

Brem-069-09.26.2014

Date: Fri, 26 Sep 2014 15:59:52 -0400 [09/26/2014 03:59:52 PM EDT]

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From: Doug Deschenes <Doug@dfpclaw.com>

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To: Carlisle ZBA <zba@carlisle.mec.edu>

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Cc: "Jeffrey Brem (jabrem@comcast.net)" <jabrem@comcast.net>

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Subject: Lifetime Green Homes Proposed 40B Project (aka "Brem property")

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Part(s):  2 Brem package.pdf [application/pdf] 1,949 KB

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Peggy,

Attached please find a response to Mike Jacobs letter of September 9th, 2014 including a revised waiver request listing for submission to the ZBA. Please let me know how many hardcopies you would like and I will have them delivered to your office Monday.

Thank You.....Doug Deschenes

-----Original Message-----

From: Cheryl [mailto:cheryl@dfpclaw.com]  
 Sent: Friday, September 26, 2014 3:54 PM  
 To: Doug Deschenes  
 Subject: Message from "RNP002673879997"

RECEIVED  
 SEP 26 2014

TOWN CLERK-CARLISLE  
 CHARLENE M. HINTON

This E-mail was sent from "RNP002673879997" (MP C4503).

Scan Date: 09.26.2014 15:54:02 (-0400)  
 Queries to: administrator@dfpclaw.com

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*\*Admitted in MA and NH*

September 26, 2014

Michael Jacobs  
MHJ Associates  
41 Coolidge Street  
Brookline, MA 02446

RE: Lifetime Green Homes, LLC: Missing Documents According to Comprehensive Permit Regulations (760) CMR 56)

Dear Mr. Jacobs,

Below please find my response to your letter of September 9, 2014. I have numbered my responses to match the numbered issues in your letter:

1. Information has been provided and noted as received in your letter.
2. The requirements for an Eligible Purchaser are set forth in the Affordable Housing Restriction. A model of the restriction is attached in "Attachment G" to the Comprehensive Permit Application. The requirement is also set forth in the Regulatory Agreement, a model of which is also attached in "Attachment G" to the Comprehensive Permit Application. The requirements are set by the Department of Housing and Community Development and administered through the Project Administrator, in this case MassHousing. Furthermore, these restrictions will be monitored by a Monitoring Agent pursuant to a monitoring agreement, an example of which is attached to the Comprehensive Permit Application in "Attachment G". An income Eligible Purchaser is an individual or households earning no more than eighty percent of the area median income. As detailed on Page 11 of the Comprehensive Permit Application, eighty percent of the area median income is approximately \$66,000.00.
3. The duration of the affordability restrictions is in perpetuity as set forth in the MassHousing Site approval letter dated June 3, 2014, attached to the Comprehensive Permit Application as "Attachment H", and as further detailed in the Affordable Housing Restriction detailed above.
4. A tabular analysis comparing existing zoning requirements to those proposed within the Project are shown on Page 3 of the MassHousing Application, attached to the Comprehensive Permit Application as Attachment 3. See revised Waiver List attached
5. See revised Waiver List attached.
6. As detailed in the "Guidelines for Local Review of Comprehensive Permits" issued by the Department of Housing and Community Development, below please find an explanation of

Project impacts, some of which have been addressed in detail in the Comprehensive Permit Application:

Wildlife Habitat: Information on the Wildlife Habitat is included on Page 6 of the Comprehensive Permit Application. Please note, as stated therein, the proposed Project property is not identified as containing any priority habitat by Natural Heritage Endangered Species Program. It is noted that there is a potential vernal pool on the eastern end of the property; however, this potential vernal pool is further than 600 feet from any work.

Erosion/Siltation: Erosion and siltation is shown on the revised grading plan. Erosion controls have also been identified on the Notice of Intent Plan which was filed with the Conservation Commission and copied to the Zoning Board of Appeals. Furthermore, as stated above, my client is not seeking a waiver from the requirement for a "Construction Management Plan" which is required by the Town of Carlisle Zoning Bylaws prior to the commencement of construction. Therefore, any construction related issues relating to erosion and/or will be more particularly described in that report, prior to the commencement of construction on site.

Construction Impacts: Construction Impacts are expected to be typical of those to any residential construction in Carlisle. Furthermore, as stated above, my client is not seeking a waiver from the requirement for a "Construction Management Plan" which is required by the Town of Carlisle Zoning Bylaws prior to the commencement of construction. Therefore, any construction related issues relating to noise, dust, erosion/siltation or potential releases will be more particularly described in that report, prior to the commencement of construction on site.

Historical: In Attachment "F" to the Comprehensive Permit Application is the Project Notification Form for Massachusetts Historical Commission. On the form is the response from Jonathan K. Patton of the Massachusetts Historical Commission which states as follows:

"After review of MHC files and the materials you submitted, it has been Determined that this project is unlikely to affect significant historic or archaeological resources."

Archaeological: Please see above.

Open Space and Recreational Amenities: Information regarding Open Space and information regarding recreational amenities in the area of the proposed project are provided on pages 4-6 of the Comprehensive Permit Application.

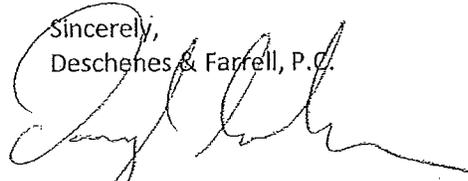
Impact on Municipal Services : Information regarding utilities and impacts on municipal services is detailed on page 3 of the Comprehensive Permit Application. For fire protection purposes the project proposes a 45,000 gallon cistern to be constructed at the applicant's expense and located near the front of the project. This cistern will not only be available for fire suppression for the Project, but also for other existing property owners.

Water Supply: Domestic Water Service will be provided by shared, private wells with the required legal restrictions, easements, and use arrangements as detailed on page 3 of the Comprehensive Permit Application.

Sewerage Treatment: Sewerage will be by three separate shared systems and will utilize Alternative Technologies (MassDEP approved state of the art components.) as is detailed on page 3 of the Comprehensive Permit Application.

Thank you for your continued time and attention to this matter.

Sincerely,  
Deschenes & Farrell, P.C.



Douglas C. Deschenes

**ATTACHMENT 'E'**  
**REQUESTED WAIVERS**

**PREFACE:** These waivers are generated pursuant to M.G.L Chapter 40B and 760 CMR 56. To the extent reasonably practicable, they are generated to be consistent with the Town of Carlisle Zoning Board of Appeals Rules and Regulations. Under 760 CMR 56, a Board shall grant such waivers which are consistent with Local Needs, as defined therein, and that are required to permit the construction and operation of the Project. Zoning waivers are required solely from the "as-of-right requirements of the zoning district where the Project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district." A Board may not deny a requested waiver if such denial would make the Project Uneconomic unless the Local Concerns outweigh the Local Needs as defined in 760 CMR 56.

The Lifetime Green Homes Project is slightly below the threshold 15% profitability margin for a project to be considered "economic" under Chapter 40B and the applicable regulations. However, the Project is economically viable such that the Project has acquired the requisite Project Eligibility letter from Mass Housing. A copy of the Project pro forma is attached hereto as Exhibit A for your consideration. Because of the current economic viability of the Project (14.4%), the denial of any requested waiver which will either: 1) increase the cost(s) of the Project, or 2) result in a reduction in the total number of housing units produced, either of which will make the Project uneconomic. Attached please find, as Exhibit B, additional pro formas reflecting a reduction in the number of housing units constructed. As can be seen from these pro formas, a reduction in even a single unit will make the Project's projected income fall to an uneconomic level.

The Project proponent is proposing to develop the Project as a condominium project whereby all of the proposed units shall be located on a single lot. The Project does not propose a subdivision. Therefore, the entranceway into the Project from Long Ridge Road is to be considered as a "Private Driveway" as defined in the Carlisle Zoning Bylaw Section 5.4.

**Zoning Bylaw Waivers:**

**§3.0. District Use Regulations.**

Waiver: Seeking waiver to allow for development of twenty (20) unit housing development on a single lot in the Residence District B.

Basis: Without the requested waiver the Project could not be developed as proposed (i.e. number of units). A reduction in the number of units developed will make the Project uneconomic. The Zoning Bylaw only allows one (1), single-family home on a lot in the Residence District B. In accordance with Section 1.1 of the Town of Carlisle Zoning Bylaw, the purpose of the Bylaw is to "promote the general health, safety, convenience and welfare of the Town of Carlisle and its inhabitants." More specifically, while the basis for this Bylaw is conceivably to reduce density and provide for larger single family home lots, the bylaw is inconsistent with "Local Needs" under Chapter 40B and the

regulations promulgated thereunder. Furthermore, to the extent the bylaw is intended to promote safe and environmentally protective housing, the proposed Project has been designed to meet state and federal public safety and environmental protection laws and regulations, and to the extent economically feasible, the Local Carlisle Rules and Regulations. Therefore, the proposed Project will meet the intent of the bylaw.

§4.2.1 No building shall be erected or altered so as to extend nearer to the line of any street or nearer to its front lot line ... .. than forty (40) feet, ... ..

Waiver: Seeking waiver to allow for reduced setback from street of 33” (40’ required).

Basis: Without the requested waiver the Project could not be developed as proposed and meeting the setback requirement would result in a loss of units. Any number of units less than the 20 proposed will make the Project uneconomic. The intent of the bylaw, presumably, is to provide spacing between housing units and the street and/or its front lot line for both safety and aesthetic reasons. Given the fact that the requested waiver request only a 7 foot reduction, a front yard setback of less than 40’ is allowed in other districts, Long Ridge Road is a relatively quiet residential street with a low speed limit and because Long Ridge Road ends approximately 200 +/- feet from the front of the Project Lot, the relief can be granted without derogating from the intent of the bylaw (i.e. safety and aesthetics). Furthermore, to the extent that the bylaw is intended to control the density of housing units, the proposed Project has been designed to meet state and federal public safety and environmental protection laws and regulations and, to the extent economically feasible, the Local Carlisle Rules and Regulations. Therefore, the proposed Project will meet the intent of the bylaw.

§4.3.2. No building shall be erected or altered in General Residence Districts B and M so as to extend nearer to any side or rear lot line of its lot than forty (40) feet, ... ..

Waiver: Seeking waiver to allow for reduced front, side and rear setbacks (proposed: 33’ front, 10’ side, 10’ rear (40’ required).

Basis: Without the requested waiver the Project could not be developed as proposed and meeting the setback requirements would result in a loss of units. Any number of units less than the 20 proposed will make the Project uneconomic. While the intent of the bylaw is presumably to provide spacing between housing units and their property lines for both safety and aesthetic reasons, given the fact that there are only two other dwelling within sight of the Project, which are a significant distance from the nearest unit in the Project, the relief can be granted without derogating from the intent of the bylaw. The proposed setbacks will allow for safe and adequate access to the dwellings for emergency

access and are in conformance with Massachusetts building codes. Furthermore, to the extent that the bylaw is intended to control the density of housing units, the proposed Project has been designed to meet state and federal public safety and environmental protection laws and regulations and, to the extent economically feasible, the Local Carlisle Rules and Regulations. Therefore, the proposed Project will meet the intent of the bylaw.

#### 5.4.4 Private Driveways

Waiver: Seeking waiver to allow for twenty units on a Private Driveway as shown on the plan. Section 5.4.4 allows for a maximum of 6 “lots” to share a Private Driveway. Although the Project proposes the use of a Private Driveway which will only service one “Lot”, in the event the Board interprets the bylaw to apply to “units” we are seeking a waiver to allow for use of the Private Driveway to serve 20 units.

Basis: Without the requested waiver the Project could not be developed as proposed. Any number of units less than the 20 proposed will make the project uneconomic. The intent of the Private Driveway bylaw is to provide safe and convenient access so as to secure safety in case of fire, flood, panic and other emergencies. Given that the driveway has been designed to meet not only state and federal public safety regulations but most of the roadway standards under the Carlisle Rules and Regulations, including the width requirements, the proposed Private Driveway will provide safe and convenient access and is consistent with the Bylaw’s purpose and intent. The safety of the proposed Private Driveway will also be reviewed for adequacy by the Carlisle Police and Fire Department. Additionally, the proposed Private Driveway will be addressed in the Project proponent’s traffic report to be reviewed by the Board’s peer consultant to verify its adequacy and safety. Therefore, the proposed Project will meet the intent of the bylaw.

### Subdivision Rules and Regulations Waivers of Expected Conditions

#### Carlisle Planning Board Rules and Regulations Governing the Subdivision of Land

The Project is not requesting a subdivision approval and therefore waivers from the subdivision requirements are technically not required under Chapter 40B and the Regulations promulgated thereunder. However, to the extent that the Board shall look to the subdivision standards for a basis for required Project conditions (i.e. driveway construction standards), as has been and may further be discussed during the hearing process, the applicant seeks the following waivers from the standards presumed to be applied:

Article II §6.B2(a) Landscape Plan

Waiver: Seeking waiver from providing a landscape plan prepared by registered landscape architect with the Comprehensive Permit Application.

Basis: Site plans include a landscape plan provided by the Project's Civil Engineer. As the Project design is finalized, the applicant will then provide a landscape plan prepared by a registered landscape architect thus avoiding the cost of design and multiple redesigns. The cost of multiple redesigns will make the Project uneconomic. Allowing the proponent to apply with the initial landscape plan, obtain comments from the Board and other town boards and then provide a finalized plan prepared by a registered landscape architect will meet the intent of this bylaw, which is presumably to give the Board an opportunity to review, comment on and/or impose conditions on the Project relative to landscaping. The proposal to submit a landscape plan prepared by a registered landscape architect based on the Board's review of the submitted plan will more than meet the intent of the Bylaw.

Article III §2.A(1)

Waiver: Seeking waiver from the requirement that a subdivision containing more than 11 "Lots" having legal frontage on a single Dead-end street is required to have no less than two (2) noncontiguous accesses with existing Town roads.

Basis: While the Bylaw is applicable to more than 10 "building Lots" "having frontage on a single Dead-end street", and is not applicable to the Project which has one lot containing a Private Driveway, it is assumed that the intent of the bylaw is to limit the number of dwelling units on a dead end for safety reasons. Without the requested waiver the Project could not be developed as proposed (i.e. 20 units). Any number of units less than the 20 proposed will make the Project uneconomic. As proposed, the Private Driveway serving 20 homes with a single access conforms to the safety standards of NFPA 1141 Table 5.1.5.1 (a) which allows for 100 households on a one access route. Additionally, the proposed Private Driveway will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, the proposed Private Driveway will meet the intent of the bylaw.

Article III §2.A(2)

Waiver: Seeking waiver from the requirement that a subdivision roadway "shall be laid out such that the closure of any single road will deny access to no more than ten (10) building Lots".

Basis: While the Bylaw is applicable to subdivision roadways and access to no more than 10 "building Lots", and while the Project has one lot containing a Private Driveway servicing 20 dwelling units on the lot, it is assumed that the intent of the bylaw is to limit the number of dwelling units whose access could be denied should a portion of the Private Driveway be closed for safety reasons. Without the requested waiver, the Project could not be developed as proposed (i.e. 20 units). Any number of units less than the 20 proposed will make the Project uneconomic. As proposed, the Private Driveway serving 20 homes with a single access conforms to the safety standards of NFPA 1141 Table 5.1.5.1(a). Additionally, the proposed Private Driveway will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, the proposed Private Driveway will meet the intent of the bylaw.

Article III §2.B(1)

Waiver: Seeking waiver from minimum centerline offset requirement of 125'. It is proposed to provide an offset of 75'.

Basis: Requiring adherence to the 125' centerline offset requirement will result in a significant reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. The 75' centerline offset (closest pavement edge to pavement edge from offset intersections) proposed will provide for a safe access way (Private Driveway) as it exceeds the Mass DOT centerline offset requirement of 50'. (See Exhibit C) Additionally, the proposed centerline offset will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, the proposed centerline offset will meet the intent of the bylaw.

Article III §2.B(4)

Waiver: Seeking waiver from meeting minimum centerline radius as shown on "Exhibit E" of the Subdivision Rules and Regulations. Please note Exhibit E shows a minimum centerline radius requirement of 125'. It is proposed to provide a radius of 80'.

Basis: Requiring adherence to the 125' centerline radius requirement will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. The 80' centerline radius proposed will provide for a safe access way (Private Driveway) as it exceeds the NFPA 1141 Section 5.2.10 centerline radius requirement of 60'. Furthermore, the location of the subject horizontal curve is less than 200' from the terminus (dead end) of the Private Driveway. The travel speeds at this intersection are generally less than 20 mph. Therefore, the proposed 80' radius will provide for a safe design. Additionally, the proposed Private Driveway will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety including radius templates. Therefore, the proposed centerline radius will meet the intent of the bylaw.

Article III §2.B(5) Maximum Grade and Article III §2.C(2)

\_Waiver: Seeking waiver from meeting maximum street grade as shown on "Exhibit E" of the Subdivision Rules and Regulations. Please note Exhibit E, footnote B, shows a maximum street grade of 6% when the centerline street radius is less than 200 feet. (Also note that the Project's proposed centerline street radius is 80'). It is proposed to provide a maximum street grade of 8%.

Basis: Requiring adherence to the 6% maximum street grade will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. The 8% maximum street grade complies with the regulations with the exception of footnote B, and therefore, the proposed 8% maximum grade will provide for a safe design. Additionally, the proposed Private Driveway (including grades) will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, the proposed maximum grade of 8% will meet the intent of the bylaw.

Article III §2.B(5) Sag Vertical Curve

Waiver: Seeking waiver from meeting Sag Vertical Curve requirement as shown on "Exhibit E" of the Subdivision Rules and Regulations. Please note Exhibit E shows a

Sag Vertical Curve requirement of K=24. It is proposed to provide a Sag Vertical Curve of K=15.

Basis: Requiring adherence to the K=24 requirement will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. SAG vertical curves are controlled by night lighting of the roadway. In this case the roadway is the terminus of the Cul-de-sac also within a curve which will slow all vehicles. Therefore, the proposed K=15 Sag Vertical Curve provides for a safe design. Additionally, the proposed Private Driveway (including Sag Vertical Curve) will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, the proposed Sag Vertical Curve of K=15 will meet the intent of the bylaw.

Article III §2.D (1)

Waiver: Seeking waiver from Subdivision Dead-end Street Requirement that "no Dead-end Street shall provide legal frontage for more than ten (10) building Lots."

Basis: Requiring adherence to the limitation on the number of "lots" (we are only one lot with 20 units) on a Dead-end street will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. The Private Driveway proposed servicing 20 units complies with the standards of NFPA 1141 Table 5.1.5.1(a) which allows for 100 households on a one access route and is also compliant with NFPA 1141 Section 5.1.4 which allows for a cul de sac up to 1200 feet in length. Therefore, allowing 20 units on the Private Driveway (Dead-end) will provide for a safe access/egress to/from the Project. Additionally, the proposed Private Driveway (including the fact that it is a Dead-end) will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, allowing 20 units on the Dead-end Private Driveway will meet the intent of the bylaw.

Article III §2.D (2)

Waiver: Seeking waiver from Subdivision Dead-end Street geometry requirements for the Cul-de-sac turnaround of: 140' outside diameter of the paved surface and a 100' diameter center island. The proposed geometry is as follows: 120' outside diameter of the paved surface and a 80' diameter center island.

Basis: Requiring adherence to the Subdivision Dead-end Street geometry requirements will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. Inherent in that intended purpose is the safe travel of emergency vehicles within the Dead-end. The proposed geometry complies with the standards of NFPA 1141 section 5.2.8 which specifies a 120' minimum outside diameter of the traveled way. Therefore, the proposed geometry will provides for a safe vehicular travel (including emergency vehicles) within the Private Driveway. Additionally, the proposed Private Driveway (including the geometry of the Cul-de-sac) will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, allowing proposed Cul-de-sac geometry will meet the intent of the bylaw.

Article III §2.D (4)

Waiver: Seeking waiver from Subdivision Dead-end Street Requirement that "no more than three Lots can be accessed on a Cul-de-sac. The Project proposes 4 units to access on the Cul-de-sac.

Basis: Requiring adherence to the limitation on the number of "lots" (we are only one lot, 20 units) accessing on a Cul-de-sac will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. The Private Driveway proposed has 4 units accessing on the Cul-de-sac. The addition of one additional unit accessing on the Cul-de-sac will not have a perceptible impact on the safe access and egress from the units onto the Private Driveway. Therefore, allowing 4 units to access the Private Driveway from the Cul-de-sac still provides for a safe access/egress to/from the Project. Additionally, the proposed Private Driveway (including the number of units accessing on the cul-de-sac) will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer

consultant to verify its adequacy and safety. Therefore, allowing 4 units to access on the on the Cul-de-sac will meet the intent of the bylaw.

Article III §5.B(5)

Waiver: Seeking waiver from requirement of sloped/vertical granite curbing on subdivision roadways. The Project proposes to use Cape Cod Berm on the Private Driveway.

Basis: Requiring use of sloped/vertical granite curbing on the Private Driveway will result in significant cost increases making the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. Inherent in that intent is that subdivision roadways (which is expected to ultimately be "owned" by the Town) should be built to meet the highest of construction standards so that the Town will not be responsible for maintenance costs. However, the proposed Private Driveway is not proposed to be accepted as a Town roadway. Therefore, there will be no maintenance costs to the Town associated with Private Driveway as it will be "owned" and maintained by the applicable Homeowners Association. Furthermore, the use of Cape Cod berm has been allowed in other developments in Carlisle, including Long Ridge Road which is the town roadway abutting the Project, Garnet Rock Road, Nowelle Farm Road and Suffolk Lane which are all Town roadways in the general vicinity of the Project. Therefore, allowing the use of Cape Cod berm will meet the intent of the bylaw.

Article III §5.G(3)(i)

Waiver: Seeking waiver from requirement that "Infiltration of runoff from impervious surfaces (other than roof runoff) shall only be allowed where pretreatment of runoff for sediment removal of eighty percent tss (total suspended solids) is provided." The Project proposes 44% pretreatment

Basis: Requiring adherence to the 80% tss removal will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the Project uneconomic. The Carlisle Subdivision Rules and Regulations expressly state that the Subdivision Control Laws (under which Carlisle's Rules and Regulations are promulgated), are intended to protect the safety, convenience and welfare of the inhabitants of Carlisle. Inherent in that intended purpose is the protection of groundwater. The proposed pretreatment of 44% complies with the Massachusetts DEP requirements thus insuring protection of the groundwater in the Project area.

Additionally, the proposed pretreatment is addressed in the Project proponent's Stormwater report to be reviewed by the Board's peer consultant to verify its adequacy. Therefore, the waiver if granted will meet the intent of the Bylaw.

### **Carlisle Non-zoning Wetland Bylaw**

#### *Section 2.2*

Waiver: A waiver is requested from the local Conservation Commission filing fees.

Basis: Payment of the local Conservation Commission filing fees will make the Project uneconomic.

### **Zoning Board of Appeals Rules and Regulations**

#### *Attachment A: Comprehensive Permit Performance Standards*

#### *Section II. Specific Performance Standards*

#### *Section A. Zoning Bylaws 2. Setbacks:*

Waiver: Seeking waiver to allow for reduced front, side and rear setbacks (proposed: 33' front, 10' side, 10' rear (40' required) Also, to allow for buildings closer than 100 feet from the boundary of the property, closer than 50 feet from any Open Space and closer than 30 feet from any other residential unit. The Project proposes to locate a unit within 15 feet of the boundary line, 35 feet from the Open Space and 16 feet from each other at their closest points.

Basis: Without the requested waiver the Project could not be developed as proposed and meeting the setback requirements would result in a loss of units. Any number of units less than the 20 proposed will make the Project uneconomic. While the intent of the bylaw may be to provide spacing between housing units and their property lines for both safety and aesthetic reasons, given the fact that there are only two other dwelling within sight of the Project, which dwellings are a significant distance from the nearest unit in the Project, the relief can be granted without derogating from the intent of the bylaw. The proposed setbacks will allow for safe and adequate access to the dwellings for emergency access and are in conformance with Massachusetts building codes. Furthermore, to the extent that the bylaw is intended to control the density of housing units, the proposed Project has been designed to meet state and federal public safety and environmental protection laws and regulations and, to the extent economically feasible, the Local Carlisle Rules and Regulations. Therefore, allowing the requested waiver will meet the intent of the bylaw.

Section A. Zoning Bylaws 5. Units on a Common Drive:

Private Driveways

Waiver: Seeking waiver to allow for twenty units on a Private Driveway as shown on the plan. Section A. Zoning Bylaws 5, limits the number of units on a common drive to six (6). The proposed Project has 20 units on a Private Driveway not a Common Driveway as defined in the Carlisle Zoning Bylaw.

Basis: Without the requested waiver the Project could not be developed as proposed. Any number of units less than the 20 proposed will make the Project uneconomic. The intent of the Common Driveway bylaw is to provide safe and convenient access so as to secure safety in case of fire, flood, panic and other emergencies. Given that the driveway has been designed to meet not only state and federal public safety regulations but most of the roadway standards under the Carlisle Rules and Regulations, including width requirements, the proposed Private Driveway will provide safe and convenient access and therefore be consistent with the Bylaw's purpose and intent. Additionally, the proposed Private Driveway will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, allowing the requested waiver will meet the intent of the bylaw.

Section B. Subdivision Rules and Regulations, Rules and Regulations Regarding Special Permits for Common Driveways and Rules and Regulations for SROSC:

Section 2. Roadways and Common Driveways, Part a

Waiver: Seeking a waiver from the requirement that a "Common Drive" exceeding 300 feet must have turnouts "at reasonable intervals along the driveway, but at least every 300 feet to allow vehicles to pass". The Project proposes no turnouts.

Basis: In order to provide turnouts the Project would need to be redesigned such that a number of units would be lost. Any number of units less than the 20 proposed will make the Project uneconomic. The intent of the Common Driveway bylaw is to provide safe and convenient access so as to secure safety in case of fire, flood, panic and other emergencies. Given that the driveway has been designed to meet not only state and federal public safety regulations but will be built to meet the twenty (20) foot pavement width for a roadways to be accepted as a public way under the Town of Carlisle roadway standards, sufficient accommodations have been made to allow for the safe passage of vehicles without the need for turnouts. (Please note turnouts are not required on 20' public ways). Additionally, the proposed Private Driveway will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify

its adequacy and safety. Therefore, allowing the requested waiver will meet the intent of the bylaw.

Section 2. Roadways and Common Driveways, Part e (i)

Waiver: Seeking a waiver from the requirement that Dead-ends shall provide at the closed end a Cul-de-sac turnaround .... “with an outside diameter of the paved surface of one hundred and forty (140) feet. A landscaped island having a diameter of one hundred (100) feet shall be provided in the center of the turn-around....” The Project proposes an outside diameter of the paving of 120’ and a landscape island having a diameter of 75’.

Basis: In order to provide the required diameters (i.e. outside paved surface and landscape island), the Project would need to be redesigned such that a number of units would be lost. Any number of units less than the 20 proposed will make the Project uneconomic. The intent of the Common Driveway bylaw is to provide safe and convenient access so as to secure safety in case of fire, flood, panic and other emergencies. Given that the driveway has been designed to meet not only state and federal public safety regulations but will be built to meet the twenty (20) foot pavement width for a roadways to be accepted as a public way under the Town of Carlisle roadway standards, sufficient accommodations have been made to allow for the safe passage of vehicles with the diameters proposed. Additionally, the proposed Private Driveway will be addressed in the Project proponent’s traffic report to be reviewed by the Board’s peer consultant to verify its adequacy and safety. Therefore, allowing the requested waiver will meet the intent of the bylaw.

Section 2. Roadways and Common Driveways, Part e(iii)

Waiver: Seeking a waiver from the requirement that: “No more than three dwelling units shall be accessed directly from a Cul-de-sac.” The Project proposes 4 units to access on the Cul-de-sac.

Basis: Requiring adherence to the limitation on the number of units accessing on a Cul-de-sac will result in a reduction in the number of units within the Project. Any number of units less than the 20 proposed will make the project uneconomic. The intent of the Common Driveway bylaw is to provide safe and convenient access so as to secure safety in case of fire, flood, panic and other emergencies. Given that the driveway has been designed to meet not only state and federal public safety regulations but will be built to meet the twenty (20) foot pavement width for a roadways to be accepted as a public way under the Town of Carlisle roadway standards, sufficient accommodations have been made to allow for the safe passage of vehicles with the diameters proposed. The Private Driveway proposed has 4 units accessing on the Cul-de-sac. The addition of one

additional unit accessing on the Cul-de-sac will not have a perceptible impact on the safe access and egress from the units onto the Private Driveway. Therefore, allowing 4 units to access the Private Driveway from the Cul-de-sac will provide for a safe access/egress to/from the Project. Additionally, the proposed Private Driveway (including the number of units accessing on the cul-de-sac) will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, allowing 4 units to access on the on the Cul-de-sac will meet the intent of the bylaw.

Section 2. Roadways and Common Driveways, Part (f)

Waiver: Seeking a waiver from the requirement that "A development shall not have fewer than two (2) noncontiguous accesses within existing Town roads except in a development of ten (10) or fewer homes or units having legal frontage on a single dead end street." The proposed Project will have 20 units on a Private Driveway with only one access within an existing Town roadway.

Basis: Without the requested waiver the Project could not be developed as proposed. Any number of units less than the 20 proposed will make the Project uneconomic. As proposed, the Private Driveway serving 20 homes with a single access conforms to the safety standards of NFPA 1141 Table 5.1.5.1 (a). Additionally, the proposed Private Driveway will be addressed in the Project proponent's traffic report to be reviewed by the Board's peer consultant to verify its adequacy and safety. Therefore, the proposed Private Driveway will meet the intent of the bylaw.

Comprehensive Permit Fee Waivers:

Regulation 3.02(a). for Limited Dividend Organizations pursuant to a project eligibility letter issued by a federal or state agency - \$1000 per unit plus \$5000 filing fee.

Waiver: Seeking waiver to reduce total filing fee to \$4000.00.

Basis: The filing fee is expressly intended to "pay statutorily required notices and mailings and additional costs based on the number of units". The required filing fee (\$25,000.00) is excessive and makes the Project uneconomic. Allowing the proponent to pay \$4000.00 will satisfy (or exceed) the intent of the regulation.

## Board of Health Regulation Waivers

### Supplemental Regulations For Sewage Disposal Systems

§15.211 The minimum setback distance between a system 2000 GPD/BR or larger to a well is 150'.

Waiver: Seeking waiver from the well setback requirement of 150 feet to allow for a setback of 100 feet.

Basis: The shape of the Project land and the proposed development density do not allow for the required distance of 150'. A redesign of the Project to allow for the 150' required setback would result in a loss of units thereby making the Project uneconomic. The intent of the Carlisle Board of Health Regulations is presumably for the protection of public health, including but not limited to, the protection of aquifers and abutting wells. The proposed 100' setback conforms to the Massachusetts DEP regulations and is therefore protective of public health. Furthermore, the Project proponent has agreed to conduct nitrogen loading analysis, groundwater studies and a mounding analysis. The results of these tests will provide the Board information regarding the adequacy of this proposed setback. Therefore allowing the proposed 100' setback will meet the intent of the Bylaw.

### Section 15.221 General Construction Requirements for All System Components

Waiver: Seeking waiver from the requirement of Total GPD/BR required per Bedroom to allow for design standard of 110 GPD/BR.

Basis: A determination of the required GPD/BR design standard under the Regulations is defined based on the number of bedrooms being serviced by the system. In the Project, multiple dwellings will "share" a common system such that each individual system will service no less than 6 bedrooms. Therefore, the bylaw allows for a design standard of 110 GPD/BR, which is what the Project design allows for. However, in the event that the BOH interprets the bylaw to require a higher GPD/BR design standard, a waiver from the higher design standard is requested.

The size of the Project land and the proposed development density do not allow for septic designs utilizing a minimum design flow requirement higher than 110 GPD/BR. A redesign of the Project to allow for a higher GPD/BR design standard would result in the loss of units making the Project uneconomic.

The general intent of the Carlisle Board of Health Regulations is presumably for the protection of public health, including but not limited to, the protection of aquifers and abutting wells. A more specific intent of the 165 GPD/BR requirement is to account for the installation of garbage grinders by adding 50% of the daily flow. This Project will not

allow garbage grinders and therefore does not require the additional 50%. Also, the proposed 110 GPD/BR design standard conforms to the Massachusetts DEP regulations and is therefore protective of public health. Lastly, the Project proponent has agreed to conduct nitrogen loading analysis, groundwater studies and a mounding analysis. The results of these tests will provide the Board information regarding the adequacy of this proposed design standard. Therefore, allowing the proposed 110 GPD/BR design standard will meet the intent of the Bylaw.

§15.290-293(5) Shared Systems, Condominium and Systems over 2000 GPD/BR.

Waiver: Seeking waiver from the required minimum design flow standard of 165 GPD/BR to allow for a design flow standard of 110 GPD/BR.

Basis: The size of the Project land and the proposed development density do not allow for septic designs utilizing a minimum design flow requirement higher than 110 GPD/BR. A redesign of the Project to allow for a higher GPD/BR design standard would result in the loss of units making the Project uneconomic.

The general intent of the Carlisle Board of Health Regulations is presumably for the protection of public health, including but not limited to, the protection of aquifers and abutting wells. A more specific intent of the 165 GPD/BR requirement is to account for the installation of garbage grinders by adding 50% of the daily flow. This Project will not allow garbage grinders and therefore does not require the additional 50%. Also, the proposed 110 GPD/BR design standard conforms to the Massachusetts DEP regulations and is therefore protective of public health. Lastly, the Project proponent has agreed to conduct nitrogen loading analysis, groundwater studies and a mounding analysis. The results of these tests will provide the Board information regarding the adequacy of this proposed design standard. Therefore, allowing the proposed 110 GPD/BR design standard will meet the intent of the Bylaw.

Town of Carlisle Water Supply Regulations

Section VI Location And Use Requirements:

Waiver: Seeking a waiver from the requirement that "all private wells shall be located a minimum of twenty-five (25) feet from the normal driving surface of any public roadway or a minimum of fifteen feet (15) from the road right-of-way, whichever is greater." The waiver sought is to allow the well to be within less than five (5) feet from the Private Driveway.

Basis: Requiring all proposed wells within the Project to be 25' from the Private Driveway (if applicable), will require a redesign of the Project such that units will be lost. Any number of units less than the 20 proposed will make the Project uneconomic. Additionally, there is no public roadway or road right-of-way within the Project. The bylaw does not provide a setback from driveways. However, in the event the Board applies the roadway standard a waiver is sought.

The intent of the Well Regulations are presumably for the protection of public health, including but not limited to, the protection of aquifers and wells. Given that the Private Driveway will be utilized by the unit owners and their guests only, and not the general public, the concern regarding contamination of the well due to road contaminants is minimized. Furthermore, the proposed well locations conform to the Massachusetts DEP regulations and are therefore protective of public health. Additionally, curbing will be installed at all subject locations which will act as a runoff barrier protecting the wells. Lastly, the Project proponent has agreed to conduct nitrogen loading analysis, groundwater studies and a mounding analysis. The results of these tests will provide the Board information regarding the adequacy of the proposed well locations. Therefore, allowing the proposed proximity of the well from the Private Driveway will meet the intent of the Bylaw.

**General Waiver:**

Waiver: The applicant requests that the Carlisle Zoning Board of Appeals grant relief from any other zoning requirement or other applicable local rule, regulation, bylaw or policy which the Carlisle Zoning Board of Appeals determines to be applicable to the Project and which is not met by the current site plan or any subsequent site plans reflecting changes resulting from the Zoning Board of Appeals' review of the Project.