

# TOWN OF TISBURY

*Office of*

## BOARD OF APPEALS

VINEYARD HAVEN, MASSACHUSETTS  
P.O. BOX 1239/VINEYARD HAVEN, MA 02568  
(508) 696-4260

### COMPREHENSIVE PERMIT DECISION CASE #2192

**Applicant:** Island Housing Trust of P.O. Box 779, West Tisbury, MA 02575 (“Applicant”). Applicant shall include any successor in interest.

**Locus:** 6 Water Street (Assessor Parcel 7F9, B-1 District (“Property”).

**Owner:** Island Housing Trust.

**Project:** To demolish an existing single-family dwelling and an existing out-building that is used for dwelling purposes and to construct a single, two-story building with six permanently affordable one-bedroom units (“Project”).

**Project Eligibility:** On May 12, 2014, the Department of Housing and Community Development (“DHCD”) issued a project eligibility letter (“PEL”) to the Applicant for the Project for six one bedroom affordable rental units under the Housing Stabilization and Investment Trust Fund (HSITF) and Commercial Area Transit Node Housing Programs (CATNHP), provided all units shall be affordable to households earning at or below 80% of Area Median Income.

**Plans:** The Project is shown on the following plans: Site plan of land prepared for Island Housing Trust dated June 9, 2014 by Schofield, Barbini & Hoehn Inc.; First and second floor plans dated June 12, 2014 by James Weisman/Terrain Architects; S Elevation drawing for 6 Water Street dated June 4, 2014 by James Weisman/Terrain Architects (“Plans”).

**Request:** A comprehensive permit to construct the Project under the Plans.

**Notice & Hearing:** In accordance with all applicable requirements, a public hearing on the comprehensive permit application to construct the Project in accordance with the Plans was noticed and advertised by the Board of Appeals (“Board” or “BOA”) and opened on June 12, 2014 and continued on August 14, 2014, September 11, 2014 September 23, 2104 and October 17, 2104 and closed on October 17, 2014. The public hearing was held at the Tisbury Town Hall Annex before Jeff Kristal, Susan Fairbanks, Michael Ciancio, Neal Stiller and Anthony Holand, who each attended each public hearing session.

**Decision:** The Board voted 5 to 0 to grant a comprehensive permit for the Project as shown on the Plans and with the below conditions

**Determinations:**

**A. Jurisdictional Requirements:**

Under 760 CMR 56.04(1), to be eligible to submit an application to the Board of Appeals for a Comprehensive Permit, the Applicant and the Project shall satisfy the following requirements: (1) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization; (2) the Project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and (3) the Applicant shall control the Site.

**1. Applicant's Status**

The Board found that the Applicant is a non-profit organization.

**VOTED:** The Board determined that, provided that the Applicant, as a non-profit organization has the appropriate status under 760 CMR 56.02 to hold and receive a comprehensive permit.

**2. Fundable Project**

The Board found that the PEL indicates that the Project is presumptively fundable by a subsidizing agency.

**VOTED:** The Board determined that the PEL satisfies the fundability requirement, provided that, before any construction begins, the Applicant shall provide the Town with final written confirmation the provision of funding that satisfies the requirements set forth under 760 CMR 56.04(1) and provided that the Applicant shall, as a condition of any approval hereunder, enter into a Regulatory Agreement.

**3. Site Control by Applicant**

The Board found that the Applicant owns and controls the subject property.

**VOTED:** The Board determined that Applicant controls the site as required by 760 CMR 56.04(1).

**VOTED:** The Board determined that the Applicant meets the jurisdictional requirements under 760 CMR 56.04.

**Conditions:**

**Any grant of a comprehensive permit hereunder shall be dependent upon compliance with all of the following terms and conditions:**

**A. Regulatory Conditions.**

1. The total number of units that may be constructed at the Premises shall be limited to no more than six rental units, each with each unit to have no more than one bedroom, for a maximum of six bedrooms for the Project.
2. As a condition of approval, 100% of the rental units shall be and shall remain affordable and shall be marketed and leased to eligible households whose annual income may not exceed 80% of area median income, adjusted for household sized, as determined by the United States Department of Housing and Urban Development (the "Affordable Units"); and, subject to approval by DHCD, the Affordable Units and the remaining units shall be eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD.

The Applicant shall notify the BOA and the Town Administrator when building permits are issued and shall cooperate with the preparation of request forms to add the units to the Town's SHI. The Applicant shall notify the BOA and the Town Administrator when occupancy permits are issued and cooperate with the preparation of request forms to add the units to the Town's SHI permanently. The Affordable Units shall permanently remain affordable rental units, for so long as the Project is not in compliance with the Town's Zoning By-law, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§20-23.

A springing affordable restriction and regulatory agreement shall be signed with the Town, so that the affordability requirement is enforceable by the Town or its designee, and recorded at the Registry of Deeds as set forth below, so that when and if any affordable restriction enforceable by the Subsidizing Agency expires, the Town's restriction shall automatically take effect. If the Comprehensive Permit is modified, then the parties shall modify the Regulatory Agreement to conform the Regulatory Agreement to the modifications.

3. The Applicant shall execute a Regulatory Agreement that shall be countersigned by the Subsidizing Agency as required under G.L. c.40B and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement. If the Comprehensive Permit is modified, then the parties shall modify the Regulatory Agreement to conform the Agreement to the Permit.

4. The Applicant shall annually certify to the Subsidizing Agency, as may be required by the Subsidizing Agency, the continuing eligibility of any tenant in an affordable unit.
5. The Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Board and its counsel ("Town Regulatory Agreement"), which shall be recorded with the County Registry of Deeds against the Property prior to issuance of any building permit for the Project.

The Town Regulatory Agreement: (i) shall become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that the Project shall remain a rental project so long as the Project does not conform to local zoning; (iii) shall require that 100% of the apartments in the Project shall be rented in perpetuity to low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23; (iv) shall restrict or limit the dividend or profit of the Applicant as required under G.L. c.40B and 760 CMR 56.00, et seq. and shall restrict the number of allowed units to not more than 6 units, each with a maximum of one bedroom for a maximum of a total of 6 bedrooms for the Project. If the Comprehensive Permit is modified in the future, then the parties shall modify the Regulatory Agreement to conform to the Permit.

The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the Town or its designee and shall require that the Affordable Units shall remain affordable rental units in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town's Zoning Bylaws or for the longest period allowed by law, which ever period is longer.

6. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto; however, the Town or its designee may request and shall be provided by the Applicant with all information that is provided to the Subsidizing Agency and may take any steps allowed under G.L. c.40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.
7. When the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee, to the full extent allowed by M.G.L. Chapter 40B, Sections 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010) or any other relevant decisional law or amendment to G.L. Chapter 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of

its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee.

8. The Applicant shall develop a marketing plan for the Affordable Units for review and approval of the Subsidizing Agency, said plan to conform to any and all affirmative action requirements or other requirements as imposed by federal or state regulation and shall conform with the local preference requirement set forth above.
9. If at any time it appears that the Applicant is in violation of the affordable housing restriction with the Town at any time when said restriction is in effect as described above, following a hearing of which the Applicant has been given prior notice, then the Board may pursue such enforcement rights as it may have under the affordable housing restriction and/or applicable law.
10. Profits from the Project in excess of those allowed under applicable law and regulations shall be utilized as provided in the regulatory agreement with the Subsidizing Agency and as required and provided for under G.L. c.40B and 760 CMR 56.00.
11. The Applicant shall annually provide the BOA or its designee with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency or its designated auditor of the Applicant's costs and revenues for informational purposes.
12. The Town, by and through the BOA or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
13. Prior to receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Official and the BOA.

**B. General Conditions**

1. The Applicant shall comply with all local by-laws, rules and regulations of the Town of and its boards, officers and commissions, unless expressly waived hereunder.
2. Each unit at the Project shall have a maximum of one bedroom, for a maximum of six bedrooms at the Project; and each unit shall be rented on a year-round basis and no subletting of any unit shall be allowed.

3. The existing structures at the Property are to be demolished by the Applicant and the new building shall be assembled by the Applicant from modular units that will be delivered to the site using cranes.

The demolition of the existing structures at the Property and the delivery to and assembly at the Property of the modular units that will be used to create the new building **shall not occur during the high tourist season**, which shall mean from the Thursday before the Memorial Day Weekend until the Tuesday after the Labor Day Weekend.

No activity at the Property shall occur during the high tourist season that would block traffic on Water Street; and, during the non-high tourist season, the Applicant shall obtain a police detail whenever traffic will be blocked by activity at the Property.

Once demolition and assembly of the modular components has taken place, then exterior construction may occur at the Property during the high tourist season but only between the hours of 10:00 a.m. and 4:00 p.m. No exterior construction shall occur on Sundays at any time of the year. During the non-high tourist season construction may occur as provided for under the Town's General By-laws, but not on Sundays. The Applicant shall consider obtaining an off-site staging area to assist with construction efforts.

4. All utilities within the Premises shall be installed underground.
5. The exterior of the building shall be constructed substantially as represented in the Application, as revised, and as shown on the Plans. The final Plans for the interior of the building shall be reviewed by the Building Official.
6. The Project shall be serviced by municipal sewer and water, at the Applicant's sole expense, and in accordance with all of the applicable Town requirements and fees and shall be constructed and fully operational prior to the first occupancy permit for the Project.
7. All lighting for the Project shall be as shown on the Final Landscape Plan which shall be provided by the Applicant to the Board of Appeals for the Board's review and approval at a duly posted public meeting and the Board's approval shall not be unreasonably withheld.

The Board shall have thirty days from receipt of the Final Landscape Plan from the Applicant to review and approve the Final Landscape Plan or to ask the Applicant to revise it or to deny approval, but approval shall not be unreasonably withheld.

All lighting shall be shielded and directed so as to avoid light trespass at the property line and to avoid unshielded point sources of light being visible from a public way or

- adjacent properties. Any landscaping lighting utilized shall be low lighting.
8. Screening for the rear of the property shall consist of a wooden barrier that shall be as shown on the Final Landscape Plan as approved by the Board of Appeals.
  9. The Applicant shall make improvements to the Water Street sidewalk as shown on the Final Landscape Plan as approved by the Board of Appeals and the Final Landscape Plan shall show the proposed curb and curb cut and depth of the sidewalk and shall use porous cement with aggregate.
  10. The Applicant proposed to and shall mitigate noise and vibration from Water Street for the Project through the use of super insulated, air tight construction methods, including 9 inches of insulated walls, floors, ceilings and through the installation of triple-glazed windows and by building the building on piers that shall be located 5 to 6 feet above grade.
  11. The Applicant shall provide 2 parking spaces at the Property that shall be managed and administered by the Applicant in the Applicant's discretion; and the Applicant shall insure that off-street parking is available to each tenant that has a vehicle and shall provide a yearly report to the Board and the Town of how many tenants have vehicles and what off-street parking arrangements have been made for the tenants.
  12. The Project shall include a minimum of one unit with universal handicap design.
  13. All utility work and other roadwork performed within any public right of way shall be performed and conducted in conformance with the regulations of the Town, including requirements for street opening permits. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with current engineering and construction standards. Final design of storm water management system shall comply with Department of Environmental Protection regulations.
  14. All structures and site improvements within the Project site shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, sewer and water infrastructure and the Applicant shall bear the cost of maintenance, repairs, replacement, snow plowing and trash removal for same in perpetuity.
  15. The Applicant shall provide monitoring of the Project by an off-site management entity that is available by phone 24/7. The Applicant shall post the name and telephone number of the management company at the Premises and shall provide the Board with a current copy of the management contract upon request.
  16. The Project shall be sprinklered.

17. The Applicant, as proposed in the Application, shall comply with the Stretch Energy Code and seek to install solar panels. In addition, each unit shall be equipped with water saving plumbing fixtures in every bathroom, kitchen, and laundry area, and all underground water pipes shall have water tight joints.
18. All infrastructure (utilities, driveways, and parking) to service the building shall be constructed as shown on the Plan and the Final Landscape Plan as approved by the Board of Appeals, prior to issuance of a certificate of occupancy for any unit in any building.
19. Final drawings for water and sewer infrastructure shall be submitted to the Town's Department of Public Works for review and approval and no waivers from the applicable rules and regulations and fees were requested nor are any granted hereunder.

**C. Construction and Bonding**

1. The Applicant shall provide the Board and its agent with authority to enter the Premises during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard hat, safety glasses and work boot requirements), with or without prior notice to determine conformance with this Decision.
2. The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. A consulting engineer shall be used if necessary; however, it is anticipated that it is likely that the Building Office will be able to perform the necessary inspections. All fees for Board consultants including fees incurred prior to the date of this decision shall be paid by the Applicant within 30 days of the receipt by the Applicant of the consultant's bill for services. Any outstanding fees owed for consulting services incurred by the Board before this decision was rendered shall be paid forthwith and before any building permit issues. Thereafter, no occupancy permit shall issue if an outstanding fee bill is 30 days overdue.
3. The Applicant shall abide by orders issued by the Building Official in conformance with applicable law in conjunction with construction of the Project, subject to the Applicant's rights of appeal under applicable law.
4. Erosion controls shall be continuously maintained throughout the course of construction. Adjacent public streets shall be swept as needed to remove sediment and debris. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable.

5. No certificates of occupancy shall be issued by the Town until the Applicant has fully completed all utility work appurtenant to any portions of the site for which an occupancy permit is to be issued and until a determination is made that the Project is in substantial conformance with the Final Landscaping Plan as approved by the Board of Appeals.
6. To the extent that landscaping for the Project is not completed prior to the issuance of the first certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the Board in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.

In addition, the Applicant shall provide surety sufficient to loam and seed any disturbed areas which are yet to be developed as per the plans. Such surety shall be held by the Town Treasurer until the Treasurer is notified by the Board to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the completion of the landscaping work.

7. Prior to the issuance of any building permit, the Site and Engineering Plans, finalized as necessary as provided in this Decision, shall be signed and sealed, as appropriate, by a Massachusetts Professional Engineer, a Professional Land Surveyor and a Massachusetts Registered Landscape Architect. The Final Plans shall be filed with the Board and the Building Official and shall include the following the utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes.
8. A surety instrument, that shall not expire until it is satisfactorily replaced or released, in an amount to be determined by the BOA in consultation with Town boards and officials and other consultants shall be given to the Town by the Applicant prior to starting any activity authorized by this approval ("Authorized Activity") within a public way, on Town property or in any Town easement to ensure the proper and timely completion of all such work that shall be held by the Town Treasurer until the Treasurer is notified by the BOA to release the surety.

Requests to reduce the surety may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost

estimate of the same. The surety retained shall be based on the work remaining.

9. Prior to starting any Authorized Activity, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Official and the Department of Public Works Director to review this approval and the conditions set forth herein.
10. Prior to starting any Authorized Activity, the Applicant shall provide to the Building Official:
  - (a) the company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site;
  - (b) a copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Premises have been paid;
  - (c) certification from the Applicant that all required federal, state and local licenses and permits have been obtained;
  - (d) proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work; and
  - (f) at least 48 hours written notice of work beginning. If activity on site ceases for longer than one month, 48 hours written notice prior to restarting work shall be provided.
11. During construction, at the end of each work day, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.
12. No blasting shall be performed at the Property.
13. Prior to the start of any Authorized Activity (including demolition of the existing structures), a plan to implement adequate erosion and sedimentation control measures for the Project shall be submitted by the Applicant to the Building Official for approval to prevent movement of soil onto the adjacent street or any adjacent property. Said measures shall be maintained throughout the duration of the Project and until all disturbed areas have been permanently stabilized with either an adequate vegetative or asphalt cover in accordance with the Plans and the Final Landscaping Plan as approved by the Board of Appeals.

14. The Applicant shall be permanently responsible for the following at the Project:
  - (a) all site maintenance and establishing a regular schedule for site maintenance;
  - (b) repairing and maintaining all on-site infrastructure, including ways, parking lots, drainage structures and utilities therein; and
  - (c) site lighting.
15. There shall be no mailboxes at the Property unless the U.S. Postmaster requires that there shall be mailboxes. If the U.S. Postmaster requires mailboxes, then the Applicant shall create a central mailbox location with the approval of the U.S. Postmaster.
16. Prior to commencing Authorized Activity (including demolition of the existing structures), the Applicant's final demolition and construction plans shall provide that the demolition and construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control and blocking of Town roads and the Applicant shall use best practices and provide for dust control in the form of sweeping and spraying of water whenever necessary and provide for a police detail whenever traffic is blocked or impeded.
17. No stumps or construction debris shall be buried or disposed of at the Property.
18. The Applicant shall use all reasonable means to minimize inconvenience to residents in the general area, during construction.
19. Prior to demolition and post- demolition, the Applicant shall take appropriate measures to control rats at the Property by baiting and trapping the rats until the problem is abated.
20. Any Permit granted hereunder is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b).
21. Any changes to the Project after issuance of the Permit shall be reviewed and approved by the Board in accordance with 760 CMR 56.05 (11).

## **V. LAPSE**

Any Comprehensive Permit granted hereunder shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)), unless the Comprehensive Permit is duly recorded before the three

year period lapses and unless construction on the Project has commenced within such period.

In addition, construction in accordance with this Comprehensive Permit shall be completed within eight years of the Permit taking final effect or approval of any further construction of any unit not already begun shall lapse. The Applicant may apply to the Board for reasonable extensions of these deadlines for good cause, but shall do so before any lapse occurs.

**VI. WAIVERS:**

The only waivers sought by the Applicant were so as to allow the use and the massing and density and dimensional setbacks as shown on the Plans. The Board voted unanimously to grant those waivers; and, if any additional waivers are desired, then the Applicant shall return to the Board to request the specific waivers desired.

The Applicant shall comply with the State Building Code and the Town's Zoning By-law and all other local development controls and permit requirements, in effect on the date of the Application, except for the use and the massing and density and dimensional setbacks as shown on the Plans. Any waiver not expressly granted is hereby denied. Grant of the Comprehensive Permit and the above Waivers is expressly conditioned upon compliance with all of the conditions of approval.

**VII. VALIDITY OF PERMIT**

This permit shall not be valid until recorded with the Registry of Deeds and evidence of such recording is provided to the Building Official and the Board. Any modification of this permit shall be subject to 760 CMR 31.03 or any successor regulation thereto.

**BOARD OF APPEALS**

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Jeff Kristal, Board of Appeals Chairman

On October 17, 2014, the Board of Appeals voted 5-0 to authorize its Chairman to execute the decision on behalf of the Board.

Filed with Town Clerk on:

Sent to Applicant, certified mail, on: \_\_\_\_\_

Notices to interested parties mailed on: \_\_\_\_\_

Any person aggrieved by this decision may appeal to a court or agency of competent jurisdiction within twenty (20) days following the filing of this decision, under G.L. c.40A, §17 and G.L. c.40B, §20, et seq., as applicable.