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Sarah Raposa, A.I.C.P., Vice
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TOWN OF MEDWAY COMMONWEALTH OF MASSACHUSETTS PLANNING AND ECONOMIC DEVELOPMENT BOARD

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MULTI-FAMILY HOUSING SPECIAL PERMIT, SITE PLAN DECISION 56 Summer Street (Mockingbird Lane) Approved with Conditions and Waiver

Decision Date: April 23, 2024

Applicant/Permittee: Tortcon Builders, Inc.
70 Bethany Road
Framingham, MA 01701

Property Owner: Tortcon Builders, Inc.
70 Bethany Road
Framingham, MA 01701

Location: 56 Summer Street
Assessors' Reference: Map 46, Parcel 028

Applicable Plans: "Mockingbird Lane", dated May 24, 2023, last revision date March 28, 2024, 16 sheets, prepared by Robert G. Murphy & Associates, Inc. and Land Planning, Inc., submitted April 22, 2024 (Note: sheets have differing revision dates)

Zoning District: Agricultural-Residential – II (AR-II)
Multi-Family Housing Overlay District

Board Members Voting: Andy Rodenhiser, Sarah Raposa, Timothy Harris, John Parlee

I. PROJECT DESCRIPTION

The proposed use requires a multi-family housing special permit pursuant to Sections 5.6.4 and 3.4 of the Town of Medway Zoning Bylaw (the "Zoning Bylaw"), and major site plan review and approval pursuant to Section 3.5 of the Zoning Bylaw. The proposed project includes construction of a multi-family residential development, with 7 buildings consisting of 16

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dwelling units, to be located in 6 duplex and one quadplex buildings, with associated driveways, utilities, grading, and landscaping. (Note: The original application was for 18 dwelling units in 8 buildings, but was reduced by eliminating one of the proposed duplex buildings in the January 2, 2024 filing.) The property is in the Multi-family Housing Overlay district.

II. VOTE OF THE BOARD – After reviewing the application and information gathered during the public hearing and review process, the Medway Planning and Economic Development Board (the “Board”), on April 23, 2024, **voted to GRANT with CONDITIONS a Multi-Family Housing Special Permit to Tortcon Builders, Inc. (hereafter referred to as the Applicant or the Permittee), and to GRANT with WAIVERS and CONDITIONS as specified herein, a site plan, for a 16 unit, multi-family development and associated site improvements on the property at 56 Summer Street as shown on a plan titled “Mockingbird Lane”, dated May 24, 2023, last revision date March 28, 2024, prepared by Robert G. Murphy & Associates, Inc., and Land Planning, Inc., 16 sheets (the Site Plan) to be further revised as specified herein before endorsement and recording.**

The motion was approved by a vote of 4 in favor and 0 opposed.

III. PROCEDURAL HISTORY

A. Special permit and major site plan applications filed with the Medway Town Clerk and the Board on May 25, 2023.

B. The public hearing notice was posted at the Town Hall and on the Town of Medway web site and mailed to parties of interest as required by chapter 40A and published in the MetroWest Daily News on May 30, 2023 and June 6, 2023.

C. The Board notified Town departments, boards and committees of this application and requested review and comment.

D. The public hearing commenced on June 13, 2023, and was continued to August 8, 2023 (no testimony taken), September 12, 2023, October 24, 2023 (no testimony taken), November 14, 2023, January 9, 2024 (no testimony taken), January 23, 2024, February 13, 2024, (no testimony taken), March 12, 2024, March 26, 2024, April 9, 2024, and April 23, 2024 when the hearing was closed, and a decision rendered.

E. Member Jessica Chabot filed a certificate pursuant to G.L. c. 39, §23D with respect to the June 13, 2023 public hearing date, but missed a second public hearing date and therefore is ineligible to vote. Member Andy Rodenhiser filed a certificate pursuant to G.L. c. 39, §23D with respect to the September 12, 2023 public hearing date. Sarah Raposa filed a certificate pursuant to G.L. c. 39, §23D with respect to the meeting of January 23, 2024.

IV. INDEX OF DOCUMENTS

- A. Information submitted on behalf of the applicant:
- Multi-Family housing special permit and site plan applications received May 25, 2023
 - Project Description received May 25, 2023
 - Architectural elevations and renderings received May 25, 2023

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- “Mockingbird Lane” civil engineering plans dated May 11, 2023, prepared by Robert G. Murphy & Assoc., Inc., 9 sheets
- Stormwater Management Analysis dated May 12, 2023
- Stormwater Pollution Prevention Plan, dated May 12, 2023
- Environmental and Development Impact Report, dated May 12, 2023
- Mockingbird Lane Landscape and Lighting Plan” dated May 24, 2023, prepared by Robert G. Murphy & Assoc., Inc.
- Letter from Robert G. Murphy dated June 12, 2024 [sic]
- Letter from Robert G. Murphy dated September 1, 2023
- “Mockingbird Lane Site Plan” revision date August 4, 2023, one sheet
- “Mockingbird Lane Road Plan and Profile, revision date August 4, 2023, one sheet
- Stormwater Management Analysis, Revised September 1, 2023

The following were submitted electronically on October 16, 2023

- Updated plan set, revised through October 10, 2023, 14 sheets
- Environmental impact report dated October 12, 2023
- Project Narrative dated October 12, 2023
- Intersection Sight distance plan
- Pre-developed sketch plan
- Post developed sketch plan
- Letter from Robert Murphy dated October 16, 2023 responding to Tetra Tech comments

The following were submitted electronically on January 2, 2024:

- Updated plan set, revised through December 26, 2023, 15 sheets
- Updated stormwater report dated December 22, 2023
- Project Narrative dated December 23, 2023
- Letter from Robert Murphy dated December 30, 2023 responding to Tetra Tech comments

The following were submitted electronically on January 15, 2024:

- Updated plan set, revised through January 15, 2024, 16 sheets
- Updated Operations and Maintenance plan, dated January 14, 2024
- Letter from Robert G. Murphy dated January 16, 2024, to Bridget Graziano
- Updated Quadplex Architectural plans dated January 3, 2024, 3 sheets

Quadplex plans, draft 5, dated February 7, 2024

Quadplex plans, final, dated March 22, 2024

The following were submitted electronically on March 22, 2024:

- Updated plan set, revised through March 20, 2024, 16 sheets
- Two addendum to the plans: Land Disturbance plan and emergency vehicle access plan
- Letter requesting waiver of Section 207-19G.1 of the Regulations, tree planting requirement

Updated plan set, revised through March 28, 2024, received April 22, 2024

B. Other documentation submitted to the Board during the course of the public hearing:

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- Email from Nolan Lynch, DPW, dated June 8, 2023
- Email from Bridget Graziano dated May 30, 2023
- Email from Jessica Chabot, DRC, dated June 13, 2023
- Memo from Barbara J. Saint Andre, Director, Community and Economic Development, dated June 7, 2023
- Memo from Barbara J. Saint Andre, Director, Community and Economic Development, dated October 30, 2023
- Letter from Joshua and Melinda Cook, 5 Independence Lane
- Letter from Paul Yorkis dated November 10, 2023
- Letter from Kathleen Yorkis dated November 11, 2023
- Email correspondence between Bridget Graziano, Conservation Agent, and Robert Murphy, dated September 11 and 12, 2023
- Jessica Chabot certificate under G.L. c. 39, §23D for meeting of June 13, 2023
- Andy Rodenhiser certificate under G.L. c. 39, §23D for meeting of September 12, 2023
- Sarah Raposa certificate under G.L. c. 39, §23D for meeting of January 23, 2024
- Letter from Design Review Committee dated February 10, 2024

C. Correspondence from Town's consulting engineer, Tetra Tech:

- Project review letter from Tetra Tech dated June 30, 2023
- Project review letter from Tetra Tech dated October 23, 2023
- Project review letter from Tetra Tech dated March 15, 2024

V. TESTIMONY - In addition to the special permit and site plan review application materials as submitted and provided during the course of its review, the Board heard and received verbal testimony from:

- Robert Murphy, for the applicant
- Steve Bouley, P.E. of Tetra Tech, Inc., the Town's Consulting Engineer
- Chris Rice of 48 Summer Street
- Paul and Kathleen Yorkis, 7 Independence Lane
- Josh Cook, 5 Independence Lane

VI. FINDINGS - The Board voted to approve the following findings regarding the multi-family special permit by a vote of 4 in favor and 0 opposed.

A. MULTIFAMILY HOUSING SPECIAL PERMIT - The Board makes the following findings in relation to this development's compliance with Section 5.6.4 Multifamily Housing.

1. Section 5.6.4.B.1: The site has more than 50 feet of frontage on Summer Street, which meets the minimum 50-foot frontage requirement of Section 5.6.4.B (1) of the Bylaw. The Board finds that Summer Street, which is also designated as state highway Route 126, has sufficient capacity to accommodate the projected additional traffic flow from the development.

2. Section 5.6.4.C: The dimensional requirements of the underlying AR-II zoning district apply to the project, as set forth in Table 2 of Section 6 of the Zoning Bylaw. The Plans show that there will not be any intrusion into any required setback. The plans indicate that the project complies with maximum lot coverage. The property is not in an Historic District; the maximum building

height is 40 feet; the plans show compliance with this requirement. The site consists of 5.54 acres, which meets the minimum area requirement for a multi-family housing.

3. Section 5.6.4.D: The maximum density for multifamily projects is 8 units per whole acre of Land Available for Development. The applicant calculated the Land Available for Development in accordance with the Zoning Bylaw, and determined that there are 3.8 acres of Land Available for Development. Accordingly, the Board finds that up to 24 dwelling units are permissible on this site. Sixteen are proposed and this complies with the requirement.

4. Section 5.6.4.E.1: With a proposed net increase of 16 dwelling units, under the provisions of Section 8.6 Affordable Housing, 12% of the units need to be affordable. Twelve percent of 16 equals 1.92, which is rounded up to two affordable units. See Section 8.6.C.

5. Section 5.6.4.E.2: The Zoning Bylaws requires open space equal to at least 15% of the parcel's total area. The project narrative indicates that over 50% of the site will be open space, and the landscaping plan shows lawns and patios for use by the residents.

6. Section 5.6.4.E.3: Two off-street spaces per unit (32 spaces) plus one visitor parking space for every two units (8 spaces) for a total of 40 are required. There are 73 parking spaces, including garage spaces, which fulfills this requirement.

7. Section 5.6.4.E.4: The project will be served by Town water and sewer.

Section 5.6.4.I Decision Criteria

8. Meets purposes of Multi-Family Housing section of the Zoning Bylaw (Section 5.6.4) and the Site Plan Rules and Regulations - The project meets the purpose of the Multifamily Housing section of the Bylaw to provide a diversity of housing types in the form of multi-family style units. It also meets the purpose of the Site Plan Rules and Regulations to assure protection of the public interest consistent with a reasonable use of the site. The plans have been reviewed by Town officials to provide measures to protect the health, safety and welfare of Town residents.

9. Consistent with the Medway Housing Production Plan - The development meets the implementation strategies of the Housing Production Plan by providing additional multifamily units.

10. Impact on abutting properties and adjacent neighborhoods - The impact on abutting properties and adjacent neighborhoods has been addressed through vegetative screening through a comprehensive landscaping plan.

11. Variety of housing stock - The development increases the variety of housing stock in the community by providing a mix of multi-family housing buildings.

12. Designed to be reflective of or compatible with the character of the surrounding neighborhood - The architectural design has been reviewed by the Design Review Committee and is compatible with the neighborhood.

B. SPECIAL PERMIT DECISION CRITERIA – The Board makes the following findings in accordance with Section 3.4 of the Zoning Bylaw. In making its determination, the special permit granting authority, in addition to any to any specific factors that may be set forth in other

sections of the Zoning Bylaw, shall make findings on all of the applicable criteria specified below:

- 1) **The proposed site is an appropriate location for the proposed use.** The site is in the Multi-family Housing Overlay District, with the access to the site from Route 126 (Summer Street), a major connector street in Town. This is a residential area, and includes multi-family housing located across Summer Street. The site is also located within walking distance of a small commercial area at the intersection of Route 126 and Route 109.
- 2) **Adequate and appropriate facilities will be provided for the operation of the proposed use.** As documented in the plans and associated materials, and conditioned herein, adequate and appropriate facilities will be provided for the operation of the proposed residential use. The project will be serviced by Town water and sewer systems. The stormwater management system has been designed in accordance with the applicable local and State regulations. Town staff and the Town's engineering consultant, Tetra Tech, have reviewed the plans and all comments have been addressed.
- 3) **The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.** It is estimated that the development will generate minimal additional traffic. The entrance to the site will not create a hazard to abutters, vehicles, or pedestrians. Suitable sidewalk facilities exist on Summer Street.
- 4) **The proposed use will not cause undue traffic congestion or conflicts in the immediate area.** The development site is located on Summer Street, also known as Route 126. Summer Street has the capacity to handle the additional traffic to be generated by the additional residential units.
- 5) **The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials or other undesirable visual, site or operational attributes of the proposed use.** The Applicant has provided documentation that its stormwater management plan is adequate. No dumpsters will be used on the site, individual homeowners will use trash and recycling barrels. The lighting plan shows compliance with the Zoning Bylaw. Hundreds of shrubs and trees will be planted in accordance with the landscaping plan. There will be no detrimental impact on abutters due to odors, dust, noise, vibration, refuse materials or other undesirable impacts.
- 6) **The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.** There are currently both single-family and multi-family residential uses in the neighborhood. The architectural design has been reviewed by the Design Review Committee (DRC) and the applicant has incorporated DRC suggestions.
- 7) **The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.** The Multi-Family Housing Overlay District was established to accommodate this type of use subject to certain conditions to limit adverse impacts. The multi-family housing units will help to diversify Medway's housing supply.
- 8) **The proposed use is consistent with the goals of the Medway Master Plan.** The proposed multi-family use is consistent with the Master Plan goal of implementing multi-family housing to increase housing diversity.

- 9) **The proposed use will not be detrimental to the public good.** As documented in the plans and application, and the findings and conditions of this decision, the proposed use is in accordance with the goals of the Master Plan while protecting against potential adverse impacts. The proposed development has reasonable and appropriate density in a suitable location.

For all of the above reasons, the Board finds that the beneficial impacts of the proposed Mockingbird Lane multi-family development outweigh the effects of the proposed use on the Town and neighborhood.

C. SITE PLAN RULES AND REGULATIONS FINDINGS – The Board shall determine whether the proposed development is in conformance with the standards and criteria set forth in the Site Plan Rules and Regulations, unless specifically waived. In making its decision, the Board makes the following findings in accordance with Section 204-8 of the Site Plan Rules and Regulations, and Section 3.5 of the Zoning Bylaw. For the reasons set forth in its findings above, the Board finds that the proposed development meets the following criteria of the Site Plan Rules and Regulations:

- 1) The site plan meets the requirements of the Zoning Bylaw and Site Plan Regulations, except to the extent any Rules and Regulations are waived by the Board.
- 2) The construction and/or renovation of buildings and site improvements and amenities are designed to reflect or be compatible with the Medway Design Review Guidelines.
- 3) Reasonable use is made of building location, grading, and landscaping and other site features and improvements to reduce the visible intrusion of structures, parking areas, loading and off-loading areas, and outside facilities for the storage, handling, and disposal of sewage, refuse and other solid wastes from public views or from adjacent residential properties.
- 4) Private Roads and driveways are properly designed and constructed to serve the intended use and provide an adequate level of service in relation to the traffic to be generated by the development.
- 5) Internal circulation, queuing and egress promote traffic safety, access via minor streets servicing residential areas is minimized, and traffic backing up into the public way is avoided.
- 6) Convenient and adequate access for fire-fighting and emergency vehicles is provided to each structure and use throughout the site.
- 7) Design and construction minimize, to the extent reasonably practical, the following impacts:
 - a) the volume of cut and fill;
 - b) the number of trees to be removed with particular care taken with mature trees and root systems;
 - c) the visual prominence of man-made elements not necessary for safety;
 - d) the removal of existing stone walls;
 - e) the impacts on waterways and environmental resource areas;
 - f) impacts on natural features such as hills, wooded areas, rock outcrops, wildlife habitat;

- g) soil erosion and pollution
- 8) Pedestrian ways, access driveways, loading and unloading areas and facilities, and vehicular and bicycle parking facilities are properly designed for public convenience, accessibility, and safety of customers, employees, and the general public.
- 9) The proposed limit of work area is reasonable and protects sensitive environmental and/or cultural resources on the site and on adjacent parcels. The project as designed will not cause substantial or irrevocable damage to the environment, which damage could be avoided or ameliorated through an alternative development plan or mitigation measures.
- 10) The project's impact on abutting residential neighborhoods has been adequately mitigated with various on-site and off-site measures. Adjacent and neighboring properties are protected from nuisance and harmful effects caused by noise, traffic, noxious or harmful fumes, and the glare of headlights and other light sources generated by uses on the development site.
- 11) The extent of building and site design features to promote energy conservation, low-impact development practices, and sustainability.
- 12) The project complies with the requirements of Medway General Bylaws, Article 26, Stormwater Management and Land Disturbance; the Town's Land Disturbance Permit Rules and Regulations, the Massachusetts DEP Stormwater Handbook, and EPA's National Pollution Discharge Elimination System requirements. The project design utilizes low impact design and nature-based stormwater management techniques where appropriate and feasible.

VII. WAIVERS

1. The applicant requested that the Board waive Section 204-5 B.1 requesting waiver to show streets within 1000 feet of the property instead of 2000 feet. Applicant stated that this scale provides a better view of the surrounding area.

The Board voted 4 to 0 to GRANT this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

2. The applicant requested that the Board waive Section 207-19G.1, tree planting requirement, of the Site Plan Regulations. **The applicant has withdrawn this waiver request.**

VIII. CONDITIONS – The Conditions included in this Decision shall assure that the Board's approval of this site plan complies with the Zoning Bylaw, Section 3.4 (Special Permits), is consistent with Site Plan Rules and Regulations, that the comments of various Town boards and public officials have been adequately addressed, and that concerns of abutters and other town residents which were aired during the public hearing process have been carefully considered.

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If there is a conflict between the Site Plan and the Decision's Conditions of approval, the Decision shall apply. If there is a conflict between this Decision and/or Site Plan and the Zoning Bylaw, the Zoning Bylaw shall apply. The Board's issuance of a special permit and site plan approval is subject to the following conditions:

1. This permit shall apply to any successor in control or successor in interest of the subject property. The Permittee (sometimes referred to herein as the applicant) shall construct all improvements in compliance with the approved and endorsed plan and any modifications thereto. This permit does not relieve the Permittee from its responsibility to obtain, pay and comply with all other required federal, state and Town permits and approvals associated with this project. The contractor for the Permittee or assigns shall obtain, pay and comply with all other required Town permits.
2. Notwithstanding any future amendment of the Zoning Bylaw, G.L. c.40A, or any other legislative act:
 - A. The maximum number of dwelling units allowed on the site under this special permit is sixteen.
 - B. The land on which this multi-family development will be located shall not be altered or used except:
 - 1) as granted by this special permit and site plan decision;
 - 2) substantially as shown on (a) "Mockingbird Lane, 56 Summer Street, Medway Ma", dated May 24, 2023, last revision date March 28, 2024, prepared by Robert G. Murphy & Assocs, Inc., and Land Planning, Inc., 16 sheets (the Site Plan); (b) "Quadplex 56 Summer Street" dated March 22, 2024 and "Duplex, 56 Summer Street Medway MA", dated May 9, 2023 (Architectural Plans), said Site Plan to be modified as specified herein;
 - 3) in accordance with any subsequently approved modified plans or amendments to this special permit and site plan.
 - C. The land and buildings comprising 56 Summer Street shall not be used, sold, transferred, or leased except in conformity with this special permit and shall not be further divided.
3. **Plan Endorsement** - Within sixty days after the Board has filed its Decision with the Town Clerk, the Site Plan shall be further revised to reflect all Conditions and required revisions as specified herein and shall be submitted to the Board to review for compliance with the Board's Decision. (Said plan is hereinafter referred to as the Plan). Upon approval, the Permittee shall provide the revised Plan in its final form to the Board for its endorsement prior to recording at the Norfolk County Registry of Deeds along with this decision. All Plan sheets shall be bound together in a complete set.
4. **Plan Revisions** – Prior to plan endorsement, the following revisions will be made to the Site Plan:
 - A. Provide Cover Sheet that includes references to the architectural elevations, floor plans and renderings.
 - B. The Plan Set with the revisions set forth in this decision, shall be recorded at the Norfolk County Registry of Deeds.

- 5. Plan Endorsement** – Prior to plan endorsement, the applicant shall also provide:
- A. Copy of a sample deed to be used to convey each dwelling unit for review, comment, amendment and approval by Town Counsel. The deed shall clearly state that the Condominium Trust shall own and be responsible for the maintenance and upkeep of development's private roadway (Mockingbird Lane), the stormwater management system, and all other infrastructure.
 - B. Copy of Condominium Master Deed and Declaration of Trust for review, comment, amendment and approval by Town Counsel. The Master Deed, and the Declaration of Trust for the Condominium shall include the following language: "The construction and operation of the condominium is authorized by a Multi-family Housing Special Permit and Site Plan approval granted by the Medway Planning and Economic Development Board on April 23, 2024, a copy of which is available for inspection at the Town Clerk's office and which is recorded at the Norfolk County Registry of Deeds" and shall clearly state that the Condominium Trust shall own and be responsible for the maintenance and upkeep of development's private roadway (Mockingbird Lane), including snow removal and sanding, the stormwater management system, landscaping, on-site water and sewer, lighting, and all other infrastructure.
- 6. Recording of Plans and Documents**
- A. No construction shall begin on the site and no building permit shall be issued before this Multi-Family Housing Special Permit and Site Plan Decision, endorsed Plan, and Operation and Maintenance Plan dated February 27, 2024 are recorded at the Norfolk County Registry of Deeds and proof of such recording is provided to the Board.
 - B. Within thirty days of recording, the Permittee or its assigns or successors shall provide the Board with a receipt from the Norfolk County Registry of Deeds indicating that the specified documents have been duly recorded or supply another alternative verification that such recording has occurred.
 - C. The Condominium Master Deed and Declaration of Trust of the Condominium Association in compliance with the conditions of this decision shall be recorded at the Norfolk County Registry of Deeds prior to the issuance of the first occupancy permit for the development.
- 7. Affordable Housing**
- A. In accordance with Section 8.6 Affordable Housing, two dwelling units within the development shall be "Affordable" and comply with the requirements for inclusion on the Town's Subsidized Housing Inventory as maintained by the EOHLC.
 - B. Within 180 days after the Decision and Plan are recorded at the Norfolk County Registry of Deeds, the Permittee shall apply to EOHLC's Local Initiative Program

(LIP) for inclusion of the proposed Affordable Housing Units as Local Action Units on the Town's Subsidized Housing Inventory and thereafter shall diligently pursue EOHLC approval of the LIP/Local Action Unit Application. Prior to submitting the LIP Application, the Permittee shall secure the support of the Medway Select Board and the Medway Affordable Housing Committee and Trust for the LIP/LAU application including the proposed marketing plan and local preference guidelines.

- C. The Affordable Housing Units shall be subject to a perpetual affordable housing deed rider, in a form acceptable to EOHLC to be recorded at the Norfolk County Registry of Deeds with the deed for the affordable housing unit as required by LIP. The Affordable Housing Units shall be sold and resold in accordance with the provisions of the affordable housing deed rider.
- D. The location of the affordable housing units shall comply with the provisions of Section 8.6.F the Zoning Bylaw. The unit location must be approved by EOHLC. The applicant has initially designated the second unit in Building B-1, and one of the units in Building 7 as the affordable units. The designation of the affordable units can be changed by the applicant with EOHLC approval, but the applicant must notify the Board and the Building Commissioner of any such changes. Upon direction by EOHLC or request of the Permittee (without effect to the Subsidized Housing Inventory eligibility), the Board shall permit a change in the location of the Affordable Housing Unit. In the event that EOHLC does not approve of the project's eligibility under the Subsidized Housing Inventory, the Permittee shall work diligently with the Town to take any action necessary to ensure the unit is included on the Town's Subsidized Housing Inventory.
- E. Affordable Housing Regulatory Agreement – If and to the extent that EOHLC approves the Affordable Housing Unit pursuant to 760 CMR 56.04(7) and 56.05 (10)(b), the Permittee shall prepare or cause to be prepared and submit to EOHLC, before an occupancy permit is issued for the first dwelling unit, an Affordable Housing Regulatory Agreement to be executed by the Town of Medway, the Permittee and EOHLC. After such submittal to EOHLC, the Permittee shall diligently pursue EOHLC approval of the Regulatory Agreement. Upon execution, the Regulatory Agreement shall be recorded at the Norfolk County Registry of Deeds. To the extent approved by EOHLC, the Affordable Housing Unit shall be subject to the Regulatory Agreement and shall be sold and resold in accordance with its provisions.
- F. The Permittee shall select and compensate a Lottery Agent to prepare the LIP/Local Action unit application and Regulatory Agreement, and manage the marketing and initial sale of the Affordable Housing Unit. Any such Lottery Agent must meet EOHLC's experience requirements so that the Affordable Housing Unit may be counted on the Town's Subsidized Housing Inventory. The Permittee and/or the Condominium Trust shall identify such Lottery Agent to the Board and any changes thereto. EOHLC shall oversee the initial sale of the Affordable Housing Unit pursuant to the LIP/LAU program in conjunction with the selected Lottery Agent.
- G. The ongoing Monitoring Agent for the affordable unit shall be EOHLC. The Board

hereby names the Town of Medway Affordable Housing Trust, if approved by EOHLC, as an additional Monitoring Agent for the sale and resale of the Affordable Housing Unit.

- H. The Condominium Master Deed and all legal documents related to the Affordable Housing Units shall include language to specify:
 - 1) the unit numbers of the designated Affordable Housing Units;
 - 2) that the Affordable Housing Units shall be sold to income eligible persons or households that meet the income restrictions;
 - 3) that the local preference criteria for the sale and re-sale of the Affordable Housing Unit shall be in accordance with the EOHLC Local Initiative Program or other applicable state housing program;
 - 4) that the Affordable Housing Units are eligible for inclusion on the Town's Subsidized Housing Inventory;
 - 5) that the Affordable Housing Units are subject to a use restriction; and
 - 6) that the Affordable Housing Unit shall not be encumbered for any financing purposes beyond the original mortgage amount without the express advance written permission of the Monitoring Agent.
 - I. Timing of construction of affordable units
 - 1) No building permit for any building other than Building B-1 shall be issued until the Select Board has approved the Affordable Housing Regulatory Agreement and the Permittee has submitted it to EOHLC.
 - 2) Building permits for no more than two buildings shall be issued until the Affordable Housing Regulatory Agreement has been approved by EOHLC and recorded with the Norfolk County Registry of Deeds.
 - 3) No more than five occupancy permits for market rate units shall be issued before the occupancy permit for the first affordable unit is issued by the Building Commissioner.
 - 4) No more than eight occupancy permits for market rate units shall be issued before the occupancy permit for the second affordable unit is issued by the Building Commissioner.
 - J. Comparability of construction of affordable housing units shall be as provided in Section 8.6.F of the Zoning Bylaw.
8. **Open Space and Yard Area** - At least 15% of the site shall be retained and function as open space and/or yard area in perpetuity. This is an ongoing obligation of the owner. This area shall be unpaved but may be landscaped or left natural, with the balance being trees, shrubs, and grass suitable for the site. This area may include a play area or other communal recreational space, subject to plan modification requirements.
9. **Ownership and Maintenance**
- A. Mockingbird Lane, the stormwater drainage facilities, and all other infrastructure shall be owned and maintained by the condominium association. It is the intent of the Board that these facilities will not be accepted by the Town of Medway.
 - B. The Board requires that the following aspects of the development shall be and shall remain forever privately owned, and that the Town of Medway shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- 1) parking areas
 - 2) Stormwater management facilities
 - 3) Snowplowing and sanding
 - 4) Landscaping
 - 5) lights
 - 6) Sewer and water
 - 7) trash removal and recycling
10. **Occupancy Permits** – No occupancy permit may be issued until the following items, at a minimum, are installed in compliance with this Decision, the endorsed Plan, and applicable by-laws and regulations and approved by the Board’s consulting engineer.
- A. Drainage system completed to the proposed outfall with frame and grates set to binder grade, as well as stormwater basins, swales, infiltrations systems or any other stormwater management facilities.
 - B. As-built plan of each stormwater basin and forebay and all critical elevations and details of the associated structures, pipes, and headwalls.
11. **Patios** – To not increase stormwater runoff, all patios constructed in the development shall be constructed with pervious paving materials.
12. **Rubbish Removal** – No dumpsters are shown on the plan, and the applicant has confirmed that no dumpsters will be used (other than construction dumpsters during construction). Accordingly, the use of dumpsters on this property for trash, recycling, or any other reason, other than temporary dumpsters during construction, is prohibited. Trash pick-up will be the responsibility of the condominium association, and shall be done by a single company and scheduled for at least once per week. Trash pick-up shall provide for recycling of paper, cardboard, glass, cans, plastic, and other commonly recyclable materials.
13. **Soil Management Plan** – Applicant proposes a net fill of approximately 12,600 cubic feet. Accordingly, the applicant shall provide a Soil Management Plan as required by Section 207-8.G of the Site Plan Regulations prior to the pre-construction meeting for the project. Fill must be from an approved site or be tested as provided in site plan regulations. Applicant must comply with requirements of Section 207-8 of the Site Plan Regulations.
14. **Streets** – Any damage to the existing sidewalks along the subject site’s frontage resulting from site infrastructure and building construction work, shall be repaired or replaced to the satisfaction of the Medway Department of Public Works (DPW) before the final occupancy permit. All signage and pavement markings shall comply with Mass. Uniform Traffic Control Device guidelines. Applicant shall obtain street opening and any other required permits from DPW and comply with all DPW requirements for utility work and work within the Town right of way. Any markings disturbed on Summer Street shall be replicated.
15. **Trees** – The applicant is removing 101 trees with a dbh of at least 15 inches, with a total loss of 1,897 inches at dbh. Under Site Plan Regulations, the applicant is required to mitigate this tree loss by planting the equivalent of 949 caliper inches of trees; at 2 ½ inch

caliper trees, the minimum caliper required in the Regulations, this requires 380 replacement trees. The applicant proposes to plant 334 trees on the site, as shown on sheet 9, the Landscape plan, last revision date March 28, 2024, and 50 trees on the adjacent Lot A that is owned by the applicant. Some of the trees, as shown on the Landscape Plan, will exceed the 2 ½ inch caliper, thereby complying with the minimum total caliper of 949 inches. The trees that are to be planted on Lot A shall be planted prior to the issuance of the first occupancy permit for this development, meet all the requirements for replacement trees under the Regulations, and must survive at least one year or be replaced.

16. **Well** – The plans show a proposed irrigation well. The Board’s approval of this site plan does not constitute approval of the well location, which must be approved by the Board of Health. The applicant must obtain Board of Health approval for the location of the well before installing.
17. **Water Conservation** – The development will be connected to the Town’s public water system, and the Town is subject to its Water Management Act Permit with the Massachusetts Department of Environmental Protection. The Permittee shall incorporate the following water conservation measures for construction of the development:
 1. any landscape irrigation may not be connected to municipal water supply, private well water only
 2. rain-gauge controlled irrigation systems only
 3. low flow household fixtures
 4. water efficient appliances (dishwashers, washers, toilets, etc.)
18. **Stormwater Management and Land Disturbance**
 - A. No construction, clearing of vegetation, or any site work shall commence until after the pre-construction meeting as provided in condition. The Permittee agrees to provide the Board’s consulting engineer with advance notice (48 hours preferred) of all required inspections of the stormwater system or other site work that requires inspection.
 - B. Throughout construction the Permittee shall be responsible for keeping the constructed stormwater drainage system in a clean and well-functioning condition and shall do nothing which would alter the drainage patterns or characteristics as indicated on the Plan approved herein without the express written approval of a field change by the Board.
 - C. All waste products, refuse, debris, grubbed stumps, slash, excavate, construction materials, etc. associated with the planned construction shall be contained and ultimately deposited at an appropriate off-site facility and shall not be incorporated in any manner into the project site.
19. **Stormwater Management and Land Disturbance – Post Construction**
 - A. The stormwater drainage system shall be maintained by the Permittee, its successors and assigns. It is the intent of the Board and the Permittee that the stormwater management system shall not be accepted by the Town.
 - B. The Permittee and its successors shall submit an annual report of inspections of

all stormwater management structures as prescribed in the Stormwater Management Operations and Maintenance Plan to the DPW. The annual report shall be submitted no later than December 1st of every year. The inspections shall be conducted in accordance with the approved Stormwater Management Operations and Maintenance Plan.

- 20. Fees** - Prior to plan endorsement by the Board, the Permittee shall pay:
- A. the balance of any outstanding plan review fees owed to the Town for review of the site plan by the Town's engineering, planning or other consultants; and
 - B. any construction inspection fee that may be required by the Board; and
 - C. any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes and business licenses.
 - D. The Permittee's failure to pay these fees in their entirety shall be reason for the Board to withhold plan endorsement.
- 21. Restrictions on Construction Activities** – During construction, all local, state, and federal laws shall be followed regarding noise, vibration, dust and blocking of town roads. The Permittee and its contractors shall at all times use all reasonable means to minimize inconvenience to abutters and residents in the general area. The following specific restrictions on construction activity shall apply.
- A. Work at construction sites and in the operation of construction equipment including start-up and movement of trucks, vehicles, and machines shall commence no earlier than 7 a.m. and shall cease no later than 7 p.m. Monday through Saturday. No construction shall take place on Sundays, federal holidays, or state legal holidays without the advance written approval of the Building Commissioner. The limits in this subsection do not apply to interior construction work such as painting, installation of drywall, flooring, and similar work.
 - B. The Permittee shall take all measures necessary to ensure that no excessive dust leaves the premises during construction including use of water spray to wet down dusty surfaces.
 - C. There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that any loose gravel or dirt is removed from the roadways and does not create hazardous or deleterious conditions for vehicles, pedestrians or abutting residents. In the event construction debris is carried onto a public way, the Permittee shall be responsible for all clean-up of the roadway which shall occur as soon as possible and in any event within twelve hours of its occurrence.
 - D. The Permittee is responsible for having the contractor clean-up the construction site and the adjacent properties onto which construction debris may fall on a daily basis. All waste products, refuse, debris, and construction materials shall be contained and deposited post construction at an appropriate off-site facility.
 - E. During construction, adequate provisions shall be made on-site for the parking, storing, and stacking of construction materials and vehicles. All parking for

construction vehicles and construction related traffic shall be maintained on site. No parking of construction and construction related vehicles shall take place on adjacent public or private ways or interfere with the safe movement of persons and vehicles on adjacent properties or roadways.

22. Landscape Maintenance

- A. The site's landscaping shall be maintained in good condition throughout the life of the development and to the same extent as shown on the endorsed Plan. Any shrubs, trees, bushes, or other landscaping features shown on the Plan that die shall be replaced by the following spring.
- B. Within 60 days after two years after the last occupancy permit is issued, the Town's consulting engineer or the Building Commissioner may conduct an initial inspection of the landscaping to determine whether and which landscape items need replacement or removal and provide a report to the Board. At any time, subsequent to this initial inspection, the Town's consulting engineer or the Building Commissioner may conduct further inspections of the landscaping to determine whether and which landscaping items need replacement or removal and provide a report to the Board.

23. Snow Storage and Removal

- A. On-site snow storage shall not encroach upon nor prohibit the use of any parking spaces required by the Zoning Bylaw.
- B. The Permittee and future owners shall inform snow removal operators of the approved locations for on-site snow storage.
- C. Accumulated snow which exceeds the capacity of the designated on-site snow storage areas shall be removed from the premises within 24 hours after the storm event has concluded.

24. Right to Enter Property – Board members, its staff, consultants or other designated agents of the Town shall have the right to enter upon the common areas of the site at reasonable times during construction to inspect the site to evaluate for compliance with the terms and conditions of this permit and the endorsed site plan and may acquire any information, measurements, photographs, and/or observations deemed necessary for that evaluation.

25. Construction Oversight

- A. Construction Account
 - 1) Inspection of infrastructure and utility construction, installation of site amenities including landscaping, and erosion controls by the Town's consulting engineer is required. Prior to plan endorsement, the Permittee shall establish a construction account with the Board. The funds may be used at the Board's discretion to retain professional outside consultants to perform the items listed above as well as the following other tasks - inspect the site during construction and installation, identify what site plan work remains to be completed, prepare surety estimates, conduct other reasonable inspections until the site work is completed and determined to be satisfactory, review as-

built plans, and advise the Board as it prepares to issue a Certificate of Site Plan Completion.

- 2) Prior to plan endorsement, the Permittee shall pay an advance toward the cost of these services to the Town of Medway. The advance amount shall be determined by the Board based on an estimate provided by the Town's consulting engineer.
 - 3) Depending on the scope of professional outside consultant assistance that the Board may need, the Permittee shall provide supplemental payments to the project's construction inspection account, upon invoice from the Board, until the road, stormwater system and other infrastructure are completed, and the as-built plan and Certificate of Site Plan Completion has been granted.
 - 4) Any funds remaining in the Permittee's construction inspection account after the Certificate of Site Plan Completion is issued shall be returned to the Permittee.
- A. Pre-Construction Meeting – At least seven days prior to the start of any site preparation or construction, the Permittee shall meet with the Town's consulting engineer, Community and Economic Development staff, the Department of Public Works staff, other Town staff as appropriate, the site contractors, and the Permittee's project engineer for a pre-construction meeting. At or before the pre-construction meeting, the Permittee shall provide the following information:
- a Construction Management Plan as specified in Section 204-3 H. of the Site Plan Rules and Regulations,
 - earth removal calculations
 - earth fill estimates
 - copies of its National Pollutant Discharge Elimination System (NPDES) permit and its Stormwater Pollution Prevention Plan (SWPPP) for this project as filed with the U.S. EPA.
 - list of contacts with contact information for contractors, those responsible for compliance with this permit (Clerk of the Works), on-site management, and erosion control inspector.
- C. Any construction work occurring in the Town's right-of way in conjunction with the Town of Medway Street Opening/Roadway Access Permit and any utility connection permits must meet the requirements of the Medway Department of Public Works and is subject to inspection by the Department of Public Works.
- D. The Permittee shall retain its own professional engineer licensed in the Commonwealth of Massachusetts to conduct progress inspections of the construction of the approved plan and improvements. Inspections shall occur at least on a monthly basis. The Permittee's engineer shall prepare a written report of each inspection, including photographs, and provide a copy to the Board within five days of inspection.
- 26. On-Site Field Changes**
- A. During construction, the Permittee may be authorized to make limited, minor, on-site field changes to the approved plan based on unforeseen site or job conditions,

situations, or emergencies necessitated by field conditions or due to practical considerations. These field changes shall not alter items which may affect the site's compliance with this decision and the Zoning Bylaw nor conflict with a specific condition of the decision. Field changes shall not substantially alter the intent, layout or design of the endorsed site plan.

- B. Prior to undertaking such field changes, the Permittee and/or contractor shall discuss the possible field changes with the Town's consulting engineer and submit a letter and drawings to the Planning and Economic Development Coordinator and the Building Commissioner describing the proposed changes and what conditions, situations, or emergencies necessitate such changes. In accordance with Section 3.5.2.C of the Zoning Bylaw the Building Commissioner may determine that the field change is insubstantial, authorize the change, and so notify the Board. Otherwise, the Board shall review the proposed field change at a public meeting and determine whether the proposed field change is reasonable and acceptable based on the unforeseen conditions, situations, or emergencies and whether other options are feasible or more suitable. The Board will provide a written authorization of field change. Any approved field change shall be reflected in the as-built plan to be provided at project completion.

27. Plan Modification

- A. Proposed modifications (not including on-site field changes) to the endorsed plan shall be subject to review by the Board.
- B. This Special Permit and Site Plan Approval is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the site plan that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as site plan modifications.
- C. Any work that deviates from an approved site plan may be a violation of the Zoning Bylaw unless the Permittee requests approval of a plan modification and such approval is provided in writing by the Board.
- D. The request for a modification to a previously approved plan shall be subject to the same application and review process, including a public hearing, the payment of plan modification filing fee and plan review fee and all costs associated with another public hearing including legal notice advertising. Any modifications approved by the Board shall be made a permanent part of the approved site plan project documents and shall be shown on the final as-built plan.

28. Performance Security

- A. Pursuant to Section 3.5.1.B of the Zoning Bylaw, a final certificate of occupancy shall not be issued until the project has been completed in accordance with the approved and endorsed plan and the applicant has complied with or satisfied all conditions of this Decision. For a temporary or partial occupancy permit, the Permittee may request that the Board accept suitable performance security, to the Board's satisfaction, to cover the cost of all remaining site work, and that the Board so notify the Building Commissioner.

- B. The Board shall determine a reasonable and sufficient amount to cover the Town's cost to complete the work if the Permittee fails to do so. The Town's consulting engineer shall prepare an estimate of the current cost to complete the work that remains unfinished at the time the occupancy permit is requested. The estimate shall be based on unit prices in the latest Weighted Average Bid Prices by the Massachusetts Department of Transportation. The estimate shall also include the cost to maintain the infrastructure, site improvements and amenities, and off-site mitigation measures in the event the Permittee fails to adequately perform such. The estimate shall reflect the cost for the Town to complete the work as a public works project, which may necessitate additional engineering, inspection, legal and administrative fees, staff time and public bidding procedures. A contingency of up to thirty percent shall be added to the total estimate. The Board shall approve the estimate and notify the Town Treasurer/Collector and the Building Commissioner of the approved amount.
- C. The performance security shall be accompanied by a performance security agreement executed by the Permittee, the Board, and the performance guarantee company, in a form acceptable to the Board, the Town Treasurer/Collector, and Town Counsel, which shall define the obligations of the Permittee and the performance security company. It shall include:
 - 1) the date by which the Permittee shall complete construction
 - 2) a statement that the agreement does not expire until released in full by the Board
 - 3) procedures for collection upon default.
- D. Final Release of Performance Security - Final release of performance security is contingent on project completion.

29. Project Completion

- A. As provided in Sections 3.4.E and 3.5.7 of the Zoning Bylaw, special permits and site plan approvals shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, §17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date, except for good cause. Upon receipt of a written request by the applicant filed at least 30 days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested.
- B. Prior to issuance of the final occupancy permit, the Permittee shall request and secure a Certificate of Site Plan Completion from the Board. The Certificate serves as the Board's confirmation that, in its opinion, the completed work conforms to the approved site plan and any conditions and modifications thereto, including the construction of any required on and off-site improvements. The Certificate also serves to release any security or performance guarantee that has been provided to the Town of Medway. To secure a Certificate of Site Plan Completion, the Permittee shall:
 - 1) provide the Board with written certification from a Professional Engineer registered in the Commonwealth of Massachusetts that all building and site

work has been completed in substantial compliance with this permit, the approved and endorsed site plan, and any modifications thereto; and

- 2) submit an electronic version of an As-Built Plan, prepared by a registered Professional Land Surveyor or Engineer registered in the Commonwealth of Massachusetts, to the Board for its review and approval. The As-Built Plan shall show actual as-built locations and conditions of all buildings and site work including landscaping and trees shown on the original site plan and any modifications thereto. The final As-Built Plan shall also be provided to the Town in CAD/GIS file format per MASS GIS specifications.

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**Medway Planning and Economic Development Board
SITE PLAN and SPECIAL PERMIT DECISION
56 Summer Street**

Date of Action by the Planning and Economic Development Board: _____

Andy Rodenhiser, Chair

Date

Sarah Raposa, AICP, Vice-Chair

Date

Timothy Harris, Clerk

Date

John Parlee, Member

Date

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth herein. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Permittee, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

Any person aggrieved by the Special Permit or Site Plan Decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, which shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

In accordance with G.L. c. 40A, §11, no special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed within said twenty day period, or that an appeal has been filed. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. The fee for recording or registering shall be paid by the Permittee. A copy of the recorded Decision, and notification by the Permittee of the recording, shall be furnished to the Board.

56 Summer Street Special Permit and Site Plan Review Decision
April 23, 2024

**Medway Planning and Economic Development Board
SITE PLAN and SPECIAL PERMIT DECISION
56 Summer Street**


Date of Action by the Planning and Economic Development Board: 4/23/24



Andy Rodenhiser, Chair

4/23/24

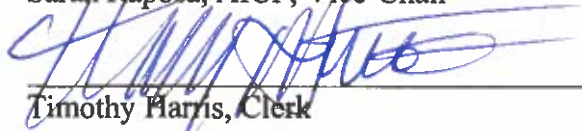
Date



Sarah Raposa, AICP, Vice-Chair

4/23/24

Date



Timothy Harris, Clerk

4/23/24

Date



John Parlee, Member

23 APR 2024

Date

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