



**Board of Appeals**

**TOWN OF ACTON**

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**Comprehensive Permit  
Grandview Acton  
DECISION  
#20-05**

**361 & 363 Great Road**  
August 4, 2020

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, Grandview Acton, LLC c/o MCO & Associates, Inc. PO Box 372, Harvard, MA 01451 (hereinafter the “Applicant”) for the property located at 361 & 363 Great Road in Acton, Massachusetts. The property is identified on the Acton Town Atlas map as parcel D4-12 & D4-19 (hereinafter the “Site”).

This decision is in response to an application for a Comprehensive Permit for a senior age restricted condominium homeownership development. The project consists of one garden style building with 32 units of which 8 will be designated as affordable. The comprehensive permit application was submitted to the Board of Appeals on March 24, 2020. The Board opened a duly noticed public hearing on May 5, 2020. The hearing was continued on June 9, 2020, June 30, 2020, July 14, 2020, August 4, 2020 and closed on August 4, 2020. Throughout the duration of the hearings, the Board heard testimony from the Applicant, Town Staff, and abutters to the proposed project and from Acton residents. Board members Kenneth Kozik (Chair) and R. Scott Robb (Member) were present throughout the hearing sessions. Adam Hoffman (Member) was present throughout the hearing sessions except for July 14, 2020. Mr. Hoffman provided a certification pursuant to Ch. 79 of the Acts of 2006 (Mullin Rule) that he reviewed the video

recording of hearing session. 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 "Grandview Acton" was filed with the Town Clerk on March 24, 2020. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:

- Cover Letter;
- Table of Content;
- Application Form;
- Certified Abutter's List;
- DHCD Project Eligibility Letter dated, December 17, 2019;
- List of Waiver Requests;
- Development Impact Report (DIR);
- Appendix C – Tabulation of Building – Unit Composition;
- Appendix D – Comprehensive Permits – filing Fee Schedule;
- Use Description;
- Development Schedule;
- Recorded Deeds & Plans;
- Letter Authorizing Competition of Improvements;
- Proposes Condominium Budget
- Cut/Fill Report;
- Preliminary Analysis of Traffic Impacts;
- Traffic Impact Analysis;
- Drainage Calculations;
- Water Balance Calculations;
- Earth Removal Calculations;
- Bird Eye View;
- 3D Renderings;
- Floor Plans;
- Affordable Dwelling Units;
- Development Pro Forma;
- Market Study and Outreach Plan;
- Project Feasibility;
- Fee;
- Site Plan.
  - Cover Sheet
  - Existing Conditions Plan
  - Site Development & Grading Plan
  - Layout Plan
  - Construction Details
  - Erosion and Sedimentation Control Plan

1.2 Additional, supplemental, revised, and corrected plans and documentation submitted as part of the application included the following:

- Local Initiative Program Application (LIP);
- Aerial Presentation Plan;

- Stormwater Report;
- Drainage Plans;
- 100-year Storm Drainage Calculations;
- Applicant response letter, dated June 1, 2020;
- Applicant's response to Regional Housing Service Organization's April 8, 2020 comments;
- Applicant's response to Planning Division's April 8, 2020 memo;
- Applicant's response to the Health Division's comments;
- Applicant's response to GCG's May 4, 2020 memo;
- Construction Specifications;
- Sewage Disposal Profile;
- Revised Site Plan, dated May 19, 2020;
- Supplementary Architectural Plans;
- Landscape Plan, dated May 28, 2020;
- Supplementary Elevation Plans;
- Site Elevation GIS Plan;
- Lighting Layout Plan;
- Applicant's response to Fire Department's June 10 comments;
- Floor Plans - 32 Spaces with Details & Small Car Spaces.

1.3 Interdepartmental communications were received from:

- Design Review Board, dated July 24, 2019 and May 28, 2020;
- Acton Community Housing Corporation, dated April 6, 2020;
- Regional Housing Service Organization, dated April 8, 2020;
- Planning Division, dated April 28, 2020 and revised June 8, 2020;
- GCG Associates, dated May 4, 2020, and June 25;
- Health Division, dated May 6, 2020 and June 10, 2020;
- Fire Department, dated May 7, 2020, June 10, 2020, and July 10, 2020;
- Acton Water District, dated May 19, 2020;
- GIS Department, dated June 5, 2020;

1.4 Other Correspondence included:

- Ruth Thatcher, dated May 6, 2020;
- Terra Friedrichs, dated June 9, 2020.

1.5 Extension Agreements:

- Consent and Agreement to Extension of Hearing to June 9, 2020;
- Consent and Agreement to Extension of Hearing to June 30, 2020;
- Consent and Agreement to Extension of Hearing to July 14, 2020.

Exhibit 1.1 and 1.2 are hereinafter collectively referred to as the Plan.

## **2 FINDINGS AND CONCLUSIONS**

Based upon its review of the 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 July 1, 2019, 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 November 2019, Acton's SHI percentage is 7.72%. As a result Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum 10% criterion.
- 2.3 Last year, the Board approved Acton Avalon Phase II comprehensive permit. This project consists of 86 rental housing units, which equal 1% of the subsidized housing inventory under the Town's Certified Housing Production Plan. Subsequently, DHCD granted the town two years of safe harbor until July 2021, which allows the Board to decide which comprehensive permit application it wanted to hear. For this case, the Board decided to hear the Comprehensive Permit application.
- 2.4 The Site is located within an R-2 (Residence 2) Zoning District. The overall development is located within the Groundwater Protection District Zones 3 & 4.
- 2.5 The subject property totals approximately 2.91 acres in area.
- 2.6 The development will be age-restricted for households of 55 and older. At least one member of the household must be age 55 or above.
- 2.7 The project consists of one building containing 32 garden style units. There will be 4 floors with a podium parking under the building for the residents.
- 2.8 There are 65 parking spaces shown on the site plans. 32 parking spaces underneath the proposed building and 33 parking spaces in the parking lot. Most of the parking spaces will be reserved for the condominium owners and a few spaces will be designated for guests.
- 2.9 The proposed access driveway will have a pavement width of 24'.
- 2.10 The Project is located less than a quarter-mile from the Acton Woods Plaza and less than half mile from the Bruce Freeman Rail Trail. An existing sidewalk is located across the street of the property on Great Road connecting the site to the Acton Woods Plaza.
- 2.11 There is no sidewalk along the front of the property itself and the property is not well connected for pedestrians with the aforementioned amenities.
- 2.12 The Applicant has requested waivers from the following Town of Acton Bylaws and Rules and Regulations:

Zoning Bylaw provisions:

- Section 3.3.4 Table of Principle Uses
- Section 6.7.7 Interior Area Landscape
- Section 7.5.2 Construction Sign
- Section 10.4 Site Plan Special Permit
- Section 10.6 Outdoor Lighting Regulations for Site Plan Special Permit

Stormwater Management and Erosion & Sediment Control

- X.6 Regulated Activities

Board of Health

- 16-4.2.10

Additional Waiver Request

- Building Permit Fees
  - Water Connection Fee
  - Any such other application/permit/connection fees as may be applicable
  - Any other zoning requirements or other applicable local rules as necessary to allow the project to proceed as proposed
- 2.13 Given the regional need for affordable housing, the Board finds that the increased density of this Project is reasonable for affordable housing on this Site, that as conditioned herein the access is adequate, and that the project is otherwise designed in a reasonable and acceptable manner. Therefore, the Board grants all of the requested waivers from the Zoning Bylaw, Stormwater Management and Erosion & Sediment Control, Health requirements, however subject to the Conditions of this Decision and following limitations:
- Any waiver not specifically itemized in the application shall be subject to review by the Zoning Enforcement Officer and disposition in accordance with sections 42.22-24 of this decision.
  - The Board defers the granting of any fee waivers to the respective authorities (Board of Selectmen, Water District Commissioners, and others) and hereby encourages these authorities to grant reasonable fee waivers as necessary for the project to remain economical to construct and deliver.
- 2.14 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 has satisfied this requirement. Only public agencies, non-profit organization, or limited dividend organizations may apply for Comprehensive Permits under M.G.L. Ch.40B. DHCD regulations define Limited Dividend Organization: Limited Dividend Organization means any entity which proposes to sponsor a Project under M.G.L. c.40B, §§ 20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the Project.

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 December 17, 2019 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 the purchase and sale agreement of 361-363 Great Road from the Estate of Anne M. Parson to MCO & Associates, Inc. dated March 15, 2019.

- 2.15 The proposed Project, when conforming to the conditions set forth in this Decision, will adequately provide for storm water drainage and sewerage, will not be detrimental or injurious to the surrounding neighborhood, will provide for convenient and safe vehicular and pedestrian movement to and from , and within and through the site, all without an undue burden on the occupants of the Project or on the surrounding neighborhood or the Town.
- 2.16 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.
- 2.17 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.
- 2.18 The Board has 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.
- 2.19 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 to by the Applicant.

### **3 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, or (c) if the municipality is in "safe harbor" due to achieving its goals in the Housing Production Plan . Currently Acton is in "safe harbor". However, the Board chose to hear the application because the proposed project addresses a specific housing need in Acton.

### **4 BOARD ACTION**

Therefore, the Board voted unanimously on August 4, 2020 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 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.

- 4.1.1 The revised floor plans shall show two corner affordable units.

- 4.1.2 The applicant shall show the location of the eight (8) parking spaces that are reserved for the eight (8) affordable units. The affordable unit parking spaces shall be distributed throughout the parking lot.
- 4.1.3 The affordable units shall be numbered on the floor plans.
- 4.1.4 The applicant shall modify the plans to comply with the outstanding comments from the Fire Department dated July 10, 2020.
- 4.1.5 The applicant shall comply with the following outstanding GCG Associates comments:
- Adjust infiltration basin 2 to meet the 2 foot required separation to groundwater. Plan shall be submitted and approved by the Engineering Department.
  - Verify any spot grades and grading on the property.
  - Adjust any roof drain accordingly.
  - Adjust any manholes accordingly.
  - Rounding should be provided at the parking lot landscape island corners.
  - Provide the access path and clearance path for dumpsters.
  - Update the stormwater management report accordingly after the required plan changes are completed.
- 4.1.6 Except as otherwise directed herein, the Applicant shall modify the plan to address all comments received on or before the close of the public hearing.

## **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

- 4.2.1 The development will be age-restricted for households of 55 and older. There shall not be a prohibition against children living in the development for affordable or market rate units as long as one resident is 55 years or older.
- 4.2.2 Affordable Units must contain the same basic appliances as the Market Rate units. Units shall contain complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and laundry hook-ups suitable for standard washer and dryers.
- 4.2.3 All of the units shall have the same interior unit features and amenities. Appliances and lighting installations shall be at a minimum Energy Star rated. Flooring, bath fixtures and kitchen cabinetry shall be “builder grade” quality and durability or better. All interior finishes of the affordable units shall be the same type and quality as of the baseline market rate units before adding any optional upgrades for additional charge. For instance, if hardwood flooring is a basic feature in market rate units, affordable units shall have the same quality hardwood flooring.
- 4.2.4 The Market Rate Units and the Affordable Units shall be visually comparable from the exterior as in size and appearance shown on the architectural plans.
- 4.2.5 The Applicant shall provide (1) parking space to each unit for no charge. The applicant may charge a rental fee for additional spaces, provided that the affordable units shall be offered, without obligation to accept, a second space at no charge or at a reduced charge of no more than 60% of the lowest fee charged for a second space to any market rate unit renter.

- 4.2.6 The Affirmative Fair Housing Marketing Plan (AFHMP) shall be approved by the Board or its designee and by the monitoring agent before the issuance of a building permit.
- 4.2.7 Great Road is a State Highway; the applicant shall be required to get an approved access permit with MassDOT.
- 4.2.8 The applicant shall investigate if solar is feasible on the proposed roof. If so, the applicant shall submit a plan that shows how it could be installed.
- 4.2.9 Prior to issuance of the first building permit, confirm that the final condominium documents reflect equal condominium fees for the market rate and affordable units.
- 4.2.10 Prior to issuance of the first building permit, finalize the sales prices of the affordable units in accordance with then applicable DHCD standards and requirements to ensure that the units qualify for inclusion in Acton's subsidized housing inventory (SHI).
- 4.2.11 Prior to issuance of the first building permit, update the condominium documents so that affordable unit owners are given explicitly one vote per unit.
- 4.2.12 Prior to issuance of the first certificate of occupancy, the applicant shall build the sidewalk along the property on Great Road subject to MassDOT approval, and within the entrance of the proposed development.
- 4.2.13 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.
- 4.2.14 The Applicant shall not be required or obligated to make any off-site improvements except for those shown on the approved plan.
- 4.2.15 Prior to and in connection with the initial sale, no affordable unit shall receive upgrades from the approved base unit layout and plan without the approval of the monitoring agent.
- 4.2.16 All affordable units shall be tested for Radon prior to the issuance of an Occupancy Permit; if Radon is detected an active Radon mitigation system shall be installed prior to the sale of the unit.
- 4.2.17 There shall be no removal of trees beyond the limits of clearing except with the Tree Warden's approval.
- 4.2.18 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.
- 4.2.19 Prior to the issuance of any certificate of occupancy, the Applicant shall submit, to the satisfaction of the Zoning Enforcement Officer, a copy of the Grandview Acton Condominium Trust and the Condominium Master Deed which shall include an adequate plan for the operation and maintenance of the storm water management system.
- 4.2.20 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.
- 4.2.21 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.2.22 The Applicant shall be diligent to ensure that no construction debris or material from the site enter any of the abutting properties or the Great Road public right-of-way.
- 4.2.23 The Applicant shall be responsible for sweeping, removal of snow, and sanding of the driveways and parking lot to provide access to residents and emergency vehicles during construction and

until the Condominium Association has been legally established and has assumed said responsibilities.

- 4.2.24 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 affect neighboring and abutting properties during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- 4.2.25 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.
- 4.2.26 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.
- 4.2.27 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 1 – 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.
- 4.2.28 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.
- 4.2.29 By granting waivers from the local bylaws and regulations identified in Findings 2.12 above, 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.

- 4.2.30 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.
- 4.2.31 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 along with a Record Plan sheet of the Approved Plans. Proof of recording shall be forwarded to the Board and the Zoning Enforcement Officer prior to the issuance of any building permit.
- 4.2.32 The Applicant shall comply with the State Building Code.
- 4.2.33 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 4.2.34 Prior to the 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.
- 4.2.35 Prior to the final certificate of occupancy being issued for the Project, the Applicant shall have fully completed the improvements and plantings shown on the approved Landscaping Plan.
- 4.2.36 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.
- 4.2.37 All construction vehicles shall be parked on the Site and off of Great Road at all times.
- 4.2.38 The Project shall be limited to a total of one building, thirty-two units, and improvements shown and labeled on the Plan.
- 4.2.39 The landscaping shall be maintained in perpetuity by the Condominium Association, which obligation shall be incorporated in the Condominium Association documents, as applicable, and the declaration of restrictive covenants to be executed by the Applicant. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.
- 4.2.40 As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the driveway, parking lot, drainage facilities,

utilities, landscaping, and any other specific infrastructure shown on the final Approved Plans (the “Infrastructure”), the release of the occupancy permit for 32 Dwelling Units and the sale of all Dwelling Units in the development shall be subject to the following restrictions:

- 4.2.41 The occupancy permit for the Dwelling Units shall not be issued, and no sale of any Dwelling Units shall be permitted, until: (1) the base and binder course for the private driveway and for the parking lot for the units to be occupied has been installed, (2) all infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said unit; and (3) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of the occupancy permit have been completed to the satisfaction of the Zoning Enforcement Officer. All water connections shall be approved by the Acton Water District and completed and paid for by the Applicant in accordance with Acton Water District rules and regulations.
- 4.2.42 Notwithstanding the foregoing, if in the judgment of the Zoning Enforcement Officer the work set forth in subsection (a) above or the landscaping cannot reasonably be completed because the time of year is inhospitable thereto, such work or landscaping may be treated separately from Infrastructure such that the Applicant may be permitted to post a performance guarantee consistent with G.L. c. 41, s. 81U in lieu of completing the work or landscaping prior to release of the occupancy permits for the Dwelling Units and the sale of the Dwelling Units; provided that the Applicant shall complete the landscaping no later than the next construction and growing season or the performance guarantee shall be forfeited.
- 4.2.43 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines.
- 4.2.44 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 and for any Dwelling Unit in the Project.
- 4.2.45 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 The Applicant shall establish a Condominium Association that will be governed and controlled by the provisions of M.G.L. Ch. 183A, including Condominium Deed, By-Laws; Rules and Regulations, and Protective Covenants (collectively the “Condominium Documents”). The Applicant shall provide in the Condominium Documents that a separate reserve of 10% of the total budget shall be maintained specifically for repairs to, replacement of, and maintenance of, the common drainage systems for the Project that shall be the responsibility of the Condominium Association, as applicable. The Condominium Documents shall provide that no changes shall be made without the affirmative vote of 28 of the 32 unit owners.
- 4.3.2 The condominium fees for the affordable and market homeowners shall be equal. 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.
- 4.3.3 The Applicant shall provide notice of any transfer as set forth in 760 CMT 56.05(12(b)).

- 4.3.4 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.
- 4.3.5 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. All Condominium Association documents, as applicable, and all deeds or unit deeds to Dwelling Units in the Project shall reference and be subject to this Comprehensive Permit Decision. 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.
- 4.3.6 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. Assurances through deed restrictions or otherwise shall be given that the Town will not be requested to accept or maintain the, drainage system, open space, or any other improvements within the proposed development for which this Comprehensive Permit grants approval to construct.

#### **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 Five of the affordable units shall receive their Occupancy Permits before the 15th market rate unit receives its Occupancy Permit.
- 4.4.2 Certificates of Occupancy for all eight (8) of the Affordable Units shall be issued prior to the last Certificate of Occupancy being issued for the newly constructed market rate Dwelling Units.
- 4.4.3 Affordable Units: The eight affordable two bedroom units as designated on the Approved Plan shall be made available for purchase by households whose aggregate income is no greater than 80% of the Area Median Income (AMI) as published by the Department of Housing and Urban Development (HUD) for the Boston Metropolitan Primary Statistical Area (BMPSA).
- 4.4.4 Sale Price: The maximum sale prices for the Affordable Units shall be reviewed and approved by the DHCD at the time of the lottery for selection of buyers of the Affordable Units. Subject to the approval of DHCD, the sale price for the Affordable Units shall be set to be affordable to a household earning not more than 80% of the Area Median Income published by HUD for the Boston Metropolitan Primary Statistical Area, adjusted for household size. The applicable household size is three (3) persons for the 2-bedroom units. Any modification or deviation from the designation of the affordable units as originally proposed and reviewed by the DHCD shall be subject to approval by DHCD.

4.4.5 Selection of Buyers for Affordable Units: The Applicant shall obtain DHCD and Regional Housing Service (RHSO) approval of the Affirmative Fair Housing Marketing Plan (AFHMP) for the sale of the Affordable Units prior to putting the Affordable Units on the market. Buyers shall be selected through a fair lottery process (the “Lottery”).

4.4.5.1 To the maximum extent permitted by law and by DHCD, first preference for the purchase of five of the Affordable 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. Residents who can prove residency in Acton with utilities and leases and families with students in METco are also eligible.
- (ii) An employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, or a person who is currently privately or publicly employed within the Town of Acton.

4.4.5.2 Purchasers 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 to the time of closing on the purchase of an affordable unit. Such a purchaser’s failure to meet at least one of these criteria during this time period shall be a cause for that purchaser’s disqualification and selection of a new purchaser in accordance with the procedures of the Lottery.

4.4.5.3 Within a pool of potential buyers, preference shall be given to households requiring the total number of bedrooms in the Unit with at least one occupant per bedroom and no more than two occupants per bedroom.

4.4.5.4 The selection of purchasers for the Affordable Units, including the administration of the Affirmative Fair Housing Marketing Plan (AFHMP), shall be administered by a consultant retained and funded by the Applicant. The Affirmative Fair Housing Marketing Plan (AFHMP) shall be implemented pursuant to a Lottery Plan developed by the Lottery consultant and approved by the DHCD. The RHSO, if permitted by the DHCD, shall oversee the Lottery. The Applicant shall fund the expenses of the Lottery.

4.4.5.5 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.

4.4.5.6 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.

4.4.5.7 In the event that the aforesaid paragraphs for the selection of buyers for the affordable units are inconsistent with DHCD requirements, including any

requirements set forth by the Acton Community Housing Corporation (ACHC) in its approval of the buyer selection plan, DHCD requirements shall prevail.

- 4.4.6 Perpetual Affordability Restriction: Prior to the issuance of any occupancy permits, a Regulatory Agreement, in a form acceptable to DHCD shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) the eight (8) affordable Units in the Project shall be sold and resold subject to a Deed Rider, in a form acceptable to DHCD, and (b) the Project Owner's profit shall be limited to 20% of the total development cost of the Project as defined by the Regulatory Agreement and applicable regulations.

The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Unit in the Project at the time of each sale and resale, and the Deed Rider shall restrict each such affordable unit pursuant to this Decision in perpetuity in accordance with the requirements of M.G.L. Ch. 184, §§31-33.

After obtaining DHCD's final approval of the Regulatory Agreement and Deed Rider, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of DHCD if required pursuant to MGL Ch. 184, §32 or other law. The Applicant shall submit to the Board written evidence of the Applicant's efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction.

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 and the Deed Rider 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.

In the event that the Applicant submits to the Board written evidence of the Applicant's efforts to secure governmental approval of the perpetual restriction, the written denial thereof, and the grounds for denial, the Applicant shall (a) submit to the Board a proposed alternative form Deed Rider which, when approved by the Board and Town Counsel, shall be submitted to DHCD for such approval, and (b) grant to the Town of Acton or its designee, subject to the approval of DHCD, in the Deed Rider a right of first refusal, in a form mutually acceptable to counsel for the Applicant and to Town Counsel, covering each Unit in the Project which shall be triggered upon the expiration of the affordability period.

- 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 25% affordable so long as the Project does not conform to local zoning;

(ii) shall require that at least twenty five percent of the dwellings in the Project shall be affordable to low and moderate income households as that term is defined in MGL Chapter 40B, Sections 20-23; and (iii) shall restrict the number of allowed dwelling units to not more than 32 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 Affordable Units shall remain affordable units in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws.

- 4.4.8 **Profit Cap:** To conform to the intent of the Act that profits from the Project be reasonable and limited, the Applicant shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Project, as accepted by DHCD (the “Profit Cap”). The Regulatory Agreement shall provide mechanisms to enforce this requirement. If the Applicant has exceeded the Profit Cap, the Applicant shall, subject to DHCD approval, donate the excess profit above the Profit Cap to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of supporting, promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation of affordable housing in the Town of Acton.
- 4.4.9 **Regulatory Agreement:** Prior to applying for an occupancy permit for any dwelling unit, the Applicant shall submit to the Board a copy of a fully executed Regulatory Agreement between the Applicant, the Town and DHCD, governing the protection and administration of the Units covered by this Decision. The Regulatory Agreement shall be recorded prior to the conveyance of the first dwelling unit. The Town shall have the right, concurrent with DHCD, to enforce the terms and conditions of the Regulatory Agreement.
- 4.4.10 **Affordable Units to be Substantially Indistinguishable:** The Market Rate Units and the Affordable Units shall be visually comparable from the exterior as shown on the architectural plans. In addition, the Affordable Units must contain the same basic appliances as the market rate units. Units shall contain complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and laundry hook-ups suitable for standard washer and dryers.
- 4.4.11 **DHCD and Financial Information:** In addition to the Applicant’s obligations to DHCD, (a) upon issuance of a final certificate of occupancy for all of the Units and every ninety (90) days thereafter until the last Unit is sold, the Applicant shall cause a Certified Public Accountant (CPA) to deliver to the Town an itemized statement of the Project’s total development costs and gross income certified by the CPA, and (b) the Applicant shall provide any back-up and supporting documentation, including, but not limited to, cancelled checks, invoices, receipts, and financial statements, 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, changes the mix of affordable and market rate units, or increases the height of the buildings on the Site, 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 32 Dwelling Units 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 three (3) 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 three 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

## **5 APPEALS**

5.1.1 Any person aggrieved by the issuance of this Decision 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.

5.1.2 The Applicant shall have the right to appeal the issuance of this Decision 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



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Kenneth F. Kozik, Chairman

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Adam Hoffman (Member)

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.

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- 4.5.6 If construction authorized by this Comprehensive Permit Decision has not commenced within three (3) 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 three 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).

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The Town of Acton Zoning Board of Appeals

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Kenneth F. Kozik, Chairman

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Adam Hoffman (Member)

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R. Scott Robb (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.

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Eva K. Szkaradek, Town Clerk

Date

Copies furnished:

Applicant  
Owner  
Town Clerk  
Fire Chief  
Acton Water District

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

RHSO  
Design Review Board  
ACHC  
GIS Department