

**Zoning Board of Appeals
Minutes of January 15, 2026 at 6:00PM
Select Board's Meeting Room, Town Hall
Zoning Administrator: Noreen Stockman
Present: Peterson, Murphy, Petrucci, Finneran, Morse, Duffy
Absent: Hanney**

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TOWN CLERK

Executive Session: Cancelled

Public Comment – None

#065-25 Habitat for Humanity of Cape Cod, Inc., 48 Benjamin Nyes Lane, North Falmouth – requesting a Comprehensive Permit to demolish the existing structures and construct fourteen (14) single-family dwellings; all units to be affordable

Voting Members: Murphy, Duffy, Finneran, Petrucci, Peterson

Morse made a motion to continue to January 29, 2026. Peterson seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
Document (s) Submitted:	Date Submitted:	Submitted By:
Email re flow test	10/15/25	a
Letter opposition (Lmatmur)	10/15/25	a
Email - S. McGraw	10/16/25	a
Hydramat flow test	10/14/25	a
letter w/ comments	10/14/25	a
letter - support (300 Comm)	10/14/25	a
Email - E. Kirk	10/21/25	a
Comments S. McGraw	10/31/25	a
B&T Review #1	12/2/25	a
Certification (S. Peterson)	12/10/25	a
letter from EOHLC	12/12/25	a
Email from M. Brune	12/18/25	a
letter w/ comment (R. Bringer)	1/28/25	a
letter J. Casque (opp)	1/30/25	a

Application #	Applicant Name:	Address:
060525	Hab. for Humanity	48 Benjamin Mues
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / see	8/22/25	Hab. for Humanity
Request + ARU H2O	8/25/25	g
Request referenc	8/25/25	g
(9) sets plans	}	}
(9) Copies arch plans		
Letters of support / request		
PEI		
POA agreement		
Narrative		
IRS cert / Good standing		
Maps / photos		
Waivers		
Public impact		
Marketing materials		
H2A info		
monitoring info		
Building referenc	8/28/25	g
Email - Comments (Bradley)	9/2/25	g
Referenc H2O	9/2/25	g
Referenc Housing	9/12/25	g
Referenc - Eng	9/23/25	g
Implic S housing	9/24/25	g
Sub-plan	}	}
Eng. responses		
Sign stam		
Review #2 Eng.	9/30/25	g
email final meet	10/10/25	g

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#084-25 Broken Bow Residences, LLC, '0' (lot 001A) Broken Bow Lane, East Falmouth – requesting a Comprehensive Permit to construct twelve (12) homeownership units within six (6) duplex buildings; three(3) units will be affordable

Voting Members: Murphy, Duffy, Morse, Peterson, Finneran

Duffy noted that referrals had been received from the following departments / committees:

Conservation, Engineering, Affordable Housing Committee, Housing Coordinator, Wastewater Division, Water

Correspondence – none

Duffy moved that the Falmouth Zoning Board of Appeals has the grounds to declare that a denial or approval with conditions of the application is consistent with local needs, as defined in G.L. c. 40B, Sections 20-23, and 760 CMR 56.03(1)(a) and 3(a) because the Town's Subsidized Housing Inventory exceeds 10%, and further under 760 CMR 56.03(1)(b) and (4) for municipal compliance with its approved Housing Production Plan, and to provide the requisite 15 day written notice following tonight's hearing to the applicant and to the Executive Office of Housing and Livable Communities. Morse seconded the motion. Motion carried 5-0. All in favor.

Murphy - Who are the members of the LLC?

Mirrione – William and Karen Curley.

Nick Mirrione, project representative – For the record, I disagree that you are claiming to be in Safe Harbor so we are proceeding with that assumption.

Duffy – He is proceeding as if we are in Safe Harbor.

Mirrione - This property is located on Broken Bow Lane on 1.6 acres in a fairly developed neighborhood with fairly level topography, with the exception of the detention area in the back where the drainage is proposed. We are proposing 12 x 3-bedroom units, with 2-baths, full basements with direct access from the inside, and a proposed height of 23.6'. We will have 32 parking spaces of which 3 will be handicap. The development will be served by town water and sewer. We will not be starting construction until the sewer has been installed. We will be adding a hydrant to the property.

Board Discussion -

Peterson – You won't start the construction until this area has been sewered?

Mirrione – That's the intent. I don't think that we can get a permit until sewer is available.

Petrucci – At this point I don't have lot of questions; I would prefer to ask them at a later date.

Morse – Why was there a decision to change from rental to ownership? The town is only getting 3 affordable units for this project?

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Mirrione – The first project was 16 rental units. When we decided to go through the LIP process, we had to increase to 20 units to get the numbers to work. It doesn't work as a rental for 12 units, so we went to ownership.

Morse – Where will the hydrant be and where is the next hydrant located?

Mirrione – The proposed hydrant will be in the middle of the property and the existing will be moved to the opposite side of the driveway.

Morse – Will the utilities be buried?

Mirrione – Yes. The riser pole is already there.

Morse – We've had referrals from various departments including Engineering, I think that the Board will most likely expect answers to those at the next meeting.

Murphy – I want you to come back with an answer to who is paying for the grinder pumps.

Mirrione – They will be installed by the owner. They will have to pay for maintenance.

Murphy – Did you read the referral from the Planning Board?

Mirrione – Yes.

Murphy – I want you to show where snow storage will go, sheds, the sidewalk to Route 28. The Planning Board also had an issue with the design.

Duffy – The last time you were here for this project, we heard from people in the neighborhood that this parcel accumulates water. We never did get an answer on that.

Mirrione – There is no wetland out there. We have that water captured in our proposed drainage plans.

Peterson – We will need to get a peer to weigh in.

Public Comment

Walter Hughes, 45 Homestead Lane – My property abuts this project. The water will be running down the hill with nothing to stop it. All of the houses will have downspouts and will shed the water off. What will happen to that water with nothing stopping it? I think that the water will run even faster. This building will be right in back of my property. The buildings will have AC units running in the summertime and we will be able to hear them. The front of my house is about 32' from the road. Coming down the driveway there is another 30-40'. My house is 11' below Homestead Lane. We have a finished basement, and if water flows this way, it will ruin the basement. There is water running down Broken Bow already and it ends up at this property. We like to open our windows in the summer, but we won't be able to with the noise from the AC units. These buildings will be constructed on a slope and the land is very soft. I hope that you turn this project down; it will be an annoyance to the neighborhood. Where will this water go when it collects at the bottom?

Finneran – The engineers will look at this to determine if what they are proposing is adequate.

Hughes – I have a porous foundation.

Dianna Manning, 57 Broken Bow Lane – Things have changed so much over the years. It was pretty quiet when I moved in. This would change the whole makeup of the neighborhood. I want to keep the road I live on as is; there has already been new construction. I don't think that it is fair. When it rains, it is like a pond on the road. Where is the water going to go?

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Paul Young, Homestead Lane – This property is connected to the ocean; you can have all the engineers go out there and they will say that it is fine. Have them go out there when we have a hurricane and it floods. Will you be liable if you give them this permit?

Murphy – No, it's going to be up to the Applicant.

Lynn Parks, 359 Locust Field Road – I am speaking on behalf of my daughter who is a direct abutter. The new police station will be going into that area and how will that affect traffic? I hope that a traffic study is done. Some of the prices will be about \$700K for a 2-bedroom condo; that seems exorbitant. What happened if someone doesn't want to buy them? Can they be turned into a rentals?

Richard Castleberry, 41 Broken Bow Lane – I am concerned about the traffic; it's becoming an issue. Traffic has not been addressed for this situation.

John Butler, Homestead Lane – The sewer line will be put in by the town?

Finneran – It's all for Teaticket Path down the highway.

Butler - They were talking about losing the school in Teaticket; will these be 3-bedroom units?

Murphy –Yes.

Butler – They are putting more apartments on Brick Kiln Road. There are many accidents at the lights in Teaticket.

Butler –Will this be an HOA?

Mirrione – Yes.

Butler – There is an area cleared out at the other end; what is going there?

Murphy – Not, sure, I haven't heard anything.

Stockman –This road is listed as public on the Town's GIS.

Murphy – Engineering said in their referral that it is private; we'll need to confirm.

Brian Tobin, 116 Broken Bow Lane – I would request that a title search be done; it will impact noise, the trees on this lot provide a sound buffer. I would like to see a light study; drainage is a real problem in that area.

Murphy – Do you know if this is a public or private road?

Tobin – Private. The catch basin is smaller than a soccer ball, and it gets clogged. A light rain storm creates a significant puddle. I would also like to confirm that the Applicant is proceeding as the town is in Safe Harbor, correct?

Finneran –Yes.

Tobin – All of the homes in this area are single family. The average size lot is just under 1¼ acre and it's zoned Agricultural. The developer that owns the development rights in the neighborhood has gotten four times what he should have got, and now he wants to put 12 units on 1.6 acres. A much more suitable project could be put in this town. CPC money can be obtained to put in single-family dwellings for workforce housing, which should be encouraged.

Petrucci –What is CPC money?

Tobin – Community Preservation Committee.

Petrucci –What type of housing would you want to see?

Tobin – If he did 1¼ acres lots, that's 6 units. You could have 6 attainable units for working families.

Murphy – Right now we are getting only 3 units that go towards the SHI list.

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Stockman – The developer now has an opportunity to file an appeal against the town's Safe Harbor claim. If you are looking to appeal then we would wait before having them fund a 53G account.

Mirrione –Where are you in the appeal of Safe Harbor?

Stockman –I don't have a timeline.

Mirrione – Just continue the hearing for a couple of months and I'll decide within the next week or so as to what we are going to do about the appeal.

Peterson made a motion to continue to March 12, 2026. Duffy seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
084125	Broken Bow Res. LLC	A Broken Bow LLC
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / fee	11/20/25	N. Mimone
PEL / Notice of project change		
Letters to MA. Housley, EOTLE		
General info		
Existing conditions / site info		
- Buildings plans		
- Eng. plans		
- Sewer letter		
- drainage plans		
Site control		
Financial info		
applicant Qualifications		
Notifications		
Landscaping plan		
LLC docs		
development acknowledgment		
Request a butte	12/2/25	ⓐ
Request referes	12/2/25	ⓐ
Rec'd cert about a butte	12/11/25	ⓐ
Revised plans (Arch. 142)	12/10/25	ⓐ
Referal - Engineering	12/17/25	ⓐ
Referal - Housing	12/18/25	ⓐ

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Open Meeting:

- 1) Minutes: December 11, 2025, December 18, 2025, January 8, 2026
Murphy made a motion to approve minutes of December 11, 2025 and December 18, 2025. Morse seconded the motion. Motion carried 6-0. All in favor.
- 2) Discussion and possible vote on creation of a negotiating subcommittee to coordinate with counsels on 40B:
Maura O'Keefe, Town Counsel- I provided a memo on the issue regarding creating a subcommittee and I understand that there are further questions.
Petrucci – I read your memo. The idea of this committee is to be prepared to have a team in place when negotiating or mediation is needed. It is the Board's choice as to what we do and how we handle it. It would be a standing committee sitting there waiting to be called. People are replaced when they need to be and the committee can be disbanded at any time. Is there any reason as to why we can't have this in place?
O'Keefe – Yes, I do not recommend it at all; it would be subject to the Open Meeting Laws and would undermine the public process. It would be to serve the attorney who is managing the appeal. When there is an appeal, the strategy is directed by an attorney and the attorney will look for insight as to what direction this Board wants to go. What you are proposing is backwards. What I have suggested is when an appeal is taken, the attorney would request 1 or 2 members for mediation, and they will assist the attorney in strategizing. If you do it your way, it's backwards as to how litigation is managed. The strategy has to be at the direction of the attorney. You are proposing the opposite; this committee would be an Open Meeting Law violation. Minutes would have to be taken, agendas would have to be posted and it would have to be open to the public. It also undermines the ability of my office or special counsel. It really hurts our ability to represent you.
Petrucci – We don't wait for our attorneys. This Board is the only Board that has the responsibility of a 40B. We need to be able to effectuate the outcome. There is no meeting of the subcommittee prior to the request. It's just people waiting for that request. I don't see where we are creating a problem.
O'Keefe – This proposed subcommittee would never meet or take any action unless called by the attorney. In hearing that, I am certain that the subcommittee is not required at all until that request is made. You are creating a concern that I have that this committee will violate the Open Meeting Law because of how it is created. I don't see why you can't wait for the attorney to call for a group to be created.
Petrucci – Someone has to direct the attorney. I don't see an attorney telling the Board what to do. When I was in corporate, we directed the attorney.
O'Keefe – There is no Open Meeting Law in corporate life, and that is my concern. If the attorney calls for people to help with litigation then the Open Meeting Law doesn't apply to that group. If you do it the way you are proposing the conversations are not confidential and there is no strategy. All of that will be open to public scrutiny. It is vital that these conversations remain confidential.
Petrucci – How are we guaranteed that this Board will be included in the strategy?

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O'Keefe – We have to involve this Board. I would not file a motion without consulting with the client.

Petrucci – I would not want my attorney coming back and saying this is what I negotiated for you. Once two attorneys come to an agreement, it is very difficult to break that agreement. It's mistrust in the system and the way it operates. We want to direct it and not be left out.

O'Keefe – It is important no matter what the outcome is, and its important I hear that. I don't have sufficient communication with this Board to do my job properly. Hearing things like this is vital. Some clients don't want to be involved; they just want us to take care of the litigation, and report back at the end. Others want to be directly involved.

Peterson – If we are going to enter into litigation, your first course of business is to call for a group; would that be ok with you?

O'Keefe – Yes.

Duffy – When the attorney makes the request this Board needs a liaison. Those people are not subject to the Open Meeting Law. The subcommittee would create a violation.

Murphy – It takes a lot of phone calls to get a response. That's the problem. I have made many phone calls to your office with no responses.

O'Keefe – Can you give me examples?

Murphy – I spoke with you on a Friday afternoon to get something to me and nothing came on Monday. I phoned Tuesday and Wednesday and it finally came in at 4pm before our meeting.

O'Keefe – And that wasn't sufficient, for me to draft and send you a memo?

Murphy – Absolutely not.

O'Keefe – That is outrageous for you to have that kind of standard for me to respond to you with a written memo.

Murphy – You could have called me back to let me know that you were busy.

O'Keefe – I responded to you on the first day when I wasn't at work. Your phone call was important to me and I called you on my day off.

Finneran – We don't have time to sit around and wait. Inaction bothers me. We went through this with Sandwich Road.

Murphy – I think that we should give it a chance.

Morse – I think that everyone has been happy with the members that have been put on mediation. Government law is different that corporate world. I'm against it because of the Open Meeting Law. I don't think that we will lose enough time. I would think that we would have sufficient notice. Have we had an adverse action as of yet? No we haven't.

Petrucci – I would suggest that the minute we know there's an appeal that has been filed we request Town Counsel to request a negotiating team because we want to affect the outcome. I want to be assured that whoever is counsel reaches out to us.

O'Keefe – It's a simple ask.

Stockman – If a Board's decision is appealed, there is an offer for mediation, which the developer may or may not accept. If they don't accept mediation, a subcommittee may not be valuable.

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O'Keefe – I would disagree; it is nice to have that direct communication. Having a negotiating team ready to go is a great idea. I think having the knowledge base is essential. Once a project has been appealed, I will reach out to Stockman to get on the next agenda to bring the Board up to date. Hiring Special Counsel takes some time, so I will start out with that appeal until I have someone in place, so there is not a lag.

Petrucci – My concern would be someone stands in the way of hiring Special Counsel. Does anything stand in your way to hire counsel?

O'Keefe – The decision to hire special counsel is based on a few factors: the budget and my assessment of litigation. It was an easy decision for me to make, when Safe Harbor was challenged, to hire Attorney Pucci. Then the request goes to the Town Manager.

Petrucci – There may or may not be a flaw in the process when it comes to government. What would this Board do when someone got in our way of filling our obligation?

Finneran – There is money for outside counsel built in to your budget. I would be surprised if that wasn't the case now. This comes from us being denied when we knew it was right in the past, and we had to fight to get outside counsel.

Murphy – We have no say in that.

O'Keefe – That vote was taken without my input; you don't have the ability to hire outside counsel on your own. I'm happy to take requests. I want to make sure you are represented properly, but those decisions are mine. There was a delay the last time this came up because process wasn't followed.

Peterson – Counsel has agreed to notify the Board as soon as possible.

3) Board Discussion - none

4) Board Updates - none

5) Zoning Administrator Updates

Stockman – 76 Menahaunt Road - approved a platform for battery storage for solar panels; the battery storage will be taking the place of a generator.

24 Elizabeth Jean Drive - the Board issued a Special Permit for additions and a garage. They came back for approval for a small infill deck area that would be flush with the front façade.

Peterson – Does the Fire Department have to review those batteries for solar?

Stockman – I'm not certain.

Stockman- We have gone live this past week with Permit Eyes. We are also getting a window installed, with a kiosk for public access to apply online.

6) Future Agenda Items – next meeting January 29, 2026, Select Board's Meeting Room, 5:30pm.

Finneran made a motion to adjourn at 7:55pm. Morse seconded the motion. Motion carried 6-0.

All in favor.

Respectfully submitted,

Ashley E. DeMello, Office Assistant
Board of Appeals