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**Comprehensive Permit
Residences at Kelley's Corner
DECISION
#18-07**

446 Massachusetts Avenue
September 5, 2018

GRANTED with Conditions

This is a Decision of the Acton Zoning Board of Appeals (hereinafter the "Board") on the request for a Comprehensive Permit under Massachusetts General Laws ("M.G.L.") Chapter 40B, §20-23 (the "Act"), made by the applicant, Common Ground Development, Corp, 155 Merrimack Street, Lowell, MA 01852 (hereinafter the "Applicant") for the properties located at 446 Massachusetts Avenue in Acton, Massachusetts. The property is identified on the Acton Town Atlas map as parcel F2-119 (hereinafter the "Site").

This decision is in response to an application for a Comprehensive Permit for a rental development. The project consists of one apartment style building with 31 units and additional resident amenities. All of the units will be accessible and restricted to income-qualified seniors age 62 or older and adults with disabilities. The comprehensive permit application was submitted to the Board of Appeals on June 13, 2018. The Board opened a duly noticed public hearing on July 9, 2018. The hearing was continued on July 23, 2018, September 5, 2018 and closed on September 5, 2018. Throughout the duration of the hearings, the Board heard testimony from the Applicant, Town Staff, abutters to the proposed project and Acton residents. Board members Kenneth Kozik (Chair), Adam Hoffman (Member), and Emilie Ying (Associate Member) were present throughout the hearings. The minutes of the hearings and submissions on which this decision is based may be referred to in the Town Clerk's office of the Board at Acton Town Hall.

1 **EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

- 1.1 The application for a Comprehensive Permit entitled "THE RESIDENCES AT KELLEY'S CORNER" was filed with the Town Clerk on June 13, 2018. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:
 - Table of Contents;
 - Letter to Acton Town Clerk;
 - Letter to Acton Board of Appeals;
 - Application for Comprehensive Permit;
 - Comprehensive Permit Fee;
 - Certified Abutters List;
 - Project Eligibility letter;
 - List of Requested Exceptions to Local Requirements and Regulations;
 - Development Impact Report;
 - Use Description;
 - Development Schedule;
 - Records Plans and Deeds;
 - Letter Authorizing Completion of Improvements;
 - Drainage Calculations;
 - Water Balance Calculations;
 - Earth Removal Calculations;
 - Site Plan, last updated July 18, 2018;
 - Comprehensive Permit Plan
 - Cover Sheet
 - Existing Conditions Plan
 - Site Development and Gardening Plan
 - Layout and Utility Plan
 - Construction Details
 - Erosion and Sediment Control Plan
 - Architectural Plans;
 - First Floor Plan
 - Second Floor Plan
 - Third Floor Plan
 - Exterior elevations; last revised September 5, 2018.
 - Planting Plan by Lorayne Black, ASLA, last revised as received on August 31, 2018;
 - Building elevation drawings;
 - Affordable Dwelling Units;
 - Development Pro Forma.

- 1.2 Additional, supplemental, revised, and corrected plans and documentation submitted as part of the application included in the following:
- Board of Selectmen Letter of Support, dated March 22, 2018;
- Example - Affirmative Fair Housing Marketing Plan (Peabody Properties), dated June 28, 2018;
- Stormwater Management Report, last revised August 9, 2018;
- Pre-Development Drainage Map, last revised August 9, 2018;

- Post-Development Drainage Map, last revised August 9, 2018;
- Water Waiver Request, dated July 2, 2018;
- Response to CrossTown Connect, email dated July 10, 2018.
- Order of Conditions issued by the Acton Conservation Commission on August 17, 2018 (MassDEP File # 85-1238).

1.3 Interdepartmental communications were received from:

- Acton Water District, dated March 12, 2018;
- Design Review Board, dated June 6, 2018;
- Fire Department email, dated June 15, 2018;
- Acton Community Housing Corporation comments, dated June 29, 2018;
- Acton Community Housing Corporation Summary of Project, dated June 27, 2018;
- Planning Division, dated June 29, 2018;
- Engineering Department, dated July 2, 2018 and July 23, 2018;
- Building Division, emails dated July 6, 2018, dated July 16, 2018, and dated July 23, 2018;
- Acton Housing Authority, dated July 9, 2018;
- CrossTown Connect, received July 10, 2018;
- Acton Community Housing Corporation comments dated August 30, 2018.

1.4 Other correspondence included:

- Ann Chang, dated July 5, 2018;
- William Manning, dated July 9, 2018;
- Priscilla Bolte, dated July 9, 2018;
- Heide Madera, July 9, 2018;
- David Hoffman and Leslie Warner, dated July 9, 2018;
- Terra Friedrichs, dated July 24, 2018;
- James Eldridge, dated July 24, 2018;
- Emails from Steve Joncas, dated, July 16, 2018, July 22, 2018;
- Email between Steve Joncas and Chris Allen, last dated July 16, 2018;
- Email from Roland Bartl, RE: Fee Waiver Request, dated July 23, 2018 and approved by the Board of Selectmen on August 6, 2018;
- Email from Steve Joncas, RE: Cross Town Connect, dated July 10, 2018;
- Email from Steve Joncas, RE: DHCD Awards, dated July 26, 2018;

1.5 Extension Agreements:

- Consent and Agreement to Extension of Hearing to July 23, 2018;
- Consent and Agreement to Extension of Hearing to September 5, 2018.

2 FINDINGS AND CONCLUSIONS

Based upon its review of exhibits, and the record of the proceedings, the Board finds and concludes that:

2.1 The submitted application substantially complies with the Board's comprehensive permit application requirements as stated in the Town of Acton's "Rules and Regulations for Comprehensive Permits" adopted August 22, 2017, and the subsequent regulations of the Department of Housing and Community Development's ("DHCD") Housing Appeals Committee

entitled “Comprehensive Permit; Low or Moderate Income Housing” 760 CMR 56.00 (the “Regulations”).

- 2.2 According to DHCD’s Chapter 40B Subsidized Housing Inventory (SHI) as of June 2017, Acton’s SHI percentage is 6.71%. As a result Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B’s minimum 10% criterion.
- 2.3 The Site is located within an R-2 (Residence 2) Zoning District. The overall development is located within the Ground Water Protection District Zone 4.
- 2.4 Massachusetts Avenue is a State highway.
- 2.5 The subject property totals approximately .88 acres in area.
- 2.6 The project consists of one apartment style building containing 31 one-bedroom units.
- 2.7 All 31 of the proposed units will be made available to seniors age 62 or older and to adults with disabilities whose income and assets qualify them as low or moderate-income.
- 2.8 The development would provide 41 parking spaces at a rate of 1.32 spaces per unit. 3 of the parking spaces would be designated accessible spaces.
- 2.9 The proposed access driveway will have a pavement width of 24’.
- 2.10 The project is located within the Kelley’s Corner area. An existing sidewalk is located in the front of the property on Massachusetts Avenue connecting the site to businesses and services in Kelley’s Corner to the east and West Acton Village to the west.
- 2.11 The applicant requested waivers from the following Town of Acton Bylaws and Rules and Regulations:

Zoning Bylaw provisions:

- Section 3.3.4 – To allow for multifamily housing on a Residence 2 (R-2) zoned lot where only single-family use is allowed.
- Section 5.2.4 – To allow for a front yard setback of 10 feet where 30 feet is required
- Section 5.2.5 – To allow for a side yard setback of 6 feet where 10 feet is required
- Section 6.3 – To allow for 41 parking spaces (1.32 spaces per unit) where the required minimum is 62 spaces (2 spaces per unit)
- Section 6.7.1 – To allow for 41 parking spaces within a single parking lot cell where there is a maximum of 40 spaces allowed in a single cell
- Section 6.7.2 – To allow for a paved surface within 7 +/- feet of the front yard setback and within 5 +/- feet of a side yard setback where the bylaw requires that there be “no parking spaces or other paved surface other than access driveways, common driveways, walkways, sidewalks, or bikeways, shall be located within 30 feet of the front lot line and within 10 feet of the side and rear lot line”.

- Section 6.7.6 – To allow for less than the required perimeter landscaping where the minimum requirement is a 10 foot wide buffer strip containing appropriate landscaping to effectively screen the parking area.
- Section 6.7.7 – To allow for less than the required interior area landscaping where the required minimum of interior landscaped area is 10 %.
- Section 10.4 – An exception is requested from this section and all subsections regarding Site Plan Special Permit.
- Section 10.6 – An exception is requested from this section and all subsections regarding Outdoor Lighting Regulations for Site Plan Special Permit.

Comprehensive Permit Rules and Regulations:

- Section 1.6 – An exception is requested from this section which states that the Board may require in its decision that a performance guarantee be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized under a permit.
- Section 3.9 – An exception is requested from this section which requires for a letter authorizing completion of improvements by the Town. This waiver is unnecessary. The requirement is only for subdivisions; no subdivision is proposed in this case.
- Section 3.15 – To allow for the development of the project without the submission of a traffic study. The size of this project does not trigger a traffic study under any other Acton regulations; therefore the Board finds that a waiver is not necessary.

General Town Bylaw:

- Chapter X (Storm Water Bylaw) Section 6 Regulated Activities.
- Town of Acton's Wetland Protection Bylaw Rules and Regulations provisions:
 - To allow for a 55 foot setback for the proposed building, and a 51 foot setback from the proposed parking lot, where a 75 foot setback to edge of driveways, roadways, and structures is required.
 - To allow for 37 foot setback from wetlands to lawn, where a 50 foot setback with undisturbed natural vegetation is required.

Fees:

- Building Permit Fees.
- Reduction in Sewer Connection Fees.

2.12 Given the regional need for affordable housing the Board finds that the requested waivers, including for increased density, reduced setbacks, and reduced parking are reasonable in relation to the size of the Site, its location, and the specifics of the proposed development and its proposed use. Therefore, the Board grants all of the waivers as requested and necessary as enumerated above, subject to the conditions of this Decision.

2.13 In addition, the Applicant may be required to post construction signage with acknowledgements of State funding support. Therefore, a waiver is granted from Zoning Bylaw section 7.5.2 (construction sign limited to 8 square feet display area) as needed to allow the installation of one

construction sign that complies with the requirements of the Commonwealth of Massachusetts and its State funding agencies.

2.14 On August 6, 2018 the Board of Selectmen approved the Applicant's request for a waiver of the building permit fees. The Applicant stated he would pay for additional costs of contracted building permit related services: fees for file archiving; and fees for plumbing, electric, and gas permits and inspections.

2.15 The Board of Selectmen in their authority as Sewer Commissioners also approved the Applicant's request for a reduction of the sewer privilege fees from \$248,182.60 to \$133,685.46.

2.16 Pursuant to the Act and the regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development Housing Appeals Committee at 760 CMR 56.04, an applicant for a comprehensive permit must fulfill three jurisdictional requirements. The board finds that the Applicant has provided sufficient information to meet them:

Jurisdictional Requirement: The applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization;

The Applicant is a non-profit organization and has satisfied this requirement. At financial closing the Applicant shall establish a single-purpose entity as a limited dividend organization to comply with low-income housing tax credit requirements.

Jurisdictional Requirement: The project shall be fundable by an authorized Subsidizing Agency under a Low or Moderate Income Housing subsidy program;

The applicant has satisfied this requirement through the submission of a Project Eligibility Letter dated April 11, 2018 from Department of Housing Community Development indicating that the project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

Jurisdictional Requirement: The Applicant has the site under a purchase and sale agreement;

The Applicant has satisfied this requirement by providing proof of purchase and sale agreement of 446 Massachusetts Avenue to the Department of Housing and Community Development.

2.17 The proposed Project, when conforming to the conditions set forth in this Decision, will adequately provide for storm water drainage and sewage, will not be detrimental or injurious to the surrounding neighborhood, will provide for convenient and safe vehicular and pedestrian movement within and through the site, all without an undue burden on the occupants of the Project or on the surrounding neighborhood or the Town.

2.18 The proposed Project will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the Project, the neighborhood, or the Town.

2.19 The proposed Project as supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this decision, and (ii) would represent a reasonable accommodation of the need for low and moderate income housing.

- 2.20 The Board received comments from various Town departments, which are listed in exhibit 1.3 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.21 This Decision has been issued and filed with the Town Clerk within the time frame specified in M.G.L. Ch. 40B §20-23 and as agreed upon by the Applicant.

GOVERNING LAW & JURISDICTIONAL ELEMENTS

- 3.1 The law governing this project is the Act and regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development Housing Appeals Committee at 760 CMR 56.04, and the Board's Rules & Regulations for Comprehensive Permits.
- 3.2 The Act prevents the possible use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. The purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town's total area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year. Acton does not currently meet these criteria.

4 BOARD ACTION

Therefore, the Board voted unanimously on September 5, 2018 to GRANT the requested Comprehensive Permit for the project as described herein and as presented in the application, subject to and with the benefit of the following Plan modifications, conditions, and limitations.

4.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, until and unless the Zoning Enforcement Officer confirms that any proposed building permit plans are substantially in compliance with information submitted, reviewed and approved as part of this Comprehensive Permit. Except where otherwise provided, all such information shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

- 4.2.1 Except as otherwise directed herein, the Applicant shall modify the plan to address all departmental comments received on or before the close of the public hearing as itemized in Exhibit 1.3.
- 4.2.2 The plan shall show substantial screening of the proposed parking lot using vegetation and/or an opaque fence so as to provide an effective year-round visual barrier for abutting houses situated westerly of the Site.
- 4.2.3 The plan shall demonstrate that all outdoor lighting installations will comply with the standards of Section 10.6 of the Zoning Bylaw.
- 4.2.4 The plan shall demonstrate compliance with the Town's Stormwater Bylaw (Chapter X in the General By-Laws) prior to the first building permit.

4.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. The Town of

Acton may elect to enforce compliance with this Comprehensive Permit using any and all powers available to it under the law.

- 4.2.5 Unless other arrangements are approved by the Sewer Commissioners (Board of Selectmen) or their designee, the Applicant shall, prior to the issuance of any building permit, pay a Sewer Privilege Fee in the amount of \$133,685.46.
- 4.2.6 The Applicant shall submit a membership application and \$1,100 fee to CrossTownConnect prior to issuance of any occupancy permit.
- 4.2.7 The Affirmative Fair Housing Marketing Plan shall be approved by the Board or its designee and the monitoring agent before the issuance of a building permit.
- 4.2.8 Prior to the issuance of a building permit, the Applicant shall obtain an access permit from MassDOT.
- 4.2.9 Prior to the issuance of the final certificate of occupancy, the building shall have secure access for its residence.
- 4.2.10 All taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to the building permit
- 4.2.11 The Applicant shall not be required or obligated to make any off-site improvements except for those shown on the plan.
- 4.2.12 The building shall be tested for Radon prior to the issuance of any certificate of occupancy; if Radon is detected, an active Radon mitigation system shall be installed prior to occupation.
- 4.2.13 In accordance with MGL Chapter 87 Section 3, no trees shall be removed within the public way prior to a public street tree hearing and approval from the Tree Warden or the Board of Selectmen as the case may be.
- 4.2.14 Final architectural plans submitted for building permit shall be substantially in accordance to the Plan and renderings presented at the public hearing and approved hereunder.
- 4.2.15 Prior to the issuance of any certificate of occupancy, the Applicant shall submit, to the satisfaction of the Zoning Enforcement Officer, an adequate plan for the operation and maintenance of the storm water management system.
- 4.2.16 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Acton Board of Health, the Acton Water District, and the Acton Fire Department, except as waived herein.
- 4.2.17 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.2.18 The Applicant shall be diligent to ensure that no construction debris or material from the site enter any of the abutting properties or the Massachusetts Avenue public right-of-way.
- 4.2.19 The Applicant shall make every attempt to minimize any adverse or nuisance construction conditions (such as, but not limited to dust, noise, vibrations, etc.) from existing in and around the Site and affecting neighboring and abutting properties during construction. The Applicant shall at all times use all reasonable means, including where necessary temporary construction fencing or screening, to minimize inconvenience to residents in the general area.
- 4.2.20 All construction activity on the property relating to this Comprehensive Permit shall be limited to the hours of: Monday – Friday: 7:00am – 6:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays as recognized by the Commonwealth of Massachusetts: no work permitted.

- 4.2.21 All work on the Site shall be conducted in accordance with the terms of this Comprehensive Permit and shall conform with and be limited to the improvements shown on the Plan and as modified herein.
- 4.2.22 Prior to commencement of any construction, not including demolition or land clearing, the Applicant shall submit to the Zoning Enforcement Officer for review and approval a final electronic set of engineering drawings, landscape plans, and architectural plans for the project which shall be substantially in conformance with those cited in Section I – Exhibits (above) of this Decision except that they shall be updated in accordance with the requirements of this Decision. Each plan sheet shall be signed by and show the appropriate registered professional seal of the individual(s) drawing the plan sheet as appropriate to the data on the sheet. The submission shall in addition include a list of the specific changes made to conform to the requirements of this Decision; this list and the final set of Engineering Drawings and Landscape Plans shall be signed and stamped by the Design Engineer. Upon the Zoning Enforcement Officer's finding that the Engineering Drawings and Landscape Plans conform to this Decision, he shall mark electronically "Approved" on the final set of Engineering Drawings and Landscape Plans which shall thereupon constitute the final "Approved Plans" under this Decision and shall be filed with the records of the Board. If the Zoning Enforcement Officer fails to take action within 30 days after receipt of such drawings and plans, they shall be deemed "Approved".
- 4.2.23 In the event the Zoning Enforcement Officer determines that the Applicant's construction drawings submitted with its building permit application(s) materially deviate from the final Approved Plans in such a manner that, in his professional opinion, they do not conform to the requirements and conditions imposed by this Comprehensive Permit Decision, the Zoning Enforcement Officer shall notify the Applicant of the specific deviations, and the Applicant shall either bring the construction drawings into conformity with this Decision or seek modification of this decision in accordance with 760 CMR 56.05(11). In the event of a disagreement between the Zoning Enforcement Officer and the Applicant with respect thereto, they shall notify the Board which shall thereupon determine whether the building permit construction drawings (with any necessary revisions) do conform to this Decision. The Board shall endorse those construction drawings if so requested by the Applicant. Any change or modification to the plans, which in the opinion of the Zoning Enforcement Officer are deemed to be de minimis in nature, shall be deemed to be within the scope of this Comprehensive Permit.
- 4.2.24 By granting waivers from the local bylaws and regulations identified herein, it is the intention of this Comprehensive Permit to permit construction of the Project as shown on the final Approved Plans. If, in reviewing the Applicant's building permit application(s), the Zoning Enforcement Officer determines that any additional waiver from local zoning, wetlands, health, or subdivision regulations is necessary to permit construction to proceed as shown on the final Approved Plans, the Zoning Enforcement Officer shall proceed as follows: (a) any matter of de minimis nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature, including those having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver therefrom. Once the Project has been constructed in accordance with the Approved Plans, neither this Comprehensive Permit nor the Waivers set forth herein shall authorize any further waiver of the Acton Zoning Bylaw or other local by-laws, rules and regulations.
- 4.2.25 Except as waived herein or otherwise waived by the Board of Selectmen, the Applicant shall pay all fees of the Town of Acton generally imposed with respect to construction projects and for the purposes of monitoring compliance of the project's building construction and occupancy in accordance with this Comprehensive Permit.

- 4.2.26 The Applicant shall copy the Zoning Enforcement Officer on all correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all testing results, official filings and other permits issued for the Project.
- 4.2.27 Prior to any building permit being issued, this Decision shall be recorded at the Middlesex South District Registry of Deeds or the Middlesex Registry District of the Land Court. Proof of recording shall be forwarded to the Board and the Zoning Enforcement Officer prior to the issuance of any building permit.
- 4.2.28 The Applicant shall comply with the State Building Code.
- 4.2.29 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 4.2.30 Prior to the final certificate of occupancy being issued for the Project, the Applicant shall submit to the Board an “As-Built Plan” showing all drainage structures and sewer facilities as they exist on the site, including appropriate grades and elevation. The Applicant shall also submit proof that an As-Built Plan has been prepared for all utilities including water, gas, electric, and cable, acceptable to the utility company. Each plan sheet shall be signed and show the seal of a Registered Professional Engineer, or Registered Land Surveyor certifying that field inspections have been conducted throughout the duration of construction and the Project, as built, conforms and complies with all conditions of this Comprehensive Permit and the Approved Plans.
- 4.2.31 Prior to the certificate of occupancy being issued for 22nd dwelling unit in the building, the Applicant shall have fully completed the infrastructure improvements and plantings shown on the approved Landscaping Plan. Notwithstanding the foregoing, if in the judgment of the Zoning Enforcement Officer landscaping cannot reasonably be completed because the time of year is inhospitable thereto, landscaping may be treated separately from infrastructure such that the Applicant may post a bond or other performance guarantee securing the completion of the landscaping; provided that the Applicant shall complete the landscaping no later than the next growing season or the bond or other performance guarantee shall be forfeited.
- 4.2.32 The Applicant shall ensure safe and convenient vehicular access into and around the Site during the entire duration of the project construction. Any traffic problems that occur as a result of onsite operations and construction shall be mitigated immediately, at the expense of the Applicant. Additional traffic mitigation measures may be required as necessary, or as directed by the Zoning Enforcement Officer or Building Commissioner. The Board’s representatives shall be permitted access to the Site, subject to conformance with applicable safety standards, to observe and inspect the Site and construction progress until such time as the Project has been completed.
- 4.2.33 All construction vehicles shall be parked on the Site and off of Massachusetts Avenue at all times.
- 4.2.34 The Project shall be limited to the 31 unit apartment building, improvements shown and labeled on the Plan.
- 4.2.35 The landscaping shall be maintained in perpetuity by the Applicant or its successor. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.
- 4.2.36 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines.
- 4.2.37 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant’s successors and assigns for as long

as the Project and the use of the Site does not strictly and fully conform to the requirements of the Acton Zoning Bylaw; and reference to these conditions shall be incorporated in the Ownership Documents for the Project.

4.2.38 At least seven days prior to the start of construction, the Applicant shall provide written notice to the Zoning Enforcement Officer of the anticipated construction start date.

4.3 CONDITIONS - LEGAL REQUIREMENTS

4.3.1 Any sale or transfer of rights or interests in all or any part of the Site shall include a condition that successors are bound by the terms and conditions of this Comprehensive Permit.

4.3.2 The Applicant shall provide notice of any transfer as set forth in 760 CMR 56.05(12(b)).

4.3.3 Transfer of Permits. Prior to substantial completion of a Project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1) (a) and (b), and upon written notice to the Board and the Committee (in the case of a Project granted a Comprehensive Permit under 760 CMR 56.07). Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a Comprehensive Permit shall be deemed to run with the land.

4.3.4 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. The Ownership Documents shall be recorded at the Middlesex South District Registry of Deeds or filed with the Middlesex South District Land Court Registration office as applicable.

4.3.5 The, driveway, parking lot, utilities, drainage systems, and all other infrastructure shown in the Approved Plan shall remain privately owned. The Town of Acton shall not have, now or ever, responsibility for the operation or maintenance of this infrastructure, including but not limited to snow removal and trash collection.

4.4 CONDITIONS - AFFORDABILITY REQUIREMENTS

To the extent permitted by the Department of Housing and Community Development (“DHCD”), the following conditions shall apply. The Applicant shall support the Town in obtaining the DHCD’s approval of the following conditions:

4.4.1 Affordable Units: All dwelling units shall be affordable. 8 of the units (25%) shall be made available for rental by households whose aggregate income is no greater than 30% of the area median income (the “Area Median Income”) as published by the Department of Housing and Urban Development (HUD) for the Boston Metropolitan Primary Statistical Area (BMPSA); 23 of the units (75%) shall be made available for rental to households whose aggregate income is no greater than 60% of the Area Median Income.

4.4.2 Age Restriction: All units shall be rented to persons age 62 or older, or to eligible persons with disabilities of any age.

4.4.3 Rental Price: The Affordable Units shall be rented to qualified households at prices deemed affordable utilizing cost assumptions developed under the DHCD Comprehensive Permit Program and subject to condition 4.4.1 above. The applicable household sizes shall be determined in

accordance with DHCD regulations. The maximum rental prices for the Affordable Units shall be reviewed and approved by the Monitoring Agent.

4.4.4 **Monitoring:** Pursuant to 760 CMR 56.04(8)(a), the Subsidizing Agency shall be responsible for the monitoring and enforcement of these Use Restrictions, subject to the Subsidizing Agency's right to delegate such functions as set forth in 760 CMR 56.02 (the Subsidizing Agency or its delegatee of such functions is referred to herein as the "Monitoring Agent"). Any modification or deviation from the designation of affordable units as set forth herein shall be subject to approval of the Monitoring Agent and the ZBA. In addition, the Applicant shall provide the Town of Acton with all DHCD required annual compliance reports with tenant certifications, and certify that the project and units are in compliance with all regulatory terms and conditions.

4.4.5 **Selection of tenants for Affordable Units:** The Applicant shall obtain the Monitoring Agent's approval of the tenant selection plan for the rental of the Affordable Units prior to conducting the tenant selection process for the Affordable Units. Tenants shall be selected through a fair lottery process (the "Lottery") in accordance with DHCD requirements.

4.4.5.1 To the maximum extent permitted by law and by DHCD, 70% of the Units shall be given to households that meet one or more of the following "Acton Connection" preference criteria:

- (i) Currently a resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to M.G.L. Ch. 51, §4 and would be considered a resident under the United States Census Bureau's residency guidelines. "Usual residence" has been defined as the place where the person lives and sleeps most of the time. Also, non-citizens who are living in the United States are included, regardless of their immigration status.
- (ii) Currently an employee of the Town of Acton, the Acton-Boxborough Regional School District, or the Acton Water District, including those with a bona fide offer of employment by one of those entities.
- (iii) A person who is currently an employee of a business located within the Town of Acton, including those with a bona fide offer of employment by such a business.
- (iv) A family with a child who attends a school within the Acton Boxborough Regional School District.

4.4.5.2 Renters whose selection is based on any of the above "Acton Connection" preference criteria shall continually meet at least one of these criteria from the time of selection until the time of the lease commencement including at the time of commencement of any extensions of said lease. Such a renter's failure to meet at least one of these criteria during this time period shall be a cause for that renter's disqualification and selection of a new renter in accordance with the procedures of the Lottery.

4.4.5.3 The selection of renters for the Affordable Units, including the administration of the Lottery, shall be administered by a consultant retained and funded by the Applicant. The Lottery shall be implemented pursuant to a Lottery Plan developed by the Lottery consultant and approved by the DHCD. The Town of Acton or its designee, as permitted by the DHCD, shall oversee the Lottery. The Applicant shall fund the expenses of the Lottery.

4.4.5.4 Income eligibility shall be governed by the rules and regulations of DHCD, or in default, the rules and standards employed by HUD in the selection of income-eligible households for publicly subsidized housing. The prime objective is that the units must count on the Acton Subsidized Housing Inventory.

4.4.5.5 The provisions of this section are intended to complement and not to override or supersede any rules, regulations, or requirements of DHCD, the Massachusetts Commission Against Discrimination, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

4.4.5.6 In the event that the aforesaid paragraphs for the selection of renters for the units are inconsistent with DHCD requirements, including any requirements set forth by the Town of Acton in its approval of the buyer selection plan, DHCD requirements shall prevail.

4.4.6 Perpetual Affordability Restriction: As a “limited dividend organization” at the time of financing and construction, the Applicant’s profit shall not exceed more than 10% of the owner’s equity in the Development. Any profit in excess of that amount shall be paid to the Town, in a form that will allow the Town to use said funds to facilitate the development of affordable housing. Review of the Applicant’s limited dividend obligations shall be done in accordance with the Regulatory Agreement. The Applicant shall provide to the Development’s subsidizing agency a full certification of total development costs and total revenues, prepared and certified by a certified public accountant, in a form and upon a schedule determined by the Guidelines. All cost certification and other reporting requirements shall be prepared in accordance with the limited dividend guidelines and reporting requirements of G.L. c. 40B, §§20-23, 750 CMR 56.04(8) and the Guidelines.

Prior to the issuance of any building permit in the Development, the Applicant shall prepare the final draft of a Regulatory Agreement and submit the same to the Town official(s) responsible for affordable housing, the same to be reviewed pursuant to procedures established by the Development’s subsidizing agency. The form of agreement to be used shall be designed to preserve the affordability restriction in the event of foreclosure by a lender. The Agreement shall contain, at a minimum, the requirement that the Affordable Units shall be reserved in perpetuity for rent to eligible applicants as set forth in Condition 4.4.1.

In any event, as this Decision grants permission to build the Project under the Act, and as the Applicant has obtained the benefits of a comprehensive permit, the Project shall remain subject to the restrictions imposed by the Act so long as the Project is not in compliance with the Town of Acton’s zoning requirements which otherwise would be applicable to the Site and the Project but for the comprehensive permit’s override of local bylaws to promote affordable housing.

Accordingly, this Decision shall restrict such Affordable Units so long as the Project is not in compliance with the Town of Acton’s zoning bylaw, so that the units continue to serve the public interest for which the Project was authorized. It is the express intention of this Decision that the period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

4.4.7 Substitute for Regulatory Agreement with Subsidizing Agency: 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, the Applicant or his/her legal successor(s) shall enter into a Permanent Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Board and Town Counsel (the “Town Regulatory Agreement”), which shall be signed by all necessary parties, including all mortgagees and lien holders of record, and recorded with the Middlesex South District Registry of Deeds or the Land Court. The Town Regulatory Agreement, at a minimum: (i) shall require that

the Project shall remain 100% affordable so long as the Project does not conform to local zoning; (ii) shall require that at one hundred percent of the dwellings in the Project shall be affordable to low and moderate income senior households as set forth in this decision; and (iii) shall restrict the number of allowed dwelling units to not more than 31 units. The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property. It shall be enforceable by the Town and shall require that the Units shall remain affordable in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws.

4.4.8 **DHCD and Financial Information:** In addition to the Applicant's obligations to DHCD to provide financial information and documentation, upon issuance of a final certificate of occupancy for all of the Units, the Applicant shall provide a copy of all such DHCD submittals. The Applicant shall provide any back-up and supporting documentation reasonably requested by the Town for all Project costs and income sources.

4.5 LIMITATIONS

The authority granted to the Applicant under this Comprehensive Permit is limited as follows:

4.5.1 The foregoing required conditions, legal requirements and affordability requirements have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.

4.5.2 If, between the date this Decision is filed in the office of the Acton Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 56.05(11). In no case shall the Applicant be allowed to implement a Project change that increases the number of units without submitting a new application and undergoing a new public hearing and decision process. Without limitation, in the event any subsequent permitting process results in a change to the Approved Plans that triggers the need for further waivers from local bylaws, rules, or regulations, any such matter shall be treated as a project change and the procedures in 760 CMR 56.05(11) shall be followed.

4.5.3 This Comprehensive Permit applies only to the Site identified in this decision and to the proposed development as shown on the Plan.

4.5.4 Except as set forth herein, other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.

4.5.5 This Decision permits the construction, use, and occupancy of a 31 unit apartment building on the Site. The construction and use of the Site shall be in conformity with the Approved Plan, and there shall be no further subdivision of the Site, or the creation of additional Dwelling Units or any other structures or Infrastructure except that which is shown on the Approved Plan, without further approval by the Board in the form of an amendment to this Decision.

4.5.6 If construction authorized by this Comprehensive Permit Decision has not commenced within five (5) years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The Board may grant an extension of the five year lapse date for good cause shown, which shall include without limitation delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party appeal of a governmental permit or approval required for the Project. Any request for extensions shall be made at least thirty (30) days prior to expiration. A request to extend said time limits must be

made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension.

4.5.7 In the event a typographical error renders this Decision and the final Approved Plans inconsistent as to the number of units, number of bedrooms, or similar objective characteristic of the Project, the provisions of the final Approved Plans shall control on the point of inconsistency. Otherwise this decision shall be given full force and effect on its terms, unless amended by the Board in writing.

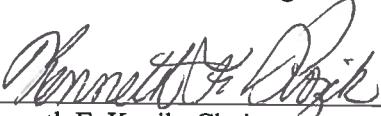
4.5.8 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Comprehensive Permit with or without a public hearing upon the request of the Applicant, his designees or assigns, pursuant to 760 CMR 56.05 (11).

5 APPEALS

5.1 Any person aggrieved by the issuance of this Comprehensive Permit has the right to appeal pursuant to M.G.L. Ch. 40A, § 17 and shall file such appeal within 20 days after the date of filing this decision with the Town Clerk.

5.2 The Applicant shall have the right to appeal the issuance of this Comprehensive Permit to the Housing Appeals Committee pursuant to M.G.L. Ch. 40B, § 22 and shall file such appeal within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Zoning Board of Appeals



Kenneth F. Kozik, Chairman



Adam Hoffman, Member



Emilie Ying, Associate Member

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva K. Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Acton Water District
Design Review Board

Land Use Department
Engineering Department
Town Manager
Police Chief
Board of Selectmen

RHSO
Assessor's Office
Historical Commission
Owner
ACHC