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**Comprehensive Permit
Issued to 146 Prospect, LLC
DECISION
#18-05**

146 Prospect Street
June 13, 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 owner, 146 Prospect Street, LLC, 159-1 Prospect Street, Acton, MA 01720 (hereinafter the "Applicant") for the property located at 146 Prospect Street in Acton, Massachusetts. The property is identified on the Acton Town Atlas map as parcel F2-125 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit for a 4 (four) single-family homes/lots development. The Project consists of 4 four-bedroom single family detached residences. One will be sold to income-qualified families. The Comprehensive Permit application was submitted to the Board of Appeals on March 28, 2018. The Board opened a duly noticed public hearing on May 7, 2018. The Board held continued hearing sessions on May 21, 2018 and June 13, 2018. The Board closed the public hearing on June 13, 2018. Throughout the duration of the hearing, the Board heard testimony from the Applicant, Town Staff and abutters to the proposed Project. Board members Kenneth Kozik (Chair), Jonathan Wagner (Member) and Adam Hoffman (Member) were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Town Clerk's office or the 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 "Sonny Side" was filed with the Town Clerk on March 28, 2018. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:
- Cover letter, dated March 28, 2018;
 - Comprehensive Permit Fee;
 - Comprehensive Permit Application Form;
 - Development Impact Report;
 - Development Schedule;
 - Unit Composition Schedule;
 - Locus Map;
 - Assessor's Field Card;
 - Quitclaim Deed transferring the property to 146 Prospect, LLC, and recorded in the Middlesex South District Registry of Deeds in Book 70034, Page 49;
 - Purchase and Sales Agreement and Bill of Sale;
 - Letter from Commonwealth of Massachusetts - Department of Housing & Community Development regarding Determination of Project Eligibility under the Local Initiative Program (LIP) dated, March 20, 2018;
 - Proposed Regulatory Agreement;
 - Letter dated January 17, 2018, from the Webster Five Cents Savings Bank;
 - Letter dated January 26, 2018, from the Acton Community Housing Corporation;
 - Letter dated November 28, 2017; from Habitat for Humanity
 - Letters dated February 5, 2018 and February 8, 2018; from Acton Board of Selectmen
 - Certified Abutters List;
 - Plan of Land recorded in the Middlesex South Registry of Deeds as Plan 1293 of 1970;
 - Order of Conditions from the Acton Conservation Commission;
 - Elevation Plans;
 - Price calculator, and Local Needs Assessment, and Marketing and Outreach Plan and Lottery Plan, prepared by MCO Housing Services and dated, January 30, 2018;
 - Plan entitled, Comprehensive Permit Plan for Sonny Side at 146 Prospect Street, Acton Massachusetts, prepared by Stamski and McNary, Inc., 1000 Main Street, Acton, MA 01720, last revised June 4, 2018, and consisting of the following:
 - Title Sheet (Sheet 1 of 6);
 - Record Plan (Sheet 2 of 6);
 - Existing Conditions Plan (Sheet 3 of 6);
 - Grading and Drainage Plan (Sheet 4 of 6);
 - Erosion and Sediment Control Plan (Sheet 5 of 6);
 - Construction Details (Sheet 6 of 6);
 - Drainage Calculations, Water Balance Calculations, Earth Removal Calculations and Site Plan for 146 Prospect Street, LLC, March 22, 2018;
 - Waiver request from the Town of Acton Local Regulations; and
 - DHCD Team Experience – Developer/Contractor Qualifications;
 - Drainage Maps, dated March 6, 2018
- 1.2 Additional plans and documentation submitted as part of the application included the following:
- Revised Building Elevation Plan (Sir Isaac Newton)

- Revised Drainage Calculations, Water Balance Calculations, Earth Removal Calculations and Site Plan for 146 Prospect Street, LLC, May 10, 2018;
- Landscape plan dated June 4, 2018;
- Drainage Maps, revisions dated May 10, 2018 and May 17, 2018.

- 1.3 Interdepartmental communications were received from:
- Planning Department, dated May 1, 2018;
 - Engineering Department, dated April 24, 2018 and May 14, 2018 also including the stamped approved Board of Selectmen Waiver of Sewer Fees;
 - Health Department
 - Fire Chief, email dated March 29, 2018;
 - Acton Community House Corporation dated April 17, 2018;
 - Design Review Board dated April 21, 2018;
 - Acton Water District, dated April 27, 2018.
- 1.4 Extension Agreements:
- Consent and Agreement to Extension of Hearing to May 7, 2018;
 - Consent and Agreement to Extension of Hearing to May 21, 2018;
 - Consent and Agreement to Extension of Hearing to June 13, 2018

Exhibits 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 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 7, 2017, and the 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 September 14, 2017, Acton's SHI percentage is 6.7%. 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) Residential Zoning District. The overall development is located within the Groundwater Protection District Zone 4.
- 2.4 The Applicant did not request a waiver from Acton Bylaw Chapter X. The Project as proposed and approved herein complies with the requirements of Chapter X.
- 2.5 The subject property totals approximately .846 acres in area.
- 2.6 The entire proposed Project consists of 4 single family homes, each on its own lot, under the Local Initiative Program which has already been pre-approved by the Department of Housing & Community Development.
- 2.7 The Project will have 1 (one) single family home which is made available to households whose incomes and assets qualify them as low or moderate-income. 148 Prospect Street (Lot 3) is designated as the affordable single family home.

- 2.8 All single family homes will have 2 (two) car garages and driveways, which can accommodate two additional vehicles each.
- 2.9 The single family homes are designed in Colonial styles of architecture and implemented in a mixture of elevations to provide sufficient architectural variety.
- 2.10 The Project is located less than a quarter mile from Acton's main school campus and approximately a third mile from significant shopping destinations. Existing sidewalks connect the site to schools, shops and surrounding neighborhoods.
- 2.11 The Applicant has requested waivers from the following Town of Acton's Bylaws and Rules and Regulations:
- 2.11.1 Town of Acton's Zoning Bylaw:
- Section 5 – Table of Standard Dimensional Regulations – Minimum Lot Area of 20,000 s.f. Proposed Minimum Lot Area is approximately: Lot 1 – 9,019 s.f. +/-; Lot 2 – 9,078 s.f. +/-; Lot 3 – 9,182 s.f. +/-; and Lot 4 – 9,428 s.f. +/-.
 - Section 5 - Table of Standard Dimensional Regulations – Minimum Lot Frontage of 150ft. Proposed Minimum Lot Frontage is approximately: Lot 1 – 53.09 ft. +/-; Lot 2 – 55.28 ft. +/-; Lot 3 – 54.28 ft. +/-; and Lot 4 – 55.55 ft. +/-.
 - Section 5 - Table of Standard Dimensional Regulations – Minimum Front Yard Setback of 30 ft. Proposed Minimum Front Yard Setback is approximately: Lot 1 - 28 ft. +/-; Lot 2 - 20 ft. +/-; Lot 3 - 19 ft. +/-; and Lot 4 - 21 ft. +/-.
 - Section 5 - Table of Standard Dimensional Regulations – Minimum Side Yard Setback of 10 ft. Proposed Minimum Side Yard Setback is approximately: Lot 1 – southerly side 9.6 ft. +/-, northerly side 6.4 ft. +/-; Lot 2 - southerly side 6.4 ft. +/-, northerly side 6.9 ft. +/-; Lot 3 - southerly side 5.9 ft. +/-, northerly side 6.4 ft. +/-; and Lot 4 southerly side 8.4 ft. +/-, northerly side 8.5 ft. +/-.
- 2.11.2 Zoning Board of Appeals Rules and Regulations for Comprehensive Permits:
- Section 3.13 – Traffic Study.
 - Section 3.14.8 – Landscape Plan.
- 2.11.3 Town of Acton's Wetland Protection Bylaw – Chapter F:
- Section F8.3 – Setback for Activities: Minimum setback to the edge of driveways, roadways, and structures shall be 75 ft. Proposed minimum setback for the Project from wetlands to a structure is approximately 47 ft.
 - Minimum setback edge of undisturbed natural vegetation shall be 50ft. Proposed minimum setback for the Project from wetlands to lawn is approximately 20 ft.
- 2.12 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 and that the access as proposed is adequate. Therefore, with the exception of the landscape plan requirement (the Applicant has provided a supplemental landscape plan), the Board grants the requested waivers subject to the Conditions of this Decision.
- 2.13 Pursuant to the Act and the regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD) 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 by agreeing to legally bind itself to limit the profit it derives from a comprehensive permit development. Thus, the Applicant is a Limited Dividend Organization as defined by DHCD.

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 March 20, 2018, from DHCD indicating that the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

Jurisdictional Requirement: The Applicant shall control the site:

The Applicant has satisfied this requirement by providing a Deed showing the transfer of ownership from Henry Oi, a/k/a Henry Oi, Jr., Personal Representative of the Estate of Allen W. Oi, Middlesex Probate Court No. 17P0315 to 146 Prospect Street LLC, recorded on October 4, 2017 in Middlesex South District Registry of Deeds in Book 70034, Page 49.

- 2.14 In accordance with DHCD regulations and standards, no local connection preference is allowed in the selection of buyers for the affordable unit is allowed.
- 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 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. Acton does not currently meet these criteria.

4 BOARD ACTION

Therefore, the Board voted unanimously on June 13, 2018 to GRANT the requested Comprehensive Permit consisting of a total of 4 (four) single family homes (inclusive of 1 (one) Affordable single family home), each single family home on a separate lot, on the Site under the Act, subject to and with the benefit of the following Plan modifications, conditions, and limitations.

4.1 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.

- 4.1.1. Unless waived or delayed by the Sewer Commissioner (Board of Selectmen), prior to the issuance of any building permit, except for the affordable single family home, the Applicant shall pay a Sewer Privilege Fee for the single family home which the building permit is applied for in an amount to be determined by the Sewer Commissioners. The Sewer Commissioners (Board of Selectmen) on May 21, 2018 have waived the sewer privilege fee, including permit fee, for the affordable single family home.
- 4.1.2 148 Prospect Street (Lot 3) shall be designated as the affordable single-family home.
- 4.1.4 Architectural plans submitted for building permit shall be substantially in accordance the plan submitted with the application.
- 4.1.3 Prior to the issuance of an occupancy permit, the Applicant shall acquire residential sewer connection permits for each single family home.
- 4.1.4 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Acton Board of Health.
- 4.1.5 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.1.6 This Project shall be established and conducted at all times in accordance with the terms of this Comprehensive Permit and shall conform with and be limited to the improvements indicated in the Plan as modified herein.
- 4.1.7 The Applicant shall be diligent to ensure that no construction debris or material from the site enter any of the abutting properties or the Prospect Street public right-of-way.
- 4.1.8 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 affecting 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.
- 4.1.9 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.
- 4.1.10 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.

- 4.1.11 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.
- 4.1.12 By granting waivers from the local bylaws and regulations identified 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.
- 4.1.13 Unless 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.
- 4.1.14 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.
- 4.1.15 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.
- 4.1.16 The Applicant shall comply with the State Building Code.
- 4.1.17 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 4.1.18 The Applicant shall obtain temporary easements or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting purposes.
- 4.1.19 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 pavement, buildings, drainage structures, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and

elevations. The “As-Built Plan” shall include an accurate utilities plan and profile, showing actual in-ground installation of all utilities after completion of construction. 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.

- 4.1.20 Prior to the final certificate of occupancy being issued for the Project, the Applicant shall have substantially completed the improvements and plantings shown on the approved Landscaping Plan or post a bond in accordance with the provisions of Section 4.1.24(b) of this Decision, it being understood that the Landscaping Plan is general in nature and it may be reasonably modified by the Applicant, Owners of the Lots and as required by the Conservation Commission.
- 4.1.21 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 to observe and inspect the Site and construction progress until such time as the Project has been completed.
- 4.1.22 All construction vehicles shall be parked off of Prospect Street at all times.
- 4.1.23 The Project shall be limited to a total of four 4 single family homes.
- 4.1.24 As security for the completion of the infrastructure related to the Project as shown on the Approved Plans, including, but not limited to, the roadway, drainage facilities, utilities, landscaping, and any other specific infrastructure shown on the final Approved Plans (the “Infrastructure”), the release of occupancy permits for all single family homes and the sale of all the single family homes in the development shall be subject to the following restrictions:
 - (a) No occupancy permit for any single family home shall be issued, and no sale of any single family home shall be permitted, until: (1) the base and binder course for the driveway for the single family home 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 single family home, and (3) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Zoning Enforcement Officer. The individual driveways and all remaining infrastructure must be fully completed and installed prior to the issuance of a certificate of occupancy for the 4th newly constructed single family home. 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.
 - (b) 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 be permitted to post a bond in lieu of completing the landscaping prior to release of the occupancy permits for the single family homes and the sale of the single family homes; provided that the Applicant shall complete the landscaping no later than the next growing season or the bond shall be forfeited.
- 4.1.25 The Applicant shall maintain and repair the drainage structures and stormwater management system on the Site as shown on the Approved Plans until such time as the Applicant sells the individual lots to a homeowner subject to these responsibilities.

- 4.1.26 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines.
- 4.1.27 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 single family home in the Project.
- 4.1.28 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.

4.2 CONDITIONS - LEGAL REQUIREMENTS

- 4.2.1 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. 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.
- 4.2.2 This Comprehensive Permit may not be transferred to an entity in which the Applicant owns and controls less than 50% of the equity interests in such entity, or to a person other than the Applicant without the prior written approval of the Board and the execution of any instruments or documents that may be required to assure the perpetual enforcement of this Comprehensive Permit pursuant to Town Counsel's direction. The scope of the Board's review of a proposed transfer shall be limited to the review of the transferee's qualifications, experience, capacity and eligibility under 40B with regards to satisfying the three jurisdictional requirements.
- 4.2.3 The driveways, utilities, drainage systems, and all other infrastructure shown in the Approved Plans 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.

4.3 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:

- 4.3.1 The Certificate of Occupancy for the Affordable single family home shall be issued prior to the last Certificate of Occupancy being issued for the newly constructed market rate single family homes.
- 4.3.2 Affordable Single Family Home: The Affordable single family home shall be made available for purchase by households whose aggregate income is no greater than 80% of the Area Median Income as published by the Department of Housing and Urban Development (HUD) for the Boston Metropolitan Primary Statistical Area (BMPSA). The Affordable single family home, as designated on the Approved Plans, shall contain four bedrooms.
- 4.3.3 Sale Price: The maximum sale price for the Affordable single family home shall be reviewed and approved by the DHCD at the time of the lottery for selection of buyers of the Affordable single family home. Subject to the approval of DHCD, the sale price for the Affordable single family home shall be set to be affordable to a household earning 70% of the Area Median Income published by the Department of Housing and Urban Development for the Boston Metropolitan

Primary Statistical Area, adjusted for household size. For this purpose, the applicable household size is five (5) persons. Any modification or deviation from the designation of the affordable single family home as originally proposed and reviewed by the DHCD shall be subject to approval by the DHCD.

- 4.3.4 Selection of Buyers for Affordable Single Family Home: The Applicant shall obtain the DHCD and Town approval of a buyer selection plan for the sale of the Affordable single family home prior to putting the Affordable single family home on the market. Buyers shall be selected through a fair lottery process (the "Lottery").
- 4.3.4.1 Within a pool of potential buyers, preference shall be given to households requiring the total number of bedrooms in the single family home with at least one occupant per bedroom and no more than two occupants per bedroom.
- 4.3.4.2 The selection of purchasers for the Affordable single family home, 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 or its designee, if permitted by the DHCD, shall oversee the Lottery and review the financial eligibility of the selected purchasers. The Applicant shall fund the expenses of the Lottery.
- 4.3.4.3 Selected purchasers shall complete a first-time homebuyer course before the closing of the purchase of an Affordable single family home if required by the purchaser's lender. The applicant shall request that the DHCD and ACHC shall make available a list of such courses for purchasers to attend.
- 4.3.4.4 Income eligibility shall be governed by the rules and regulations of the DHCD Local Initiative Program, or in default, the rules and standards employed by the Department of Housing and Urban Development in the selection of income-eligible households for publicly subsidized housing.
- 4.3.4.5 If permitted by DHCD, disputes concerning income qualification shall be resolved by the Town or its designee. A party aggrieved by a qualification-related decision of the Town may appeal the decision to the Board for a final determination.
- 4.3.4.6 The provisions of this section are intended to complement and not to override or supersede any rules, regulations, or requirements of the DHCD, the Massachusetts Commission Against Discrimination, the Local Initiative Program, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.
- 4.3.6 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 Affordable single family home 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 the Affordable single family home in the Project at the time of each sale and resale, and the Deed Rider shall restrict the Affordable single family home pursuant to this Decision in perpetuity in accordance with the requirements of M.G.L. Ch. 184, §§31-33.

After obtaining the 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 the 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 single family home so long as the Project is not in compliance with the Town of Acton's zoning bylaw, so that the single family home continues 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 Affordable single family home in the Project which shall be triggered upon the expiration of the affordability period.

- 4.3.7 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 the DHCD (the "Profit Cap"). The Regulatory Agreement shall provide mechanisms to enforce this requirement (the "Profit Cap"). 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 promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation of affordable housing in the Town of Acton.
- 4.3.8 Regulatory Agreement: Prior to applying for an occupancy permit for any single family home, 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 Affordable single family home covered by this Decision. The Regulatory Agreement shall be recorded prior to the conveyance of the first single family home. Subject to DHCD approval, the Town shall have the right, concurrent with DHCD, to enforce the terms and conditions of the Regulatory Agreement.
- 4.3.9 DHCD and Financial Information: The Market Rate single family homes and the Affordable single family home shall be visually comparable from the exterior as shown on the architectural plans. In addition, the Affordable single family home must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, operational HVAC, refrigerator, and finished basement. Further, without limiting the foregoing, and in addition to the Applicant's obligations to the DHCD, (a) upon issuance of a final certificate of occupancy for all of the single family homes and every ninety (90) days thereafter until the last single family home is sold, the Applicant shall cause the CPA to deliver to the Regional Housing Services Office 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 Regional Housing Services Office for all Project costs and income sources.

4.4 LIMITATIONS

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

- 4.4.1 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.
- 4.4.2 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 single family homes, changes the mix of affordable and market rate single family homes, 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.
- 4.4.3 This Comprehensive Permit applies only to the Site identified in this decision and to the proposed development as shown on the Approved Plans.
- 4.4.4 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.
- 4.4.5 This Decision permits the construction, use, and occupancy of four (4) single family homes each on a separate lot on the Site. The construction and use of the Site shall be in conformity with the Approved Plans, and there shall be no further subdivision of the Site, or the creation of additional single family homes or any other structures or Infrastructure except that which is shown on the Approved Plans, without further approval by the Board in the form of an amendment to this Decision.
- 4.4.6 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.
- 4.4.7 In the event a typographical error renders this Decision and the final Approved Plans inconsistent as to the number of single family homes, 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.



4.4.8 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


Jonathan Wagner,

Adam Hoffman


Kenneth F. Kozik, Chairman

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 #
Engineering Department
Board of Selectmen
Water Supply District of Acton

Town Clerk
RHSO
Assistant Assessor
Fire Chief
Municipal Properties

Land Use Department
ACHC
Town Manager
Police Chief