

**The Commonwealth of Massachusetts
Town of Southborough
Board of Appeals**

James F. Hegarty
Town Clerk
Town House
Southborough, MA 01772

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**NOTICE OF DECISION
ON A USE VARIANCE**

**William A. Depietri and Park Central, LLC
Park Central Drive
(Map 25 Lot 5, Map 33 Lot 4)**

The Board of Appeals of the Town of Southborough held a public hearing in the Hearing Room of the Southborough Town House on Wednesday, May 27, 2015 beginning at 8:30 p.m. on the application of William A. Depietri ("Applicant") and Park Central, LLC ("Owner") for a use variance. The Applicant is seeking said use variance under Section 174-25 of the Southborough Zoning Code so as to waive compliance with the use regulation as set forth in Sections 174-8.2 (Residence A Zoning District), 174-8-6 (Industrial Park Zoning District) and 174-87 (Industrial Zoning District) and the Special Permit requirements as set forth in Section 174-13.2 (Major Residential Development) in order to allow for development of approximately 56.75 acres of the property for a 158 unit townhouse residential condominium as part of an overall project that will include a 9.08 acre 180 unit affordable housing rental component, a 4.29 acre wastewater treatment facility site, 21.42 acres of restricted open space conservation land and 9.71 acres of future development in the Industrial Park Zoning District. The land that is the subject of the application is identified as Lot 4 on Assessors Map 33 containing 61.0 acres and Lot 5 on Assessors Map 25 containing 1.84 acres.

Sitting as a Board: Leo F. Bartolini Jr., Chairman
 David J. Eagle
 Andrew R. Dennington
 Paul N. Drepanos
 Jeffrey M. Walker

For Applicant: William A. Depietri,
 259 Turnpike Road, Suite 100
 Southborough, MA 01772

Angelo P. Catanzaro, Esq.
Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721

Evidence Presented

- A. On or about April 13, 2015 the Applicant filed a Variance Application Form seeking the right to develop up to 158 single, duplex and triplex unrestricted "for sale" townhouse style condominium units on a portion of the land owned by Applicant located on Park Central Drive. Submitted with the Application was a concept plan prepared by Capital Group Properties, 259 Turnpike Road, Suite 100, Southborough entitled "Park Central-Full Site" dated April 8, 2015, Scale 1"=200' and a portion of the Zoning Map of the Town of Southborough with the boundary lines of the Applicant's property overlaid thereon. Copies of relevant sections of the Town's Assessor's Map were also made part of the Application.
- B. At the public hearing Applicant, through Attorney Angelo P. Catanzaro, presented the following evidence, information and comment:
 - 1. Applicant owns approximately 101.25 contiguous acres of vacant land situated at the intersection of Turnpike Road (Route 9 West) and I-495 North. The Applicant's land is an elongated site containing a variety of soil conditions, wetlands and a pond. The topography is also varied with steep and severe elevation changes throughout. The soil conditions, location of wetlands, disproportionate shape and steep topography severely limit and to a great extent prohibit the development of Applicant's land for marketable industrial park or industrial purposes. These physical characteristics are conditions that uniquely affect this parcel.
 - 2. Applicant's parcel is situated between I-495 to the west, Turnpike Road (Route 9 West) to the south and residential communities to the east and north. Access to the parcel is presently limited to Park Central Drive, the only exit from which is Turnpike Road (Route 9) in a westerly direction. The egress from Park Central Drive is approximately 300 feet to the east of the I-495 North on-ramp. Park Central Drive presently services the newly renovated Cumberland Farms convenience store and gas station, the 108 room Red Roof Inn and a proposed future office building. Park Central Drive is also subject to an existing State access permit which limits future capacity to a proposed commercial building. This very limited access and egress for such a large parcel is a condition that is unique to Applicant's land. Significant increased egress from Park Central Drive (if allowed) will create a hazard to traffic flow on Route 9 west, particularly for vehicles attempting to enter the I-495 North ramp or vehicles using Park Central Drive to exit from the facilities presently located thereon.
 - 3. The residential community to the north of Applicant's land is several hundred feet from any proposed use and will be buffered by over 21 acres of land to be perpetually restricted to any building. The residential neighborhood to the east of the Applicant's land (Blackthorn Drive, Tara Road and Bantry Road) is proximate to Applicant's proposed use and provides additional potential points of access to the site, which access has been depicted in previous recorded plans. The industrial park portion of Applicant's land abuts this neighborhood, between Blackthorn Drive and Bantry Road, for approximately 2753 feet.

4. Applicant's land is situated primarily in the Industrial Park (IP) Zoning District with small sections in the Industrial (I) Zoning District and Residential A Zoning District. The proposed use is not allowed by right in any of these zoning districts. Future access and egress through the neighborhoods for Industrial Park purposes is regulated by the Town and may not be an allowable alternative.
5. Applicant also has pending before the Board an application (filed on or about February 11, 2014) for a Comprehensive Permit pursuant to M.G.L. c. 40B for a 180 unit affordable house "for sale" project on a 13.28 acre area of Applicant's land that directly abuts the neighborhood to the east of Applicant's land. The pending 40B application consists of five three-story condominium buildings, a clubhouse and a pool to be constructed directly behind or proximate to seven (7) homes located on Blackthorn Drive, Tara Road or Bantry Road with access and egress to and from Tara Road and Bantry Road. This project has received Project Eligibility (Site Approval) from the Massachusetts Financing Agency, a copy of which approval was provided to the Board with the Comprehensive Permit Application.
6. Following the filing of the pending Comprehensive Permit Application, Applicant and neighborhood residents, directly and through counsel, have discussed and negotiated, with the assistance of Edward Marchant, special 40B consultant engaged by the Board, a development plan for the future use of the entirety of Applicant's land for both affordable and unrestricted residential purposes. The neighbors were represented by Attorney Daniel C. Hill during these discussions, the result of which was a comprehensive settlement agreement which conditionally incorporates and supports the April 8, 2015 Concept Plan. Attorney Hill, who had previously provided the Board with a list of the residents whom he represented in connection with the 40B proposal, was present at the hearing and confirmed this agreement, to be signed by six directly impacted abutters, but with the general consensus of the neighborhood. A copy of the signed agreement has been filed with the Board. Significantly, the agreement reached by Applicant and neighbors (1) relocated the affordable housing component of the project away from the neighboring residential community; (2) changed the type of c. 40B affordable housing from "for sale" to "rental"; (3) created a perpetual no build deed restriction on the 21.42 acre parcel on the north end of Applicant's land; (4) removed all access to Bantry Road and Tara Road; (5) created limited access to Blackthorn Drive for emergency purpose only; (6) put an absolute limit on the residential development and future use of the entire parcel with the exclusion of the 9.07 acre future development site; and (7) incorporated the townhouse residential use, an alternative to further industrial development first suggested to Applicant by the Town Planner. Attorney Catanzaro pointed out this change of 40B status from "for sale" to "rental" was requested and urged by the Town and will place the Town's affordable housing inventory far above the 10% minimum state requirement for decades to come. Attorney Catanzaro and Attorney Hill both informed the Board that either the signed settlement agreement or the terms and conditions set forth therein that

pertained to the use variance could and should be incorporated into an affirmative variance decision and be made a part thereof.

7. The townhouse condominium project proposed by Applicant would be limited to approximately 56.75 acres with a layout and configuration substantially as shown on the Concept Plan. Although most of the townhouse development is located within the Industrial Park Zoning District, a very small portion may ultimately be constructed in the Industrial and Residential A Zoning Districts necessitating the use variance from the requirements of all three districts. Final and fully engineered site plans will be prepared and submitted to the Board for its approval following the finality of the use variance process. Any deviation from the Concept Plan would be minimal and dictated only by unforeseen site conditions.
8. The fully engineered site plans will be prepared as part of overall project plans that will include the c. 40B affordable housing component and the wastewater treatment facility. Composite plans are necessary as road and building layout and footprints are an integral facet of storm water drainage and utility location. It was also explained that the road that will connect the affordable housing and townhouse components to Flagg Road, although located substantially within the townhouse area, will be a fundamental component of the 40B approval process. The overlap in road use is incidental to the use variance process. Approval of the road design and infrastructure layout will be through the Comprehensive Permit application. Notwithstanding, Applicant proposes to design and build the connector road to municipal subdivision road standards. Drainage and infrastructure will be constructed to applicable state and municipal requirements and standards. The entire parcel with the possible exception of the 21.42 deed restricted area will be submitted under the provisions of M.G.L. c. 183A, the Massachusetts Condominium Law with each of the three uses (townhouses, affordable housing and waste water treatment facility) being situated within distinct phases with attendant exclusive use common areas.
9. Variance from Section 174-13.2 of the Zoning Code (Major Residential Development) is also necessary as the road layout and number of units is inconsistent with the requirements of the Major Residential Development bylaw. Literal compliance with the bylaw would result in the inability to construct the project with the density needed to satisfy the economic demands of conversion of the 40B component to a rental project, the redesign of the affordable housing project from five three story building to two five story buildings and the perpetual foreclosure of the use of remainder of the land for any purpose. This hardship is relieved by variance from those requirements.
10. Approval of the use variance application is a necessary condition precedent to the substantial expense that Applicant will incur if final engineered plans are required to be prepared prior to variance approval. Board retention of the authority to review and approve final site plans as a condition of any building permit, the Board's ongoing jurisdiction in connection with the c.40B approval process as well as

specific conditions that can be incorporated into the variance decision offer sufficient safeguard for the Board to assure that the final plans will be substantially in compliance with the Concept Plan.

- C. Applicant presented the Board with a written list of proposed conditions which applicant suggested should be incorporated into an affirmative variance decision.
- D. Town Counsel, Aldo C. Cipriano opined that the issuance of a use variance as requested by the Applicant was within the authority and discretion of the Board and that the Board could condition the variance as the Board, in its considered discretion found and determined was necessary and appropriate. Board retention of jurisdiction to approve the final Site Plans was also appropriate given the degree of zoning relief being provided to Applicant.
- E. Chairman Bartolini opened the hearing for public comment.
 - 1. Attorney Hill stated to the Board that several direct abutters would be signing a comprehensive site development agreement with the Applicant and that the conditions contained in that agreement should be incorporated into the variance decision. Attorney Hill also pointed out that the applicant's proposed use was a substantial improvement over the pending c. 40B proposal and that his clients generally supported conditional approval of the use variance.
 - 2. Thomas Gittins of 73 Flagg Road stated that he was not a party to the site development agreement and opposed the agreement. He expressed concern for emergency access for fire vehicles, the possible widening of Flagg Road that could result in the loss of Oak trees in front of his home and requested the funneling of traffic to Route 9 rather than past his house. If this is not possible, he would like consideration of making Flagg Road one-way. Responding to Mr. Gittins' question regarding the emergency access gates, Chairman Bartolini stated that only Town police and fire personnel would have access to the gates.
 - 3. Jeremy Travins of 59 Flagg Road stated that Flagg Road is very narrow with large trees, stonewalls and not much room for improvement. Traffic is already heavy and unsafe without the addition of another 300+ units, all funneled through the neighborhood. He echoed the comments made by Mr. Gittins and asked why the plan could not include a 'no left turn' out of the project.
 - 4. Karen Travins of 59 Flagg Road stressed the importance of striving for access to Route 9 to divide up the funneling of traffic through her neighborhood.
 - 5. Attila Herczeg of 4 Jacobs Lane opposed the proposed funneling of traffic and supported the concept of placing the traffic onto Route 9. He asked the developer provide for the continued, unimpeded access to nearby bodies of water for wildlife. He asked the Board to consider that any approval is contingent upon access from Park Central onto Route 9.

6. The Chairman responded to questions from Donna McDaniel of 54 William Onthank Lane, member of the Affordable Housing Committee, regarding the overall number of affordable units in the Town of Southborough and the process by which Southborough residents will make application for housing. The Chairman stated that the Applicant has agreed to give residents of the Town of Southborough preference in the first round of unit sales.
7. John Bartolini, Jr. of Wyeth Circle stated he owns several properties on Flagg Road and Route 9; and, after endless meetings with the state has found there is no good solution to placing another access onto Route 9. He stated he would be opposed to any additional opening that would create a safety hazard for his nearby restaurant, Wendy's.
8. Applicant explained that the curb cut at the Red Roof Inn is a limited capacity curb cut, and the state will make the decision whether or not to permit its use for additional traffic.
9. Majid Yazdani of 16A Bantry Road submitted that although he is not an abutter to the proposal, he hopes the developer will think out of the box and develop a project that is unique, energy efficient, and make the neighbors proud to have this development in the Town.
10. Responding to request from Mr. Gittins to approve the Variance without the emergency access for fire and police vehicles, Atty. Hill stated that if the emergency access is not included in the development plan, the neighbors would appeal the Variance, the neighbors would win the appeal, and the developer would build the three 40B projects and produce three times the traffic going by Mr. Gittins' house.

F. The Chairman closed the Public Hearing at 10:04 p.m.

Findings and Decision

1. The Applicant has complied with the applicable rules and regulations pertaining to the application for a use Variance.
2. The Board finds that the Variance will not derogate from the intent and purpose of M.G.L. c. 40A and/or the By-Laws of the Town of Southborough and will not be in conflict with the public health, safety, convenience and welfare and will not be substantially detrimental or offensive to the neighborhood or destructive of property values.
3. The Board finds that owing to the shape of the land, the varied soil conditions, wetlands and topography as well as the limited access and egress to the land, which

are conditions especially affecting Applicant's land but not affecting generally the zoning district in which they are located, literal enforcement of the By-Laws would involve substantial hardship to the Applicant and desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the zoning regulations. Variance is accordingly granted for the construction of up to 158 townhouse style condominiums on approximately 56.75 acres of Applicant's land. Compliance with the Major Residential Subdivision Requirements of the Zoning Code is also specifically waived.

4. The Variance is GRANTED subject to, and the project shall be constructed in substantial conformance with the conditions hereinafter set forth which are incorporated herein and made a part of this Decision.

Conditions

1. The entire site shall be developed and constructed in substantial conformity with the Concept Plan dated April 8, 2015 submitted to the Board as part of the Variance Application.
2. The Variance shall be effective only following final Board approval of Applicant's c. 40B Comprehensive Permit Application for a 180 unit *rental* affordable housing project with buildings and infrastructure located in substantial compliance with the April 8, 2015 concept Plan and which approval shall be final with all appeals have expired. Applicant shall amend and modify its pending Comprehensive Permit Application to reflect this change.
3. All roads, drainage, wastewater treatment plant and other infrastructure that service both the affordable housing development and the townhouse development allowed by this Variance shall be permitted and constructed pursuant to the Comprehensive Permit.
4. The remainder of the Applicant's land shall only be used as set forth on the Concept Plan as follows: approximately 9.08 acres shall be limited to the 180 unit affordable housing *rental* project pursuant to a Comprehensive Permit to be issued by the Zoning Board of Appeals pursuant to M.G.L. c. 40B; approximately 4.29 acres for a waste water treatment plant site; approximately 9.07 acres for Future Development and approximately 21.42 acres of deed restricted open space.
5. Applicant shall submit to the Board fully engineered site plans setting forth all of the components of the affordable housing project, townhouse development, storm water drainage, utilities, building foot prints waste water treatment facility, Connector Road, townhouse access roadways and common driveway layout. The Site Plans shall be the same Site Plans as submitted for c. 40B Project. The Board shall have final approval of the Site Plan under both its Variance and Comprehensive Permit jurisdiction.

6. Applicant shall comply with the terms and conditions of the written Agreement and Declaration of Restrictive Covenants between Applicant as Developer and Owner and six neighborhood property owners as Abutters, a copy of which executed Agreement has been filed with this Board. The terms and conditions, without limitation, include the following:

Applicant as Developer shall

- (a) engineer and design the Townhouse and Apartment Components of the Project so as to not exceed the residential density shown on the Concept Plan, meaning that the Townhouse Component shall not exceed 158 units and the Apartment Component shall not exceed 180 units; and
- (b) reasonably, and to the extent allowed by site conditions (including those that are presently unknown), attempt to incorporate the roadway layout and building placement design as shown on the Concept Plan into the final engineered site plans. Deviations from the Concept Plan necessitated by site conditions or constraints or permitting requirements (other than the terms and conditions of this Agreement) shall be within Developer's reasonable discretion and if implemented shall not constitute a breach of this Agreement; and
- (c) provide a fully-executed copy of this Agreement to the Southborough Zoning Board of Appeals, Planning Board and Conservation Commission (at or before the time of application to such Board) and request that the terms and conditions set forth in this Agreement be reflected, as appropriate, in the permits and approvals to be issued by those Boards in connection with the Project; and
- (d) provide a copy of engineered site plans to the Abutters prior to submission of those site plans to any Board or agency.
- (e) Temporary Grading Easements
 - (1) Abutters Dante and Wendy DeMichaelis (15 Bantry Road), Brian and Melissa Gray (17 Tara Road), Mark and Heidi Boyden (11 Tara Road), Jude and Kiera Joujoute (9 Tara Road), David and Yvonne Wu, Trustees of the Wu Family Nominee Trust (7 Tara Road), each hereby agree to grant to PCLLC and Developer a 20' wide temporary grading easement on their respective properties along all common boundaries with the project site as shown on the Concept Plan. The Property Owners each further agree to execute in the presence of a notary and deliver to Developer, within ten (10) days of Developer's request, a formal recordable Grant of Easement, to be prepared by Developer if necessary as provided for herein. Said

Grant of Easement shall not be immediately recorded but shall be held in escrow Angelo P. Catanzaro, Esq., Developer's Attorney, subject to the terms of this Agreement.

- (2) Notwithstanding the foregoing Developer agrees that the ultimate use of the grading easement will be a "worse case" safeguard for Developer as Developer will attempt to eliminate any grading on the respective burdened properties wherever reasonably possible including the use of retaining walls of not more than three (3) feet in height if such walls will prevent or reduce the need for grading but still allow for the proposed density with appropriate side and/or rear yards for the abutting townhomes (minimum 20' level area between rear of townhouse units and bottom of retaining wall or bottom of slope, whichever applies). Where grading on an Abutter's property cannot be avoided by these measures ("Unavoidable"), the Developer may exercise the grading easement for the location where grading is Unavoidable. When the actual grading easements are identified on the final engineered plans, the Developer and Developer's Engineer shall meet with the Property Owners prior to the submission of the final plans to the Zoning Board of Appeals for post-permit review and approval. In the event of a dispute between an Abutter and the Developer over whether grading on an Abutter's property is Unavoidable as described above, the parties agree that such dispute shall be resolved by an independent civil engineer, which shall be Brad McKenzie, P.E.
- (3) The term of the temporary grading easements shall be 12 months from the date that the Order of Conditions issued for the Project's roadway under the state Wetland Protection Act becomes final, all appeal periods having expired. A grading easement shall only be recorded at the Registry of Deeds *if and a only if* (i) the grading is Unavoidable; and (ii) the recording of the easement is a requirement of PCLLC or Developer's construction financing, or (iii) an Abutter notifies Developer that their property is for sale or is being listed for sale, it being the agreement of the parties hereto that in the event of such a proposed sale the affected Abutter shall notify the Developer in writing of such proposed sale within five (5) days of the signing of a Purchase and Sale Agreement. In the event that a grading easement has been recorded as allowed for herein, but the Developer does not exercise the easement, or the 12-month period has expired, the Developer shall thereafter promptly execute and record a Termination of Easement in form and substance satisfactory to the affected Abutter.
- (4) The Abutters' agreement to provide easements on their properties is subject to the following additional conditions:

- (i) no buildings, driveways, or any related above-ground infrastructure (exclusive of landscaping and fencing) on the Project Site shall be located within forty (40) feet of any land owned by an Abutter; patios may be as close as 35' to property boundaries if constructed flush with the ground, as depicted on the Concept Plan;
- (ii) grading and any related earth removal activity within the easement areas shall not adversely affect the Abutters' septic systems, leaching fields or cause the trapping or retention of surface water on abutting properties, including but not limited to earth removal that leaves a slope on the side of a leaching field that exceeds design standards and criteria to prevent break-out;
- (iii) Any graded areas on abutting properties shall, at abutters option, be re-vegetated with a combination of the following; 8' to 10' evergreen (white pine, green or blue spruce) trees, grass & fencing not to exceed 6' in height, provided that there shall not be a solid line of fencing along the entirety of any abutting property line. Re-planting areas shall be limited to the easement areas and up to 20' onto the Project Site, at the option of the abutting property owner;
- (iv) For any Abutter with a farmer's wall (rock wall) presently existing on their property line or within an easement area, the Developer shall, at the option of the Abutter, after excavation is completed, rebuild the wall in its current location to the maximum extent feasible, or rebuild the wall at a different, feasible location on Abutter's property as determined by the Abutter;
- (v) Upon the completion of all excavation within an easement area, the topography of the land within the easement area shall conform to the proposed grading elevations shown on the Concept Plan, provided however that excavation that results in final grading elevations that diverge horizontally by up to 6" in any direction, and/or that result in slope that is less steep than shown on the Concept Plan, shall be considered a *deminimis* change not requiring approval or consent from the respective Abutter.
- (vi) Prior to any excavation within any easement area, the precise location of the septic system and leaching field serving the property that is subject to the easement shall be obtained

either from the town Board of Health, if an as-built survey plan is available, or from a survey performed by a qualified professional company, such as Northboro Septic at the Developer's expense. Once the location of the septic system and leaching field is identified, Brad McKenzie, P.E. shall, on behalf of the property owner, evaluate, at the Developer's expense, whether the proposed excavation within the easement area will have any adverse effect on the septic system or leaching field, including but not limited to the threat of breakout from the sides of the leaching field as a result of excavation in proximity to the leaching field. Proposed excavation shall be deemed acceptable if, after excavation, the septic system would conform to the dimensional requirements and standards set forth in Section 15.255(2) of Title 5, as if the system were a "mounded system" under the regulation. If the proposed excavation is determined by McKenzie to have an adverse impact, then the Developer shall modify its excavation plans to avoid any such impacts. All expenses related to the foregoing shall be timely paid by the Developer.

- (5) The Developer's exercise of the easement on the property identified as 17 Tara Road, in addition to the above general conditions, is subject to the following additional conditions:
 - (i) to minimize excavation in the easement area, the Developer shall construct a back-filled 36" to 48" retaining wall with a 36" fence installed on top adjacent to property line but on the Project Site side of the property line, all as depicted on the Concept Plan.
 - (ii) The Developer may relocate the existing shed located on the lot by the driveway if the shed obstructs any excavation occurring in the easement area. In such an event, the Developer shall move the shed to a reasonable location chosen by the owner, or, alternatively and at the Developers option, the Developer may convey land to the lot owner on which to place the shed, provided that the shed relocation is compliant with zoning regulations.
- (6) The Developer's exercise of the easement on 15 Bantry Road, in addition to the above general conditions, is subject to the following additional conditions:

- (i) The grade for the easement at 15 Bantry Road, in the area directly behind the existing home, will not be below 456' above sea level.
- (ii) Upon the completion of all excavation within the easement area, the topography of the land within the easement area shall either be flat or mimic the existing topography (slight incline with varied elevation).
- (iii) Excavation on 15 Bantry Road shall be limited to the area delineated as "limit of clearing" on the Concept Plan. The existing farmer's stone wall shall be re-built by the Developer at its current location or on the property line, and consistent with its current condition and dimensions.
- (iv) To minimize excavation in the easement area, the Developer shall construct a back-filled 36" to 48" retaining wall with a 36" fence installed on top, adjacent to property line but on the Project Site side of the property line, all as depicted on the Concept Plan.

(7) Landscape Screening

- (i) The Developer shall install at Developer's sole cost and expense, sufficient natural landscaped vegetation to densely screen the Project from the Abutters' properties. The vegetated screen shall be installed on the Project Site within ten feet of its boundary with the five Abutters' properties, and shall run the entire length of said property boundary with the five Abutters. Such screening shall take into consideration that the screening is for townhouses (not multistory apartment buildings or industrial or commercial uses) and that the area between the Abutters' homes and the townhomes is, for the most part, partially wooded. When engineered plans are substantially (90% +/-) complete, the five Abutters shall meet with the project Landscape Architect to discuss the type and scope of landscape screening to be provided. The types and quantity of landscaping improvements to be installed shall be determined by mutual agreement between each Abutter and Developer for the portion of the Landscaping Zone that abuts their respective properties, but shall at a minimum include a row of 6' to 8'-tall evergreen trees (white pine, green & blue spruce) spaced no less than 15 feet apart, trunk to trunk, and may include other trees, shrubs, grass and/or wooden fencing up to six feet tall.

(ii) The Developer shall at Developer's sole cost and expense, install appropriate and reasonable natural landscaped vegetation in the general location of the emergency access gate at the end of Blackthorn Drive, as well as along the Project driveway that runs east to west from the emergency access connection to the Apartment Complex, to screen the Apartment Component from view of the abutters with frontage on Blackthorn Drive. Specifically, the Developer shall install an equal mix of 6' – 8' blue spruce and white pines along and on both sides the roadway between the emergency access connection and the Apartment Component, spaced 30' apart, excepting only those sections of the roadway that are directly in front of a building that fronts on the roadway. Further, a row of 6' – 8' blue spruce shall be installed, 30' apart, along the side yard property boundary of 25 Blackthorn Drive (on the Project Site side of the property line), running 100 feet in a northerly direction from the edge of the emergency access driveway. Further, if some or all of the ten townhouse-style homes shown on the Concept Plan being located in the area between Blackthorn Drive and the Apartment Component are not permitted to be built by a municipal or state authority, the Developer shall install additional 6' to 8' blue spruce along both sides of the roadway where gaps were left to accommodate the townhouse units as provided above.

(iii) The Developer shall inspect the landscaping improvement described above within 18 months of occupancy of the directly abutting town homes to augment the original designed landscaping in order to screen specific views of the new abutting town homes described in paragraph (a) above. Likewise, an inspection within 18 months of occupancy of the Apartment Component shall be made to augment screening for the Apartment Component described in paragraph (b) above. Further, the Developer shall remove and replace any dead or diseased plantings and trees that have failed to thrive 18 months after installation, and thereafter every 18 months to ensure that screening will always be in place. Compliance with the terms and conditions pertaining to Landscape Screening as set forth herein above is a *Required Site Design Condition*.

(iv) Limitation of Access.

Developer agrees to prepare and record an appropriate restrictive covenant to run with the entirety of the land owned by PCLLC to prohibit any connection or access from the Project Site to, through or on Tara Road, Bantry Road, and Blackthorn Drive (except for emergency access from Blackthorn Drive to the Project as shown on the Concept Plan). The emergency access connection shown on the Concept Plan at the end of Blackthorn Drive shall be restricted to emergency and public safety vehicles. Subject to approval by appropriate municipal authorities where required, Developer shall post two signs reading "DO NOT ENTER - EMERGENCY VEHICLES ONLY" one on either side of the emergency access gate at the intersection of the emergency access and Blackthorn Drive. Control over the operation of the emergency gate shall be afforded solely to the Developer's ownership entity and Management Company, and/or the police, the fire department, emergency vehicles and the gate repair company and not to plowing or other sub-contractors. The emergency access driveway shall be limited to access for maintenance (including plowing), emergency use and temporary use for the construction of the extension itself. The emergency access connection shall not be used for access to the Project Site for the construction and development of the Project. These restrictions shall be incorporated into and made a part of the Use Variance Decision and the Comprehensive Permit.

(v) Connector Road.

The Abutters acknowledge that the design for the Project will likely include, in Developer's sole discretion, a site connector road to Flagg Road permitting turning in both directions and with permitted connection to the 9.03 Acre "Future Development Lot" as shown on the Concept Plan for low-impact non-industrial use or Industrial use. The Abutters agree with such proposed design and use of the connector road as provided for herein and shown on the Concept Plan. In the event that any permitting authority of the Commonwealth of Massachusetts requires an intersection design different than the design agreed to herein, Developer shall install the required design without objection from the Abutters.

(vi) Additional Conditions.

1. Any centralized trash/recycling area(s) in the Project shall be set back a minimum of 200 feet from any lot having frontage on Bantry, Tara or Blackthorn Roads.
2. Applicant shall execute and record a permanent conservation restriction encumbering the portion of the Project Site that is north of the Apartment Component as shown on the Concept Plan as the restricted parcel, subject to whatever utility easements the Developer and/or PCLLC desire to retain on said parcel. Said restriction shall permanently restrict any further development of said parcel of any kind, except for infrastructure accessory and incidental to the Project. Said parcel, subject to the restriction, at Developer's option, may be conveyed to the Southborough Open Land Foundation ("SOLF") or other entity designated by the Town or selected by the Developer, all for Developer's tax consideration.
3. The Apartment Component shall contain no more than 180 housing units and the Townhouse component shall contain no more than 158 housing units together with any accessory buildings, facilities and utilities that are customarily incidental to such a residential development, including, without limiting the generality thereof, garages, outdoor parking, recreational facilities, trash/recycling center, clubhouse/marketing center, maintenance buildings, sewage treatment plant, above and below ground utilities of every type and kind, including, without limiting the generality of the foregoing, water, drainage, electricity, sewer, telephone, exterior lighting, and cable, and any and all appurtenances, facilities, pipes, conduits and structures of every type and kind related thereto and in connection therewith, and all other buildings, appurtenances, facilities and utilities of every type and kind that the Developer in its sole discretion deems necessary and desirable.

7. Connector Road to be constructed to service c.40B Project and Multifamily Townhouse Development shall:

- (a) connect the north end of the subject parcel south to Flagg Road with access to Flagg Road in both directions. Access road shall terminate at north end of parcel with further access only to waste water treatment facility which will service both the 40B Project and the Multifamily Townhouse Development;
- (b) provide emergency access only to Blackthorn Drive; no access to Tara Road or Bantry Road. Deed restriction to enforce no future access;
- (c) Connector Road to have minimum paved width of 22 feet; and constructed to Town Subdivision road Standards. Townhouse access roadways and common driveways within Multifamily Townhouse Development to have minimum pavement of 18 feet;

8. Park Central Drive to be extended to the north only to the first industrial parcel (shown as "Future Development Lot" on the Plan) where it will terminate. Future access from that parcel shall be limited to (i) future residential uses or facility with medical or assisted living purpose or (ii) for low-impact non-industrial use or Industrial use or (iii) other use if access to Park Central Drive denied by any governmental authority. Emergency access from Park Central Drive to the Connector Road shall be installed if requested by Fire or Police Departments.

9. Remainder of land owned by Applicant to the north of subject parcel containing approximately 21.42 acres shall be deed restricted for no future development of any kind and shall be conveyed, at Applicant's option to SOLF or some other entity of Developer's selection subject to said restriction.

10. Configuration and lay out of the proposed c.40B Project and Multifamily Housing Development, roadways and infrastructure shall be reasonably pursuant to the concept plan dated April 8, 2015 and approved by the Zoning Board of Appeals. Minor changes necessitated by site conditions and engineering requirements are allowed within the discretion of Building Inspector.

11. Multifamily Townhouse Units to be limited to a maximum of three-bedrooms and 2200 square feet of living area and shall be designed to provide housing opportunity for diversified income levels.

12. Multifamily Townhouse Buildings shall have minimum side yard setback between buildings of 20 feet; front yard setback from roadways or common drives of 15 feet and buildings shall be situated a minimum of 40 feet from lot line of existing residences or the perimeter of the premises where no existing residences are located. Patios may be within 30 feet of abutting properties.

13. Variance is subject to Residual Site Plan Approval by Planning Board pursuant to Section 174-10 (2) (Major Plan Review) for all categories not covered by Board Site Plan approval under the Use Variance Site Plan Approval namely, lighting,

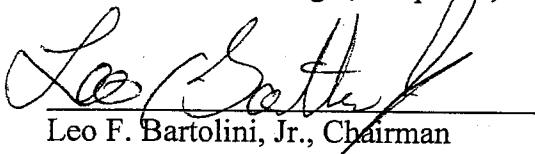
landscaping, parking and sidewalks, and any other applicable categories per the above-referenced section.

14. No building permit for any townhouse unit may be issued unless all conditions set forth herein as pertain to site improvements have been satisfied. No occupancy permit for any unit may be issued until all conditions that pertain to such units have been complied with.
15. Southborough residents shall be afforded preference in the primary sale of the housing units.
16. Applicant shall work with Mass Highway to his best ability for access to Route 9.

The Board of Appeals, based on the evidence presented at the hearing, including but not limited to the facts presented above, upon a motion by Board Member Eagle and seconded by Board Member Drepanos **GRANTED** the application for a Variance, with conditions, by a vote of 4-1. (Dennington opposed)

On a motion by Mr. Walker, seconded by Mr. Drepanos, the Board voted, by a vote of 5-0, to accept the Agreement and Declaration of Restrictive Covenants submitted by Attorney Catanzaro for the Applicant.

On a motion by Mr. Eagle, seconded by Mr. Walker, the Board voted to unanimously approve the proposed Decision with two additional conditions stipulated at the May 27, 2015 Public Hearing. The additional conditions require Applicant to work with MassHighway for access to Route 9 and to provide preference to Southborough residents for the primary sale of housing units. In favor: Eagle, Drepanos, Walker, Dennington and Bartolini



Leo F. Bartolini, Jr., Chairman

Notice: Appeals, if any, shall be made pursuant to M.G.L. c. 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Southborough Town Clerk.

Notice: Rights Granted by a Variance: If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be re-established only after notice and a new hearing pursuant to the provisions of Massachusetts General Laws, Chapter 40A, s. 10.