 40.6 limit the issuance of permits to any one applicant during a single month or year.

This section limits residential building permits issued within any calendar year to 40, and further limits the total number to any one applicant to 4.

The Board GRANTS the above waivers.

Section 50: Area and Height Regulations

50.1 Regulations

A. Table: Dimensional Requirements: Minimum Lot size

Minimum lot size is a limit on density; only five lots/dwelling units would be permitted on a parcel of 170,320 square feet. A waiver is required to construct 39 dwelling units on the project parcel.

The Board GRANTS this waiver.

50.1.A. Table: Dimensional Requirements: Side Setbacks and Height

<u>Dimensional Requirements</u>	<u>Required</u>	<u>Provided</u>
Minimum Sideyard Setback	25 feet	see chart for buildings requiring waivers**
Maximum Building Height	2 stories; 30'/23' flat	see chart for buildings requiring waivers**

Relief Required Building Number	Minimum Sideyard Setback – 25 feet Required	Maximum Building Height (definition of building height to ridge above existing grade) – 30' max	number of stories – two story maximum
1-3	conforming at 40.8 feet	conforming at 21.7 feet	conforming at two stories
5-7	**waiver required for setback at 12.3 feet	conforming at 24 feet	conforming at two stories
2-4	conforming at 91.2 feet	conforming at 28 feet	conforming at two stories
6-8	conforming at 34.2 feet	conforming at 28.5 feet	conforming at two stories
9-11	conforming at 33.3 feet	conforming at 25.25 feet	conforming at two stories
13-15	**waiver required at 24 feet to foundation excl. egress porch	conforming at 23.75 feet	conforming at two stories

10-12, 14-16, 18-20	**waiver required at 20' to foundation excl. egress porch	conforming at 27.25 feet conforming at 26.5 feet conforming at 28.5 feet	conforming at two stories conforming at two stories conforming at two stories
17-19	**waiver required at 14.8 feet to foundation excl. egress porch	conforming at 25.75 feet	conforming at two stories
22-24 23-25	conforming at 51.5' **waiver required at 14.6 feet to foundation	**waiver required at 36'11" **waiver required at 31'11" due to fill placed at rear of site above existing grade; appears 24'8" at roadway	**waiver required at three stories; definition of basement in terms of foundation exposure on more than one side will classify this basement as a third story; relief required
21	conforming at 61' west side and 40' east side	**waiver required at 31.5' that exceeds 23' limit for flat roof; based on def of building height above existing grade; visible height from road is 22.5' at front and 31.5' at rear	**waiver required at three stories; definition of basement in terms of foundation exposure on more than one side will classify this basement as a third story; relief required

The Board GRANTS these waivers.

50.2: Building Gross Floor Area for the Residential District

“B. Applicability and Exceptions:

1. Total Gross Floor Area Allowed by Right: [B]uilding permits for new construction . . . shall be issued only where, on completion of the construction or project, the Total Gross Floor Area of the new or expanded structure(s) does not exceed 3,600 sq.ft. for a Residential District Minimum Lot Size of 33,750 square ft. and prorated to 3,668 sq.ft. for one acre of land:

a. Plus 300 sq.ft. for each additional contiguous acre of land, or fraction thereof prorated.

..

2. Special Permit to exceed the Total Gross Floor Area limit: The Total Gross Floor Area limit for a dwelling and accessory buildings on a lot established in subsection 50.2.B.1 may be exceeded up to a maximum established by this subsection, by Special Permit. No Special Permit may be issued for any construction if the construction would result in the Total Gross Floor Area exceeding 4,600 sq.ft. for a Residential District Minimum Lot Size of 33,750 (or .775 acre) and prorated to 4,600 sq.ft for one acre of land:
- a. plus 300 sq.ft. for each additional contiguous acre of land, or fraction thereof prorated. . . .”

At 3.91 acres, the Total Gross Floor Area allowed as of right on the project site would be 4,568 sq. ft. (3,668 for the first acre + 300 sq ft. for each additional acre or fraction). The Total Gross Floor area allowed by Special Permit would be 5,568 sq ft (4,668 for the first acre + 300 sq. ft for each additional area or fraction). As calculated by the Applicant, the Total Gross Floor Area of the project is 46,172 sq.ft. A waiver is required for construction of all Floor Area in excess of 5,568 sq. ft.

The Board GRANTS this waiver.

Section 70: Site Plan Review

70.3. Commercial Development

A. Commercial Site Plan Review is required for:

1. Any construction, alteration, expansion, or modification of any properties, structures and uses other than that of single or two-family residences and their accessory uses and structures.

Under G.L. c. 40B, a separate site plan review process cannot be required. This Board’s review of the comprehensive permit application substitutes for Site Plan Review under Section 70. The Board finds that its exhaustive review of this project, with the benefit of peer review and comment by Town departments, is consistent with the provisions of Commercial Site Plan Review. The Board waives any remaining requirements of Section 70.3, *with the express exception of Section 70.3.I, “Performance Guarantee.”*

With the above-noted exception of Section 70.3.I, “Performance Guarantee,” the Board GRANTS his waiver.

Subdivision Rules and Regulations

Although the project is not a subdivision, it is residential development of a scale, and having design features akin to those of a subdivision. Waivers from standards contained in the Subdivision Rules and Regulations are required. The following waivers are sought:

Section 3. Design Standards

Section 3.6. Street Design

Section 3.6.6. Dead-end streets

- a. “The length of dead-end streets should not exceed one thousand (1,000) feet.”

Waiver is required: Loop roadway is 1,060 +/- feet long.

The Board GRANTS this waiver.

Section 3.6.7. Adjacent properties

“Proposed subdivision roads shall be separated from subdivision boundaries by a screening buffer of twenty-five (25) feet width or more. . . .”

Waiver is required: Access road is within 25 feet of side line, adjacent to Unit 21 (east), 13 feet provided.

The Board GRANTS this waiver.

Section 3.6.8. Design Standards: Table 1 in Appendix 2 – Type C

- Minimum Roadway width: 20 feet

Waiver is required: loop road has 14 foot travel way, with 1 foot berms provided (one-way traffic)

The Board GRANTS this waiver.

- Minimum Radius at street centerline: 290 feet

Waiver is required: 100 feet provided at Highland Road entrance; 50 feet provided within the site.

The Board GRANTS this waiver.

- Maximum Grade: 8%

Waiver is required: Main Access Road 10% proposed

The Board GRANTS this waiver.

- Minimum curb radius: 30 feet
30 feet required; 30 foot radius provided on main access road
25 feet lane provided for internal island

The Board GRANTS this waiver.

- Dead-end Street maximum length: 1000 feet

Waiver is required: loop roadway is 1,060 feet +/- long

The Board GRANTS this waiver.

Section 4: Specifications for Construction

4.1.8 Berms

“Berms shall be provided on both sides of all paved roads where the grade is 3% or greater. Bituminous concrete berms, eighteen (18) inches in width on rolled asphalt base or binder course, shall be constructed. . .”

Waiver is required: 12 inch berms proposed

The Board GRANTS this waiver.

4.1.10 Vegetation:

“Existing trees of over six (6) inches in diameter, measured at four and one-half (4-1/2) feet above existing grade, outside the travel surface of any proposed or existing roads and on proposed building lots should be preserved. . . .”

Waiver is required: Trees within the proposed limit of work line shall be removed as needed to allow for the construction of the development, beyond the edge of clearing for the roadway.

The Board GRANTS this waiver.

2.5.4(c) Performance Guarantee

Requires a performance guarantee in the form of a bond, deposit, or covenant to secure construction of ways and installation of municipal services.

The Board DENIES this waiver.

General Bylaws

Chapter 1, Section 8: Soil Removal

1-8-1. “The removal of topsoil, loam, sand, gravel, clay, hardening, subsoil and earth from any parcel of land not in public use in the Town of Truro except as hereinafter provided, shall be allowed only after a written permit therefore is obtained from the Building Commissioner.

Under G.L. c. 40B, a separate permit cannot be required for the earth removal involved in this project, but the Board may secure, through a permit condition requiring administrative review, compliance with any reasonable standards and conditions that would be applied to a non-40B project. For this project, the DPW Director will have oversight of soil removal activity during

the Town's part of the project. For the Applicant's portion of the project, earth removal will be subject to review and approval by the Board's consultant.

The Board GRANTS this waiver subject to the review and approval above.

Curb Cut Permit (Selectmen's Policy 28)

Curb cut permits are granted by the Select Board following review by the DPW Director and Chief of Police. The proposed project will have curb cuts on Highland Road (main entrance) and Route 6 (emergency access). The Highland Road curb cut has effectively been reviewed by DPW and the Police Chief as part of the comprehensive permit process. The DPW will apply for the MassDOT curb cut approval.

The Board GRANTS this waiver

Waiver of Fees

The Applicant requests relief from any requirements for paying fees for any regulatory review or for any permits related to the development of this project, including but not limited to fees for building permits and septic system installation permits.

The Board GRANTS this waiver

DECISION OF THE ZONING BOARD OF APPEALS

Comprehensive Permit

Cloverleaf Truro Rental Housing

Applicant: Community Housing Resource, Inc.

Owner: Town of Truro

Locus: 22 Highland Road
Assessor's Map 36, Parcel 238

Sitting: Arthur F. Hultin, Jr., Chair; Fred Todd, Vice Chair; John Dundas; John Thornley; Chris Lucy, *Heidi Townsend and Darrell Shedd [alternates, not voting]*

Public Hearing Dates:

November 21, 2019; December 5, 2019; December 12, 2019; December 19, 2019; January 16, 2020 (procedural); February 24, 2020 (procedural); March 12, 2020; April 2, 2020 (procedural); May 28, 2020 (procedural); June 25, 2020; July 9, 2020 (adjourned early due to technical difficulties); July 16, 2020; July 30, 2020; August 20, 2020; September 3, 2020 (procedural); September 10, 2020; September 24, 2020; October 1, 2020; October 8, 2020; October 22, 2020; November 5, 2020; November 12, 2020 (adjourned early due to GoToMeeting Outage); December 3, 2020; December 17, 2020.

On November 6, 2019, Community Housing Resources, Inc. (Community Housing or Applicant) submitted an application for comprehensive permit for a project known as "Cloverleaf," proposed to be constructed on Town-owned land off Highland Road on the east side of Route 6 ("Project"). Public hearing opened on November 21, 2019 and was continued to the dates above. Pursuant to extensions granted by the Applicant, and further continuances necessitated by the COVID-19 emergency declared by the Governor on March 13, 2020, the hearing closed on DATE. The Board deliberated on DATES. Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, the Zoning Board of Appeals voted to GRANT/DENY the application for a comprehensive permit for Cloverleaf, subject to certain conditions.

I. History of Project

The 3.91-acre project site is a parcel conveyed to the Town of Truro by the Massachusetts Department of Transportation in 2017 for the purpose of constructing a mixed-income housing development, with at least 25% of units affordable to persons or households earning 80% of the

Area Median Income.¹ The parcel was a portion of the State Highway layout and was made available to the Town through the Commonwealth's "Open for Business" initiative. Town Meeting approved the acquisition of the parcel for affordable housing purposes on April 26, 2016, ATM Article 20. The Release Deed was accepted by the Select Board on September 19, 2017.

Over the next six months, the Truro Housing Authority, working with Town staff and officials through a public process, developed a housing program for the property. Rental housing was selected to meet the Town's most acute housing needs. Density, unit size/mix, and levels of affordability were discussed. Following this process, the Board of Selectmen approved a Housing Program for 30 to 40 units, a density enabled by extension of the water line down Highland Road to the project site.² In 2019 the Town was awarded a MassWorks grant of \$2.1 million to fund the costs of the water line extension. In addition, Truro was designated a "Housing Choice Community" and was awarded a "Planning for Housing Production" technical assistance grant of \$75,000 for engineering costs relating to extension of the water line.³

The Town issued a Request for Proposals in August of 2018 for the development and management of an affordable and mixed-income rental development of 30 to 40 units, envisioned to be permitted under G.L.c. 40B. Among other design and construction guidelines indicated, the RFP included a suggestions of buildings clustered into small but multi-unit structures, and "a larger structure housing multiple smaller units with some common space, creating an independent living arrangement that would be appealing to senior citizens."

Community Housing submitted a proposal consistent with RFP criteria and was selected as the developer through the RFP process in January 2019. A Land Development Option Agreement was executed by the Select Board and Community Housing in September 2019. This Agreement provides, at Community Housing's option, and subject to the developer's obtaining all necessary permits, for Community Housing and the Town to enter into a 99-year ground lease under which the Applicant will construct and operate the housing development on the parcel. The Town will enter into such lease through the Select Board, which will negotiate certain terms and conditions governing construction and operation of the development. Community Housing.

¹ The parcel is described in a Release Deed recorded with the Barnstable County Registry of Deeds at Book 30796 Page 289, and is shown as "Parcel 1" on a plan entitled "Plan of Land in Truro Massachusetts" dated September 6, 2019, prepared by VHB, Inc., and recorded with the Barnstable County Registry of Deeds at Plan Book 672, Page 31.

² The Town of Provincetown approved the Cloverleaf water line extension in April 2019.

³ Prior to construction of the Project, the Town of Truro will extend the water line to 22 Highland Road and install the water line within the project site to serve the Project. Certain conditions in this permit are applicable prior to site disturbance (for example, the requirement of a Turtle Protection Plan approved in writing by the state's Natural Heritage and Endangered Species Program). To the extent applicable, the Town's work within the Project site must comply with the conditions in this Permit.

Project Site and Components

The project parcel lies in a Residential Zoning District, abutting Route 6 to the west, the National Seashore and a single-family property to the east; Highland Road to the south, and a single family property to the north. It lies within an area mapped by the Natural Heritage and Endangered Species Program as Priority Habitat for Eastern Box Turtle. The parcel does not include or border on any wetlands under the Wetlands Protection Act or Truro Wetlands Bylaw.

The project site is currently wooded and vacant. The front area of the parcel is fairly steeply sloped, from an elevation of 24' at Highland Road to an elevation of 63' within the parcel. The parcel slopes down to an elevation of 32' at the rear of the parcel. Site work will include considerable clearing, earth removal, and regrading in order to construct a safe roadway, and to create a level area for the project buildings and leaching field of the project's Title 5 system.⁴ All traffic will enter and exit the project on a single roadway to Highland Road. A gated emergency access road (also to be used for construction) will provide access to Route 6 from the rear area of the parcel.

The project in its final design consists of twelve townhouse-style duplexes and a fifteen-unit apartment building, for a total of thirty-nine rental units.⁵ Ten of the duplexes and the three-story apartment building are sited around an oval loop roadway, within which is a landscaped common area; an additional two duplexes are located at the rear of the parcel behind the apartment building. The duplex buildings contain a mix of one-, two-, three- and four-bedroom units. The architectural style is described as "variations on Cape Cod vernacular" and the exterior to be cedar shingles or clapboard.

The apartment building contains mostly one-bedroom units and an elevator, allowing for "single-level" living. Community space and an office are also located within the building. Design changes to the roof of the apartment building, discussed during public hearing, will allow for the installation of solar panels.

The project is proposed under the Low-Income Housing Tax Credit Program. As approved in the Project Eligibility letter issued by the Department of Housing and Community Development (DHCD), and as proposed in the application, 20 of the units will be affordable to households at no more than 60% of Area Median Income (AMI); and an additional 6 units will be affordable at no more than 80% of the AMI. An additional 6 units will be restricted to up to 110% of AMI, and 7 units will be market rate. The substantial proportion of affordable units in the project, as well as the deeper affordability of many, provides meaningful progress towards addressing the Town's rental housing needs. The considerable relief requested from the Town's Zoning Bylaw and other regulations is premised on this contribution.

⁴ As a condition of approval, the soils removed will be contributed to the Town, to be used for beach nourishment.

⁵ As originally proposed, the project contained forty units and included a seven-unit building near the front of the parcel. This building was eliminated from the design because its location did not permit sufficient and safe access to the project by emergency vehicles.

Commented [BHC1]: Project Eligibility letter approved plan for 40 units: 21 at 60%, 6 at 80%, , 6 at 110%, and 7 at market rate. See also application (same).

II. Record before the Zoning Board of Appeals

The materials identified in **Appendix A** comprise the record before the Board.

III. Findings of the Board

A. Findings on "Project Eligibility"

Based on the materials submitted by the Applicant, the Board makes the following findings with respect to the requirements of 760 CMR 56.04(1):

- (a) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization

The Applicant to the Board is Community Housing Resources, Inc. As interpreted by DHCD, it is sufficient under G.L.c. 40B for an applicant to state an intention to form a Limited Dividend Organization at a later time in order to satisfy this requirement. The Applicant has stated that a qualifying single-purpose ownership entity, tentatively named "CHR Cloverleaf, LLC" will be formed and controlled by Mr. Ted Malone; this entity must limit profit and return on investment as required by the subsidizing agency and otherwise meet the general eligibility standards of the Low Income Housing Tax Credit Program.

The Board finds that this satisfies the requirement of 760 CMR 56.04(1)(a).

- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

The Project Eligibility Letter issued by DHCD on November 19, 2019, states that the project has been approved under the Low Income Housing Tax Credit (LIHTC) program. Under DHCD regulations, this approval letter is sufficient to establish "fundability" for purposes of 760 CMR 56.04(1)(b); although as noted by the Project Eligibility Letter, it is not a guarantee that LIHTC funds will be allocated to this Project.

The Applicant shall control the site.

The Applicant entered into a Land Development Option Agreement with the Town of Truro, through its Select Board, on September 24, 2019. This Agreement has been extended by the parties through December 31, 2021. Under this Agreement, the Applicant has an option to develop and manage the project, pursuant to 99-year ground lease to be executed by the Town, which will retain ownership of the parcel. The Board finds that the Applicant controls the site for purposes of 760 CMR 56.04(1)(c).

B. Findings on the need for affordable housing

1. The Board finds that there is a critical, unmet need for affordable housing in the Town of Truro.

2. The Board finds that the need for year-round, affordable rental units is particularly acute.

3. The Board finds that the production of affordable rental housing was identified as a priority in the Town's most recent Housing Production Plan (HPP).

4. The Board finds that the Town of Truro has not achieved the 10% threshold identified in G.L. c. 40B, ss. 20, or any other "safe harbor" under the statute and DHCD regulations. The Town currently has 25 housing units on the Department of Housing and Community Development's Subsidized Housing Inventory (SHI), or 2.3%.

IV Waivers

Massachusetts General Laws c. 40B, §§20-23 empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers are "consistent with local needs" under the statute. The Board understands that reasonable waivers from local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G. L. c. 40B, §§ 20-23.

The Applicant included its November 6, 2019 application to the Board a list of requested waivers. This List was updated during the hearing process.

Under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic." Although the Applicant has not provided documentation to demonstrate that the project would be rendered uneconomic *but for* the specifically requested waivers and exceptions, the Board has reviewed the Applicant's waiver requests and has granted those that are consistent with protection of the general health, safety and welfare. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted do not either alone, or in the aggregate, render the project uneconomic.

In the event that the Applicant or any Town official, consultant or other agent determines that the final design of the project necessitates further waivers, the Applicant shall submit a written request for such waiver(s) to the Board. The Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.

The Board's decision as to each of the waivers and exemptions requested is set forth in **Appendix B, Decision on Waivers**. The only waivers granted are those expressly approved in Appendix B. If a waiver is not expressly approved in Appendix B, it is denied. All local regulations, other than those expressly waived in Appendix B, are applicable to this project, including regulations for which no waiver was requested. No "plan waiver" is granted.

TERMS AND CONDITIONS

Subject to the conditions set for hereinafter, the Board grants this comprehensive permit (the "Permit") to the Applicant for the project proposed. The Board notes that 760 CMR 56.05(8)(d) provides that:

"The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic...."

In reaching this Decision, the Board has endeavored to ensure that the conditions herein do not render the project uneconomic and that the conditions are consistent with local needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

1. The Comprehensive Permit application was based on a Project Eligibility letter issued to the Applicant by DHCD on November 19, 2019 under the Low Income Housing Tax Credit (LIHTC) program. This Permit is conditional upon receipt of Final Approval from DHCD and the grant of subsidy funding through the LIHTC program. Grant of LIHTC funding is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure (except such work performed by the Town for installation of the water line), or issuance of any building permit.
2. This Permit is conditional upon the execution of a Regulatory Agreement for this Permit by DHCD and the Applicant, to which the Town of Truro shall be made a party and beneficiary. The execution of, and compliance with such Regulatory Agreement is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure (except such work performed by the Town for installation of the water line), or issuance of any building permit. No building permit shall be granted until the terms and conditions of the Regulatory Agreement and project eligibility letter have been complied with in full, except for those which by their nature are to be complied with during and after construction of the project.
3. The Project shall conform to the following Plans:

[Add in Applicant's grid: List of Plans. Currently in PDF]

All of the above as further modified to comply with the requirements of this Decision; as well as any changes deemed necessary by the Building Inspector or the Board's consultant for compliance with this Decision.

4. Substantive revisions to the Project or the Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of

the Town Clerk and the completion of the Project, Applicant seeks to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested pursuant to 760 CMR 56.05 (11). The Board will address such requests under the procedures set out in that regulation.

5. Where this Decision provides for the submission of plans or other documents to the Building Inspector, Department of Public Works, the Board, or its agent, a written response shall be provided the Applicant as to whether such plans or other documents are consistent with this Decision within forty-five days of receipt of such plans or other documents.

Regulatory Compliance: State, Federal and Local

6. Development of the Project shall comply in all respects with all terms and conditions contained in the Project Eligibility approval for the Project issued by DHCD dated November 19, 2019 and any modifications thereto
7. The Project shall conform to all applicable requirements of the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board (MAAB).
8. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, G.L. c. 131, s. 23 and 321 CMR 10.00 et seq. This includes but is not limited to obtaining written approval from NHESP of a Turtle Protection Plan prior to site disturbance.
9. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Historical Commission.
10. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, § 61-62H).
11. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Massachusetts Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, private wells, resource protection, water supply and low impact development best management practices
12. Stormwater management systems shall meet the Guidelines of the Department of Environmental Protection Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised
13. The Project, including but not limited to site work, drainage, utilities, and construction of dwelling units and related improvements shall comply with all other applicable state and federal regulations.

14. Copies of all applications to, and approvals from State and Federal agencies shall be submitted to the Board or its designated agent prior to recording of Final Plans.
15. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Truro Board of Health, except as expressly waived in this Decision.
16. The Project shall comply with the Town of Truro Zoning Bylaw in effect at the time of the Application, except as expressly waived in this Decision
17. The Project shall comply with all Town of Truro rules, regulations, and other local bylaws and requirements not expressly waived by this Decision.

Dwelling Units; Affordability in Perpetuity

18. The project shall consist of thirty-nine units, twenty-four of which shall be contained in twelve duplex buildings and fifteen of which shall be contained in a three-story building (also containing community and office space) constructed in conformity with the Plans specified in Condition 3 above.
19. No fewer than twenty (20) of the Project units constructed and rented shall be affordable, in perpetuity, to individuals and/or families earning no more than 60% of Area Median Income (AMI) as calculated pursuant to formulas determined by the U.S. Department of Housing and Urban Development (HUD) or DHCD. No fewer than an additional six (6) units constructed and rented shall be affordable, in perpetuity, to individuals and/or families earning no more than 80% of the AMI; and no fewer than an additional six (6) units shall be affordable, in perpetuity, to individuals and/or families earning up to 110% of AMI ("affordable units").
20. No dwelling unit identified as an "affordable unit" may be rented to anyone other than a qualified tenant as required by this Decision and consistent with the requirements of DHCD and other state agencies governing the rental of below market rate units in a comprehensive permit project
21. The affordable units shall be evenly distributed within the Project and shall be indistinguishable in architectural style, exterior finish materials, and exterior appearance from market units.
22. Each affordable unit shall be rented pursuant to an affordable housing restriction, more fully described below, ensuring that only income eligible individuals or families may rent the dwelling unit.
23. The affordable units shall permanently remain affordable units, for so long as the Property does not comply with the Town's Zoning Bylaw without the benefit of this Comprehensive Permit, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

24. An affordable housing restriction, enforceable by the Town of Truro requiring that the affordable units remain affordable in perpetuity, in a form approved by counsel for the Town, shall be recorded senior to any liens on the Project locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. This affordable housing restriction shall reflect the affordability levels stated in paragraph 18 above.
25. The Affordable Units shall be and shall remain eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD. The Applicant shall notify the Board and the Town Clerk when building permits are issued for Affordable Units and cooperate with the preparation of request forms to add the Affordable Units to the Town's SHI. The Applicant shall notify the Board and the Town Clerk when occupancy permits are issued for the Affordable Units and cooperate with the preparation of request forms to add the units to the Town's SHI permanently.

Management Documents and Agreements with Town

26. The Applicant shall prepare documents in a form that conforms to this Decision and applicable law, designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.
27. Management Plan. The Applicant shall submit to the Planning Department a Management Plan (similar to the "Cloverleaf Truro Housing Property Management Plan" submitted during hearing), stating the roles and responsibilities of the project Owner ("CHR Cloverleaf Limited Partnership" or other) and the Management Agent (Community Housing Resource, Inc. or other), and governs project operations, including marketing, leasing, financial operations, and compliance. All updates to the Management Plan shall be submitted to the Planning Department.
28. Maintenance Plan. The Applicant shall submit to the Planning Department and the Department of Public Works a detailed Maintenance Plan governing repair and maintenance of the Project. The Maintenance Plan shall address Project buildings, ways, parking areas, landscaping, lighting, stormwater management systems, and other Project infrastructure and facilities. The Maintenance Plan shall ensure that the terms and conditions of this Decision are enforced. All updates to the Maintenance Plan shall be submitted to the Planning Department as agent for the Board.
29. The Applicant shall enter into a Lease Agreement, and any other Agreements deemed necessary by the Town, governing the rights and responsibilities of the parties with respect to the Project and the Project Site. Such Agreement(s) shall be approved by Town Counsel.

Profitability

30. The Project shall be limited to the profit allowed under the Regulatory Agreement (the "allowable profit").
31. Any profit that is above the allowable profit pursuant to the Regulatory Agreement, shall be paid in accordance with 760 CMR 56.04(8)(c).

32. The Applicant shall provide to the Board or its designated agent a copy of all financial statements and documentation required by the Regulatory Agreement.

Marketing and Local Preference

33. Prior to construction of the Project, the Applicant shall submit to the Board and to relevant agencies an affirmative fair housing marketing plan for the affordable units conforming to all requirements imposed by federal and state regulations.
34. To the extent allowed under G.L. c. 40B and other applicable law, the Applicant shall provide a local preference category for Truro residents, and their parents and children, and for employees of the Town of Truro, in the initial and subsequent availability of the Affordable Units.
35. The maximum number of affordable units allowed by law and the applicable subsidy program, but not more than seventy percent of the units, shall be reserved for households that qualify for inclusion in the above local preference category. A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project's monitoring agent to effectuate this local preference, with an approved secondary lottery for all other Applicants
36. This local preference shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference set forth herein, to the extent such local preference has been allowed by the Subsidizing Agency.
37. The local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.
38. The Applicant shall submit to the Board a report on marketing activity at the Project demonstrating compliance with the local preference requirement pursuant to the plan approved by the subsidizing agency as set forth below

Conditions Precedent to Commencement of Project

The conditions below are conditions precedent to the Applicant's Project construction. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until the following conditions are satisfied:

39. The Building Inspector has reviewed and approved detailed construction drawings for the entirety of the Project, including all buildings, structures, ways, and underground utilities ("Final Plans"). The Building Inspector shall review the Final Plans for conformance with this Decision; for compliance with local requirements not waived in the Permit; and with state and federal codes. All construction plans shall be stamped by a registered architect or registered professional engineer, as may be applicable. The Board may

engage, at the Applicant's expense and upon prior agreement to scope and cost of services, one or more agent to review the plan(s) and make recommendations for approval or disapproval to the degree that a plan or plans are inconsistent with this decision. Copies of the Final Plans shall be filed in hard copy and in digital form with the Building Department; the Board; the Planning Department; and the Department of Public Works

40. The Board's consultant has reviewed and approved detailed and final plans of the Project's storm water management system. These plans shall be consistent with DEP's Storm Water Management standards, policies, and handbooks; shall address any effects on abutters; and assure that there will be no detrimental drainage or erosion impact on abutting properties
41. The Board's consultant has reviewed and approved a final Stormwater Operations and Maintenance Plan for the Project roadway, infrastructure and drainage systems, both during and post-construction
42. The Board's consultant has reviewed and approved an Operations and Maintenance Plan for the Project's wastewater disposal system
43. The Board's consultant has reviewed and approved an erosion control plan to be in effect for the duration of site disturbance and project construction. This Plan shall ensure that there is no erosion or sedimentation from the project site onto Highland Road, the Route 6 layout, or abutting properties. The Plan shall include measures for extreme weather events. During installation of the water line to and within the Project site, the Department of Public Works shall ensure compliance with the erosion control plan. Prior to commencement of the Applicant's construction of the Project, the Board's consultant shall inspect and approve the installed erosion control measures, and shall inspect the Project site as needed to ensure ongoing compliance with the erosion control plan
44. The Director of DPW has reviewed and approved 1) a plan showing areas of the site proposed for vegetative clearing; limit of construction activity, soil stockpiling areas, construction staging, and refueling and storage area(s); and 2) the Applicant's installation of limit of work construction fencing
45. Performance Guaranty. The Applicant has provided to the Town Clerk a Performance Guarantee, in form and amount satisfactory to Town Counsel, to secure the completion of the Project's ways, utilities, and drainage systems
46. The Applicant has submitted to the DPW Director and the Building Inspector a construction schedule identifying the sequence and approximate dates of all key stages of construction
47. A Regulatory Agreement, similar in form to that published by DHCD, and revised for consistency with this Decision has been executed by the Applicant, DHCD, and the Town of Truro, and has been recorded in the Barnstable Registry of Deeds. The Regulatory Agreement shall:

- A. Name the Town of Truro named as a party and beneficiary thereto;
- B. Provide that 20 of the units will be affordable in perpetuity to households at no more than 60% of AMI; that an additional 6 units will be affordable in perpetuity to households at no more than 80% of the AMI; and that an additional 6 units will be restricted to up to 110% of AMI;
- C. Designate a Monitoring Agent for the Project approved by the Town, such approval not to be unreasonably withheld.
- D. Provide that the Project shall comply with profit limitations required under G.L. c. 40B;
- E. Provide that any excess profit shall be paid in accordance with 760 CMR 56.04 (8)(c).

The Regulatory Agreement shall be subject to review and approval by the Board and its legal counsel as to form and consistency with this Decision, such approval not to be unreasonably withheld.

- 48. The Applicant, the Board and DHCD have executed a Monitoring Agreement, similar in form to the Monitoring Agreement published by DHCD and revised for consistency with this Decision. The Monitoring Agreement shall be subject to review and approval by the Board and its legal counsel as to form and consistency with this Decision, said approval not to be unreasonably withheld.
- 49. The Final Plans have been reviewed and approved by the Fire Chief for hydrant locations; access to each building for fire fighting purposes; and adequacy of the access roadway from Highland Road and emergency access roadway to Route 6 for fire truck ingress and egress.
- 50. A NPDES Storm Water Pollution Prevention Plan or Stormwater Pollution and Prevention Plan (SWPPP) has been prepared. The SWPPP shall be provided to all contractors and subcontractors during construction. Copies of the SWPPP shall be submitted to the DPW Director and Planning Department.
- 51. A Disposal Works Construction Permit been obtained from the Board of Health under Title 5 of the State Environmental Code.
- 52. The Applicant shall provide the Town of Truro, in form and substance approved by Town Counsel, Applicant's agreement that the Town of Truro shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the Town, its employees and officials for any harm, damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project.

Conditions Prior to Application for a Building Permit

53. The Applicant shall obtain Final Approval from DHCD (or other subsidizing agency) and shall provide evidence of such Final Approval to the Building Department and the Board.
54. The Applicant shall record this Decision and the above-described Regulatory Agreement in the Barnstable Registry of Deeds with the Final Plans, and provide proof of such recording to the Board. No building permit shall issue until this condition is satisfied
55. The Applicant shall provide the Board and Building Department with six sets of full sized Final Plans and a digital copy of the final endorsed set. No building permit shall issue until this condition is satisfied
56. A Project Manager, Project Superintendent, and Jobsite Foreman shall be identified by the Applicant. The name and phone numbers, including emergency phone numbers of these individuals, shall be provided to the Department of Public Works, the Building Inspector and the Planning Department as agent for the Board

Conditions Relating to Construction

57. Prior to Applicant's commencement of work on the Project site, at a time designated by the DPW Director, a pre-construction kick-off meeting shall be held with the DPW Director, Project Manager, Project Superintendent, and Jobsite Foreman. Daily meetings shall be held with the DPW Director and Jobsite Superintendent. A meeting every two weeks shall be held with the Project Manager, Jobsite Superintendent, DPW Director and Town's consultant
58. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust, odor, and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. No construction activity shall commence on any day Monday through Friday before 7:00 AM or on Saturday before 9:00 AM. Construction activities shall cease by 6:00 PM on all days. No construction activity whatsoever shall take place on Sunday or federal holidays. For purposes of this condition, construction activity shall include, but not be limited to: start-up of equipment or machinery, removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities; and removal of stumps and debris.
59. The removal of trees, shrubs, and natural ground cover on the site shall be minimized to preserve the natural environment to the highest degree possible
60. Except as otherwise provided by this Decision, roadway design and construction standards shall conform to the requirements of the Truro Planning Board Subdivision Rules and Regulations. Roadway design plans and construction details shall be provided for approval by the DPW Director prior to roadway construction

61. All electric, cable, and telephone utilities shall be underground and shall conform to the utility companies' requirements. Utilities plan and construction details shall be provided to the DPW Director.
62. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the Project site. No stumps or other debris shall be buried on the Project site
63. All staging areas, including without limitation parking areas for construction personnel, portable toilets, temporary work facilities, etc. shall be on the Property.
64. If construction activity ceases for longer than 30 days, then written notice shall be provided by the Applicant to the Building Commissioner at least 48 hours before resuming work. The Building Commissioner may require that any foundation, trench, structure, equipment or other hazard be secured as necessary, in his opinion, including but not limited to installation of fencing and/or filling of trenches
65. If construction is temporarily suspended during the growing season, all exposed areas shall be stabilized by seeding and/or mulching within 14 days of suspension of construction. If construction is temporarily suspended outside the growing season, all exposed areas shall be stabilized by mulching and tack within 14 days of suspension of construction. Slopes steeper than 3:1 shall be stabilized by netting and pinning during suspension of construction.
66. Soils disturbed in earth removal on the Project site, not utilized elsewhere on the site, shall be retained for removal use by the Town, on such terms and by such means directed by the Conservation Agent and DPW Director.
67. Invasive Plants. No plants on the Commonwealth's Department of Agriculture "Invasive Plants" list (see <https://www.mass.gov/service-details/invasive-plants>) may be used in the landscaping or any other area of the proposed project
68. All residential buildings shall be constructed so as to allow for rooftop installation of solar panels. The Applicant has committed to such installation on Building 21
69. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations
70. Any damage to public roads incurred during construction of the Project shall be repaired and/or replaced to the satisfaction of the Department of Public Works.
71. To ensure compliance with the terms and conditions of this Decision, prior to requesting any Certificate of Occupancy, the Applicant shall submit to the Building Inspector, DPW Director, and Planning Department as agent for the Board, complete and detailed "As-Built" Plans of the Project, including buildings, utilities, roadway and associated infrastructure. The As-Built Plans shall be submitted as full-size plans and in digital form. These plans shall be approved by the Board or its agent for consistency with this

decision; such approval shall not be unreasonably be denied or delayed. No Certificate of Occupancy shall issue, nor shall any surety be released, unless the As-Built plans conform to this Decision

72. No certificates of occupancy for any building shall be issued until the Board or its agent finds that all improvements required by this Decision have been constructed and installed so as to adequately serve said Development
73. Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, and all required inspections have been completed by the Fire Department
74. Pursuant to an agreement reached between the Applicant and an abutter to the Project, the Applicant shall construct and maintain a stockade fence along the full length of the shared property line between the project parcel and Atlas Map 36 Parcel 170; and shall supply, at the Applicant's expense, twenty-five trees of agreed-upon variety; drip irrigation tubing; planting soil, and wood chip mulch

Wastewater Treatment

As discussed in the Waiver Appendix, the proposed Project cannot be constructed without a waiver of Article 14 of the Board of Health regulations ("Nitrogen Loading Requirements"), which requires a minimum of ten thousand square feet of Buildable Upland for every 110 gallons per day of design flow, and requires wastewater disposal systems to meet the standards for Nitrogen Sensitive Areas defined in 310 CMR 15.215 irrespective of whether the properties are located within Nitrogen Sensitive Areas as so defined." This results in a limitation of wastewater flow to 440 gallons per day per acre.

The Cloverleaf site contains a total of 3.91 acres or 170,320 square feet. Under Article 14, the maximum wastewater discharge permitted would be 1,874 gallons per day. The proposed system for this project has a design flow of 7,480 gallons per day. Waiver of Article 14 is required to allow this discharge in excess of the 1,874 gpd limit for a parcel of this size.

The Applicant proposes use of the BioMicrobics BioBarrier wastewater treatment facility to treat wastewater effluent generated by the Project. This is an Innovative/Alternative technology certified for enhanced nutrient removal by the Department of Environmental Protection. This system may be designed to achieve a level of nitrogen removal such that the concentration of nitrogen in effluent averages 5 mg/L. The following conditions are imposed to ensure protection of public health and safety, specifically, downgradient private wells:

75. The Project's BioMicrobics wastewater treatment system, shall be designed to achieve a goal of average nitrogen concentration of 5 mg/L.

76. The Applicant shall enter into an Operation and Maintenance Agreement with a certified WWTP Operator to oversee the wastewater facility. This O & M Plan shall be reviewed and approved by the Board's consultant.

OTHER CONDITIONS TO BE PROVIDED BY CONSULTANT

Administrative

77. The fees for consultant reviews incurred in the Board's review of this project application shall be the obligation of the Applicant. All consultant fees incurred prior to the issuance of this decision are due sixty days after this Decision is filed with the Town Clerk. No site disturbance shall commence until all past fees are paid in full.
78. The Applicant shall be responsible for fees incurred pursuant to consultant review of all project documents and all site inspections as provided for in the Conditions above
79. This permit cannot be transferred without approval of the Board and modification of this Decision following public hearing.
80. At the time the Applicant submits a Chapter 40B cost certification to DHCD, the Applicant shall provide copies to the Board and the Truro Select Board.
81. Except for roadway snow removal, sanding and sweeping, the Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the Project, including but not limited to structures; driveways and parking areas; landscaping; trash/recycling disposal and pickup; stormwater management system, and wastewater disposal system. The Town of Truro shall have no legal or financial responsibility for the installation, operation, and maintenance of the above
82. The Applicant shall complete construction within three (3) years from the date this Permit becomes final, unless such time shall be extended in writing by the Board. Any request for extension of time shall be made in writing no fewer than thirty days prior to expiration of the permit
83. Construction, once commenced, shall progress through to completion as continuously and expeditiously as possible and in accordance with the construction sequence and timetable provide.
84. Community Preservation Act. The Applicant shall comply with any conditions associated with the funding provided through allocation(s) by the Town pursuant to the Community Preservation Act, and comply with the funding agreement of such allocation
85. The Applicant shall comply with all Final Approval requirements as determined by DHCD (or other subsidizing agency)

86. If at any time it appears that the Applicant is in violation of an affordable housing restriction, then the Board may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.
87. The Applicant shall provide the Board with copies of any and all documents and statements provided by the Applicant to DHCD (or other subsidizing agency) or its designated auditor of the Applicant's costs and revenues for informational purposes.
88. The Town, by and through the Board or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
89. . The Applicant shall enter into a springing regulatory agreement with the Town ("Town Regulatory Agreement"), which shall be recorded at the Registry of Deeds prior to issuance of any building permit and signed by all necessary parties, including all mortgagees and lien holders of record. The Town Regulatory Agreement shall become effective only if and when the Regulatory Agreement with DHCD or other subsidizing agency is terminated, expires, or is otherwise no longer in effect and is not replaced with another regulatory agreement with another subsidizing agency.
- The Town Regulatory Agreement shall (i) contain the same terms regarding Affordable Units as the Regulatory Agreement with DHCD or other subsidizing agency, and shall provide that the Affordable Units remain affordable at the designated levels in perpetuity, meaning for so long as the Project does not conform to local zoning; (ii) shall restrict or limit the dividend or profit of the Applicant as required under G.L. c.40B and 760 CMR 56.00, et seq.; and (iii) shall constitute a restrictive covenant and shall be enforceable by the Town.
90. Agents, successors and assigns. All terms and conditions of this permit shall be binding upon the Applicant and all agents, successors and assigns.