

**TOWN OF BARRINGTON
PLANNING BOARD
PRELIMINARY PLAN DECISION**

Date of Meeting: July 5, 2016

This is to certify that at the Barrington Planning Board meeting held on the above date, the Board considered the following application:

Applicant/Owner: East Bay Community Development Corp., 150 Franklin St., Bristol, RI
Subject Premises: West of Sowams Road south of Orchard Avenue, including "Sowams Nursery" properties, and two lots with existing dwellings at 91 and 97 Sowams Road
Assessor's Plat: 28 **Lots:** 72, 73, 246, 248, 249 and 263
Zoning District:
Requested Action: Palmer Point Neighborhood Comprehensive Permit Approval – Preliminary Plan

Planning Board Members Voting on Subject Application:

Motion: [Member] made the following motion:

"The Barrington Planning Board hereby approves with conditions the comprehensive permit application seeking preliminary plan approval of plans entitled 'Palmer Point Neighborhood,' for property located on Sowams Road in the Town of Barrington, Rhode Island, Assessor's Plat 28, Lots 72, 73, 246, 248, 249, and 263, R-25 Zoning District. Plans by: Fuss & O'Neill, 317 Iron Horse Way, Suite 204, Providence, RI 02908, and Union Studio, Providence, RI 02903, dated February 2016.

This decision is based upon the following legal conclusions with supporting findings of fact and conditions of approval:

Procedural History

The Applicant filed an application for a comprehensive permit in March of 2013. The application proposed to renovate two existing single-family dwellings, to be sold at market rate, and to construct 48 new dwelling units. In a decision issued on August 13, 2013, the Planning Board granted master plan approval to the proposed development. The Board's approval was

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subject to eighteen (18) conditions and limited the density of the proposed development to 42 units, including the two existing dwellings.

Subsequently, landowners abutting the proposed development appealed the Board's decision to the Superior Court. In an opinion issued on October 1, 2014, the Superior Court affirmed the Board's decision. See CODDER 02806 v. East Bay Community Development Corp., C.A. No. PC-2013-4355 (R.I. Super. Oct. 1, 2014).

The Board held a public hearing to consider the preliminary plan application on April 5, May 3 and June 7, 2016. On June 7, 2016, the Board closed the public hearing and directed staff to prepare a draft motion for the Board's consideration.

LEGAL CONCLUSIONS in accordance with R.I. Gen. Laws § 45-53-4(a)(4)(v) with supporting FINDINGS OF FACT

The Board hereby incorporates the legal conclusions and findings of fact contained within the decision granting master plan approval, dated August 13, 2013. To some extent, the Superior Court's decision has limited the Board's discretion on the preliminary plan application, in that issues that were fully and finally decided at the master plan stage and affirmed by the Court may not be modified by the Board. The below conclusions and findings are specific to the evidence and testimony presented during the preliminary plan stage of review.

1. The proposed development is consistent with local needs as identified in the local comprehensive community plan with particular emphasis on the community's affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

- The evidence and testimony presented at the preliminary plan stage of review has not altered the Board's positive finding on this standard, which finding was affirmed by the Superior Court.
- The Applicant has satisfied the conditions of approval that relate to this finding; specifically, Conditions of Approval Nos. 1 and 2. As depicted on the plans, the proposed development contains two existing single-family dwellings and 40 new LMI units. Of the 40 new LMI units, 10 are one-bedroom units, 16 are two-bedroom units, and 14 are three-bedroom units. The 10 one-bedroom units represent 25% of the total new units.

2. The proposed development is in compliance with the standards and provisions of the Town's zoning ordinance and subdivision regulations, and/or where expressly varied or waived local concerns that have been affected by the relief granted do not outweigh the state and local need for low and moderate income housing.

- At the master plan stage of review, the Board granted six waivers of the Zoning Ordinance and/or Land Development and Subdivision Regulations. The Applicant has satisfied the conditions of approval that relate to these waivers; specifically, Conditions of Approval Nos. 7 and 16.
- Additionally, the Board revises relief for insufficient frontage for the Lot 6 Conservation Lot ("Lot 3" on the master plan), from no frontage in the master plan to 20 feet of frontage in the preliminary plan (a minimum of 140 feet is required). This parcel is created for open space purposes only; no structures are permitted on Lot 3.
 - At the master plan stage of review, the Board found that further information was required to evaluate the remaining requests for waivers. The Applicant has submitted detailed engineering plans and a revised site plan reflecting a reduced number of units. The following additional relief is hereby granted, as the Applicant has satisfied the conditions of approval that relate to these waivers; specifically, Conditions of Approval Nos. 5 and 6:

Zoning Ordinance

▪ *Section 185-17 – Dimensional Regulations:*

- Required minimum front yard depth in the Residence 25 zone is thirty (30) feet. Lot 1 minimum front yard is nine (9) feet, Lot 2 minimum front yard is ten (10) feet, Lot 3 front yard is six (6) feet, and Lot 5 front yard is seventeen (17) feet (existing).
- Maximum building lot coverage in the Residence 25 zone is 20%. The proposed Lot 1 building-lot coverage is at 22%, which is a reduction in the requested relief compared to the Master Plan stage, which depicted a building-lot coverage percentage of 29% for Lot 1.
- Allowing minimum setback of accessory structures less than the 14 foot minimum in the R25 zone. The accessory structure, identified as "Building 'A'" on the site plan, is 10 feet from the street right of way. The Applicant has reduced relief requested in the master plan by providing a larger front-yard setback compared to the previous plan depicting a five-foot setback.

▪ *Article XV: Off-Street Parking Requirements:*

- Section 185-79.A(3) and (4): Site Improvement Requirements. Parking must be placed at the side or rear of the lot and is prohibited from the front yard. Building numbers 11 & 12 have parking within front yard areas. The Preliminary Plan shows parking spaces adjacent to Building 12 are within the front-yard setback; however, these spaces have been shifted such they are no longer in the street right-of-way, which was a concern of the Board with the Master Plan layout.

Land Development & Subdivision Regulations

- *Lots:* 200-47.B. In general, lots shall not extend through a block to another existing or proposed street. A lot, such as Lot 1 on the proposed plan, may be established as a through lot, surrounded on all sides by proposed streets – allowing a waiver of Land Development & Subdivision Regulations Sec. 200-47.B, as there are no rear yards fronting on a street. This is the case with the design with regard to Lot 1, which orients all of the units on the lot to face the street, and, where there are no units, places a common green that extends from one street to the next.
- The following waivers are hereby granted, as the waivers relate to technical issues such as utility layout and storm-water management design; in addition, the waivers for street layout are based on a design that complies with the turning requirements of the Fire Department’s apparatus, as depicted on Sheet CS-103:
 - Allowing a center-line curve having less than the minimum radius of one hundred twenty-five (125) feet where a deflection angle of ten degrees or more occurs in the center line of a street (Land Development & Subdivision Regulations 200-44.F).
 - Allowing intersecting street lines with less than the radii required per Land Development & Subdivision Regulations 200-44.K.
 - Allowing for alternative curbing other than granite, which is required per Land Development & Subdivision Regulations 200-52.B.
 - Allowing sanitary sewer to be placed outside the centerline of the internal street (Land Development & Subdivision Regulations 200-52.J(1)).
- Further, in order to reduce the overall impervious surface within the development, and in recognition of the provision of 12 on-street parking spaces that do not count toward the off-street parking supply, the Board grants a waiver for *Off-Street Parking Required for Specific Uses: Zoning Ordinance Section 185-78.A(2) and .A(12)*, as required for the Applicant to comply with the Board’s condition of preliminary plan approval Number 1 reducing the number of off-street spaces by 10.

3. All low and moderate income housing units proposed are integrated throughout the development; are compatible in scale and architectural style to the market rate units within the project; and will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.

- The evidence and testimony presented at the preliminary plan stage of review has not affected the Board's positive finding on this standard, which finding was affirmed by the Superior Court.

4. There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval.

- As noted by the Superior Court's opinion affirming the Board's decision to grant master plan approval, "§ 45-53-4(a)(4)(v)(D) requires only a positive finding that there will be no negative environmental impacts 'as shown on the final plan, with all required conditions for approval.' Thus, this statutory section refers specifically to a final plan which is produced incorporating all conditions of approval. When [the Applicant] produces a final plan which incorporates the Board's conditions, it will presumably address the issues presented by the Appellants' experts."
- The Board acknowledges the concerns raised by members of the public regarding environmental issues at the subject property. Both the U.S. Environmental Protection Agency and the R.I. Department of Environmental Management have specific statutory authority and jurisdiction regarding remediation of contaminated property and mitigation during construction. In accordance with § 45-53-4(a)(1)(vii), the Applicant will be required to obtain "[a]ll required state and federal permits prior to the final plan approval or the issuance of a building permit." If all required permits are not obtained from state and federal agencies, then the proposed development cannot receive final approval. If any permits would require substantial changes to the approved preliminary plan, the Applicant will be required to appear before the Board at a public hearing to discuss those changes and request the Board's approval. If the Applicant receives the necessary permits from state and federal agencies, the Board lacks the authority to find that this criterion has not been satisfied. With the evidence that has been presented to date, the Board reserves judgment on this criterion.
- The Applicant has satisfied the Conditions of Approval Nos. 8, 11, 13, 14, 15, and 16.

5. There will be no significant negative impacts on the health and safety of current or future residents of the community, in areas including, but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewage disposal, availability of potable water, adequate surface water run-off, and the preservation of natural, historical or cultural features that contribute to the attractiveness of the community.

- In accordance with Condition of Approval No. 17, the Applicant submitted a traffic impact analysis completed by Fuss & O'Neill. The analysis concluded that "the proposed development, along with the recommendations outlined above, (if any) will not have a significant impact to traffic operations within the study area." This report was subject to peer review by Pare Corp., an engineering firm based in Lincoln, RI.

Pare's peer review report stated in pertinent part as follows: "Based on our review of the report, we are in agreement with the contents of the submittal and the analyses performed. The additional traffic is anticipated to have little or no impact to the surrounding roadway network." The Board accepts the conclusion of the traffic study prepared by the Applicant, which constitutes un rebutted expert testimony.

- Although the installation of sidewalks along Sowams Road would improve pedestrian safety in the area of the proposed development, the Board finds, based on its personal knowledge of the area, that pedestrians need not walk south only along Sowams Road, with its S-curve at the southerly end, in order to access County Road and/or the East Bay Bike Path. A safer alternative route of approximately the same distance exists via Crossways Street and New Meadow Road, where there is also a bus stop. This route is also shorter if walking directly to Barrington Shopping Center and the supermarket therein. Because the proposed development is located nearly half a mile (approximately 2,470 feet) from County Road/Rt. 114, as measured on Sowams Road, it would be unreasonable for the Board to require the Applicant to bear the expense of the construction of the full distance as a condition of approval. However, the Board finds that requiring construction of a segment of sidewalk on Sowams Road from the intersection of the proposed new road to Crossways Street, or approximately 960 feet, is a reasonable requirement to impose on the Applicant in order to enhance pedestrian safety on Sowams Road. In addition, providing a short segment of sidewalk on the east side of Sowams Road at the proposed new roadway would enhance safety for students within the development by providing them a place to stand while waiting for the school bus.
- Furthermore, although the Board heard testimony from interested citizens regarding the residents of the proposed development and their expected lack of access to vehicular transportation, the Board notes that no competent evidence was provided to support the assertion that many or most of the residents would lack automobiles. As the Superior Court stated, "this Court does not detect any error in the Board's failure to find that the Sowams Road site was unsuitable; the distances from the Sowams Road site to public transport and the retail center of Barrington presumably did not seem to the Board to be prohibitive distances (even in the winter), and this Court is in agreement."
- The Applicant has satisfied Conditions of Approval Nos. 1, 3, 11, 13, 14, 15, 16, and 17.

6. All proposed land developments and all subdivision lots will have adequate and permanent physical access to a public street in accordance with the requirements of § 45-23-60(5).

- With the exception of the open space lot, on which no structures are proposed or permitted, all lots and units within the proposed development will have access to Sowams Road through a network of streets/driveways internal to the development.

- 7. The proposed development will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable, unless created only as permanent open space or permanently reserved for a public purpose on the approved, recorded plans.**

CONDITIONS OF APPROVAL

1. The site layout plan shall be revised to remove a minimum of 10 paved spaces from the overall off-street parking spaces, of which no more than two shall be removed from an individual parking area and from the outermost row of each lot.
2. The Applicant shall provide a phasing plan depicting the two phases requested by the Applicant in its letter to the Town, dated May 3, 2016, that would allow, as Phase 1, the recording of Lots 4 and 5 prior to the completion of the new roadway and other improvements, as both lots are developed and front on a public street, Sowams Road.
3. The Applicant shall secure the necessary approvals from the RI Department of Environmental Management, to include issuance of a Remedial Approval Letter approving a Remedial Action Work Plan, in accordance with the State's Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases, as Amended November 2011 (Remediation Regulations) Site Remediation Program/Brownfield Program, in response to the presence of arsenic and ~~dieldrin~~ dieldrin at the site.
4. The Applicant shall provide a sample notice to be distributed to prospective tenants at the development to notify them of ongoing property use restrictions as enumerated in an Environmental Land Usage Restriction required as part of the site cleanup under the State's Site Remediation Program.
5. Subject to review by the Town administration, peer review engineer and/or the Assistant Town Solicitor, the Applicant shall provide the following final legal agreements for recording in Land Evidence with the approved Final Plan:
 - a. Easement agreements maintaining public access on portions of sidewalk on private property, and providing access to the open space lot. Maintenance responsibility - snow removal, sidewalk repairs – shall be assigned to the applicant for all sidewalks on-site and within the right of way of the new street
 - b. Provide final easement agreements for access to stormwater management areas and sanitary sewer lines.
 - c. Agreements requiring the Applicant to provide the following:
 - i. Routine maintenance of all stormwater management systems outside the public right of way, to include bioretention basins, dry swales, pretreatment cells, and pretreatment forebays.

- ii. Removal of snow from the on-street parking spaces.
- 6. The Applicant shall ~~be required to~~ construct ~~at its expense~~ a sidewalk on Sowams Road ~~starting from between~~ the ~~north edge of the proposed~~ new roadway ~~on Sowams to and~~ Crossways Street, subject to ~~limitations of the right of way and~~ RIDOT approval under the Physical Alteration Permit process. ~~The Applicant shall include a plan to construct this sidewalk in the final plan submittal.~~ The sidewalk shall be designed to ~~maximize pedestrian safety, to~~ include consideration of a crosswalk on Sowams at the intersection with the new road, while preserving existing trees within the right of way to the extent possible. The Board notes that its preference is to build the sidewalk on the west side of Sowams Road.
- 7. The Applicant shall provide the required bike storage per Land Development & Subdivision Regulations Sec. 200-45.2, subject to review by the Town Administrative Officer and peer review engineer. Storage inside a shed does not meet the standard. As an alternative, the applicant may provide covered bike racks within the development in locations convenient to multiple units; provide a sketch of the shelters and show locations on the site plan.
- 8. The Applicant shall obtain a Physical Alteration Permit for work to be completed in the Sowams Road right of way including the new road for the development and construction of a sidewalk.
- 9. The Applicant shall obtain an Assent from the Coastal Resources Management Council as required for the proposed work within CRMC jurisdiction.
- 10. The Applicant shall provide written confirmation from the Director of Public Works that the department or its designee has reviewed the plans for proposed sewer connections and stormwater control.
- 11. The Applicant shall provide an engineer's estimate, subject to review by the Town and/or the Board's peer review engineer, as required for the Board to establish a security sufficient to cover the cost of required improvements.
- 12. The Applicant shall ~~demonstrate~~ ~~add notes to the plans, where applicable, that~~ ~~require~~ compliance with applicable Utility ~~requirements standards~~, including National Grid's Customer Owned Outdoor Lighting Standards, for decorative street lights located within the public right of way, which will be owned and maintained by the Town, and those on private property, which will be owned and maintained by the Applicant. ~~All proposed exterior lighting shall be LED.~~
- 13. In accordance with R.I. Gen. Laws § 45-53-3(9), the Applicant shall provide a final Deed Restriction or equivalent ensuring the 40 new housing units within the development remain affordable for a period of ninety-nine (99) years from initial occupancy.
- 14. The Applicant shall provide a memorandum describing its response to Pare Corp.'s peer review comments in its letter to Philip Hervey, Town Planner, dated April 4, 2016:

A. Preliminary Plan Submission Check List

- 1) Provide the land surveyor certification/stamp. In addition, provide the land surveyor information on the cover sheet.
- 2) Provide the sizes of all existing utility pipes in Sowams Road.
- 3) Not existing all trees/wooded areas along the rear lot lines of the Orchard Avenue residential buildings have been shown.
- 4) Please confirm that there are no unique or historic features on the site or immediately adjacent to the property.
- 5) If coordination has been performed with the remaining agencies, please indicate the status:
 - a. Bristol County Water Authority
 - b. Barrington Conservation Commission
 - c. RI Department of Transportation (RIDOT) (PAPA)
 - d. RI Coastal Resources Management Council (CRMC) (assent)
 - e. Director of the Department of Public Works (reference to April 2013 review but nothing recent)

B. Comprehensive Permit Preliminary Plan Set:

- 1) Sheet CN-001: The applicant's engineer has made acknowledgements to the requirement of waivers necessary to facilitate the progress of this project. This list of waivers is included in the document submitted and titled "Zoning Variances/Special Permit". In addition to those waivers, the following are noted:
 - a. The minimum width of new residential roadway is required to be 26-ft. The project proposes 22-ft wide roadways with 9-ft wide bump outs for on-street parking. At certain locations, a combined width of 40-ft is proposed.
 - b. Granite curbing is required in the Town's subdivision regulations. Bituminous berm is proposed throughout the majority of the site and some areas show concrete.
- 2) Sheet CV-101: Verify bound demarcation on legend.
- 3) Sheet CS-101: Are overhead wires proposed between the two (2) new utility poles proposed at the entrance? If so, would this require an aerial easement or agreement with AP 28, Lot 4?
- 4) Sheet CS-103: The turning radius for the Barrington Fire Truck has been provided along the perimeter road. Has the turning radii into each parking area been reviewed.
- 5) Sheet CU-101: In accordance with the Subdivision Regulations, the sanitary sewer shall be placed along the roadway centerline. In addition to this requirement, water lines shall be placed along the opposite side of drainlines. The roadway from STA 6+50 to 8+75 has both the water and drainline on the northerly side of the road.

- 6) Sheet CG-101: Show location of snow shelves. Ensure there are no conflicts with parking.
- 7) Sheet CG-101: Investigate if the proposed drainage lateral is in conflict with the proposed water line at STA 1+70.
- 8) Sheet CG-101: The location of the proposed pole north of driveway appears to be in conflict with the existing drop inlet and proposed connection from the new catch basin/tree wells. Furthermore, indicate what the invert elevation of this drop inlet is and whether the new connection can be made.
- 9) Sheet CG-101: Bioretention detail sheet reference is inaccurately labelled.
- 10) Sheet CS-201: A centerline deflection is proposed in order to stay in line with the 40' roadway right-of-way. Show the deflection angle values on the Roadway Plan and Profile plan sheet.
- 11) Sheet CS-201: Consider eliminating the short section of tangent in the profile from STA 6+75 to 7+15.
- 12) Sheet CS-201: Layout of handicap spaces throughout the site may need to be necessary.
- 13) Sheet CG-101: Investigate if a fence is required in order to the eliminate hazards of the proposed bioretention basin embankment and standing water. If so, a gate is required in order to allow access for inspection and maintenance.
- 14) Sheet CS-201 : The minimum required setback between the edge of proposed parking areas and buildings is 10-ft. Approximately 2' is shown between building 13A and the adjacent parking area.
- 15) Sheet LP-101: Stockade fence is proposed between proposed parking areas and existing residential buildings. Landscaping appears adequate.
- 16) Sheets CD-501 & 502: References to curbing in the details should be modified if a waiver for bituminous berm is approved (ie. Details: Concrete Sidewalk, Hydrant).
- 17) Sheet CD-501: Eliminate references to bituminous "base course" in the Bituminous Berm detail.

C. Stormwater Management Report:

- 1) The applicant's engineer has designed the majority of the site consisting of the proposed residential buildings, roadway and sidewalks to drain towards the Palmer River. Provide further breakdown for the Total Impervious Areas (AIMP) for determining the WQv in each of the subwatersheds for the proposed Bioretention, and two Dry Swales. Show the individual areas for roadway, sidewalk, and roof in order for us to verify.
- 2) Provide hydrologic areas for review. Of importance is the credit given (if any) to the curve number for the existing conditions gravel roadways and paved roadways.
- 3) Provide an elevation for flow entering the two (2) proposed risers in the proposed bioretention basin so that we can further analysis the flood impacts in

- this basin and downgradient areas (sidewalk, wetland). Furthermore, provide references to elevations in this basin for the 2 and 100-year storms.
- 4) The 10, 50 and 100-Year hydrographs for the bioretention basin show that the max. elevation converge at 13.70 (\pm), with the top of the basin at the downgradient side (easterly) at elevation 14.00. Is a spillway proposed out of the bioretention basin? None is currently shown.
 - 5) If a perforated underdrain is proposed in the bioretention basin, this will affect the credit for groundwater recharge volume. In previous Pare projects, the RIDEM has requested that we omit this underdrain in order to justify the design for groundwater recharge.
 - 6) Update the existing and proposed conditions subwatershed maps.
 - 7) If the ponds will overtop for the 10-Year Design Storms and larger, is erosion prevention considered along the entire length of the downgradient side of the basin?
 - 8) The hydrologic soils map shows HSG A in the subwatersheds 2A, 2B and 2C. Verify if the appropriate factor for this HSG was considered.

D. Traffic Impact Study:

A traffic impact study, dated March 2016, was completed by Fuss & O'Neill. The following comments pertaining to the study are being provided:

- 1) Traffic counts were performed the week of Christmas December 21-23. Typically this is not a good time to perform counts as there may be variation due to holiday, from residents, etc. However, we feel that these counts will not have any significant impact on study.
- 2) Section 1- The Introduction is acceptable.
- 3) Section 2- The overall description of the Existing Conditions is well detailed and the coverage of the study area is acceptable.
- 4) Section 3 – No-Build Traffic Conditions: It appears that the engineer coordinated with the communities and that the proposed traffic growth (0%) and future traffic from other proposed developments are acceptable. The Town should confirm that they may not have any other potential development.
- 5) Section 4 – Proposed Conditions: Description of the development, and the Site Access and Circulation are acceptable. The trip Generation and Distribution are in accordance with traffic engineering guidelines.
- 6) Section 5 – Analyses: The safety analyses and capacity analyses have been performed in conformance with engineering guidelines.
- 7) Section 6- Conclusions and Recommendations: Based on our review of the report, we are in agreement with the contents of the submittal and the analyses performed. The additional traffic is anticipated to have little or no impact to the surrounding roadway network.

Overall we are in agreement with the contents of the traffic report.

E. RIDEM Office/Division of Waste Management Voluntary Procedure Letter, dated 24 February 2016:

According to the RIDEM letter, EBCDC is to perform an additional site investigation and submit a Supplemental Site Investigation Report (SIR) in accordance with Section 7.00 of the Remediation Regulations within ninety (90) days from their February 24, 2016 letter. Please provide an update to this work.

[Member] seconded the motion, and a vote was held:

- L. Trim –
- P. Dulchinos –
- E. Adams –
- A. Galbraith –
- T. Lang –
- C. O’Grady –
- J. Robertson –
- A. Streit –

[Motion result]

Pursuant to R.I. Gen. Laws § 45-53-4(a)(4)(x), any person aggrieved by the issuance of an approval may appeal to the Superior Court within twenty (20) days from the date of the recording and posting of this decision.

Pursuant to R.I. Gen. Laws § 45-53-5(a), the Applicant may appeal this decision to the State Housing Appeals Board within twenty (20) days from the date of the recording and posting of this decision.

PLANNING BOARD

LAWRENCE P. TRIM, JR., CHAIR

DATE