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TOWN OF BEDFORD
BEDFORD, MASSACHUSETTS 01730



TTD/TTY: 781-687-6124

Doreen Tremblay, Town Clerk

Town Hall
10 Mudge Way
Bedford, Mass. 01730
781-275-0083
doreent@town.bedford.ma.us

Date: July 12, 2007

Petitioner Name: 447 Concord Road, LLC
And owner - Town of Bedford
Location of Property: 447 Concord Road, Bedford, MA
Petitioner Number: 015-06



Bk: 49794 Pg: 352 Doc: DECIS
Page: 1 of 38 07/18/2007 11:28 AM

This letter certifies that twenty days have elapsed since the decision of the Zoning Board of Appeals was filed in the Office of The Town Clerk and no appeal has been filed.

Attest:

Doreen Tremblay
Town Clerk

Return To :

Brown + Brown, P.C.
110 Great Road
Bedford, MA 01730

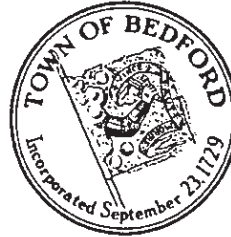
Bk. 15230 p. 156

TOWN OF BEDFORD

BEDFORD, MASSACHUSETTS 01730

TOWN CLERK

2007 JAN 26 AM 11:26



TTD/TTY: 781-687-6124

PETITION NUMBER: #015-06
PETITIONER: 447 Concord Road, LLC
LOCATION OF PROPERTY: 447 Concord Road, Bedford, MA
MEMBERS VOTING: Harold Ward, Member
Herb Aumann, Member
Paul Bauer, Member
Louise Maglione, Alternate Member

MOTION: To grant to 447 Concord Road, LLC (the Applicant) at 447 Concord Road a Comprehensive Permit to construct fourteen rental units and associated garage parking in three buildings in accordance with M.G.L. c. 40B, Section 20-23 and its implementing regulations 760 CMR 30-31, as well as the Comprehensive Permit Rules of the Zoning Board of the Town of Bedford subject to the Conditions of Approval set forth in Chapter III of this Decision.

VOTING IN FAVOR

Herb Aumann

Herb Aumann

Paul Bauer

Paul Bauer

Louise Maglione

Louise Maglione

VOTING IN OPPOSITION

Harold Ward

Harold Ward

This vote was taken on January 18, 2007. Approval of this Motion for a Comprehensive Permit requires a majority vote of the Board.

The Board voted to 3 to 1 to GRANT this Comprehensive Permit.

The Board and the Applicant have complied with all statutory requirements for the issuance of this Comprehensive Permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Town Clerk and will be mailed to all parties,

A TRUE COPY ATTEST

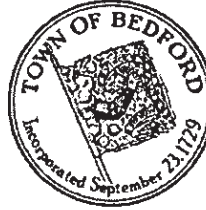
[Signature]
Town Clerk

persons or boards as required by Massachusetts General Laws Chapter 40A.

The Decision was filed in the Office of the Town Clerk on January 26, 2007. Any appeal from this decision by any party other than Applicant shall be made pursuant to Massachusetts General Laws Chapter 40B, Section 21 and must be filed within twenty (20) days after the filing of the Decision with the Town Clerk.

The Comprehensive Permit granted by this Decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty (20) days or that it has been dismissed or denied, and is recorded in the Middlesex Registry of Deeds for this district. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.

THE BOARD OF APPEALS



TOWN HALL
10 MUDGE WAY
BEDFORD, MASSACHUSETTS 01730

PETITION NUMBER: 015-06
447 CONCORD ROAD COMPREHENSIVE PERMIT

CHAPTER I. FINDINGS

This chapter summarizes the procedural history of the petition and describes the proposed project. The jurisdictional requirements for a Chapter 40B application are examined. The reasoning and findings of the Board are presented regarding exceptions from local Bylaws. Other community issues are addressed.

In making its findings and reaching decisions, the Board is guided by M.G.L. Ch. 40B and its regulations 760 CMR 31.00, by the Board's own rules for a Comprehensive Permit and by current Zoning bylaws. The Board also considered evidence presented at the public hearings and evidence placed in the public record prior to the closing of the public hearing on December 14, 2006. The record includes, but is not limited to, the documentation listed in Chapter II.

1. Procedural History

By an application ("Application") filed with the Bedford Town Clerk on November 15, 2005, the applicant, 447 Concord Road, LLC (the "Applicant"), petitioned the Town of Bedford Zoning Board of Appeals (the "Board") for a Comprehensive Permit pursuant to Massachusetts General Law, Chapter 40B, Sections 20-23 ("Chapter 40B"), to allow the 4.2± acre site located at 447 Concord Road (the "Property") to be used as a 14 unit residential rental development consisting of three two-story buildings with eighty-five percent (85%) (12 of the 14 units) of the housing units to be designated as affordable housing under the provisions of Chapter 40B, with subsidies to be provided by Massachusetts Housing Partnership financing, the Department of Housing and Community Development (DHCD) "Pilot Program" and Town of Bedford Community Preservation Act Funds. An additional subsidy will be provided by the Town of Bedford through its granting of a below

market rate land lease in order to achieve the maximum number of affordable units.

Based upon comments made and concerns raised by the Board and by the public, and through several revised plans, the Applicant thereafter adjusted the location of the buildings and site elements to arrive at the final site design. The proposed housing was depicted on the following preliminary plans:

- Site Engineering plans dated November 16, 2005, with revisions through December 4, 2006, consisting of a Title page entitled "14 Unit Residential Housing Development located at 447 Concord Road, Bedford, MA" prepared by Judith Nitsch Engineering Associates and ten sheets stamped by Sandra Brock, P.E.
 1. Sheet C1.01 "Layout Plan";
 2. Sheet C1.02 "Grading Plan" (Southern portion of site);
 3. Sheet C1.03 "Grading Plan" (Northern portion of site);
 4. Sheet C1.04 "Utility Plan" (Southern portion of site);
 5. Sheet C1.05 "Utility Plan" (Northern portion of site);
 6. Sheet C1.06 "Utility Plan" (cross-sections)
 7. Sheet C1.07 "Planting Plan";
 8. Sheet C2.01 "Details";
 9. Sheet C2.02 "Details 2";
 10. Sheet C2.03 "Erosion Control";

- Preliminary Architectural plans prepared by The Architectural Team, Inc consisting of Building Elevations, Unit Floor Plans for a 1 Bedroom Unit, 2 Bedroom Unit 3 Bedroom Unit, and 3 Bedroom Unit (HP), and Building Section, 13 pages, dated November 15, 2005.
 1. T1.00 Title
 2. C1.00 Architectural Site Plan
 3. A2.01 Building A- First and Second Floor Plan
 4. A2.02 Building B- First Floor Plan
 5. A2.03 Building B- Second Floor Plan
 6. A2.04 Building C- First and Second Floor Plan
 7. A2.05 Building A and Building C- Roof Plans
 8. A2.06 Building B- Roof Plan
 9. A4.01 Building A- Elevations
 10. A4.02 Building B - Elevations
 11. A4.03 Building B - Elevations
 12. A4.04 Building C - Elevations
 13. A5.01 Building Sections

- Outline Specifications prepared by The Architectural Team, Inc., undated

All of the plans listed above were submitted in connection with the Application and shall collectively be referenced as the "Project Plans").

A public hearing for a Comprehensive Permit was advertised in the Bedford Minuteman on November 24, and December 1, 2005. All abutters were notified. The hearing was opened on December 8, 2005 and was continued to January 26, 2006, and again to February 9, 2006, March 9, 2006, April 13, 2006, May 25, 2006, July 1, 2006, September 14, 2006, October 26, 2006 and December 14, 2006 (collectively the "Hearing"). It should be noted that business was conducted only on December 8, 2005, February 9, 2006, September 14, 2006, October 26, 2006 and December 14, 2006. At each of the other aforementioned dates a continuance was requested by the Applicant and granted by the Board, with no testimony taken.

All Town Boards were notified of the hearing and were requested to comment on the Comprehensive Permit as required by the Town of Bedford Zoning Board of Appeals Rules and Regulation for a Comprehensive Permit [1]. The Applicant cooperated with other Town Boards and presented interim plans to them to assist in preparation of their comments. The Bedford Housing Partnership and the Town's Chapter 40B Consultant, Edward Marchant, also actively participated in the public hearing.

Board members Herbert Aumann, Harold Ward, Paul Bauer and alternate member Louise Maglione were present at the initial Hearing and each continued Hearing. Board Members Robert Ellis, Jeff Cohen, Jeff Dearing and Arthur Smith were present at most but not all sessions of the public hearing. Voting members were Herbert Aumann, Harold Ward, Paul Bauer and Louise Maglione.

Also present throughout the Hearing was the Applicant and its representatives. At the hearing, the Board received detailed written and oral evidence, testimony and other submissions from the Applicant, various officials of the Town of Bedford, members of various boards of the Town of Bedford as well as other members of the public. The written evidence submitted to the Board includes, without limitation, the documents, plans and other items listed below in Chapter II and incorporated herein by reference (collectively the "Documents").

The Hearing was closed on December 14, 2006. On January 18, 2007 and January 25, 2007 the Board met at a duly noticed public

meeting and deliberated on the Application including a review of the various Documents and a discussion of testimony received by the Board at the Hearing. At the January 18, 2007 public meeting, following the conclusion of deliberations, the Board voted 3-1 to GRANT the Comprehensive Permit subject to certain conditions.

2. Project Description

The project site described in the Project Plans consists of 4.2± acres. Access to the Property is available through 100.28 feet of frontage on Concord Road. An approximately 502-foot access drive (measured from the property line at Concord Road to the beginning of the cul-de-sac) and the cul-de-sac provide access to the residential buildings.

The Property is located in the Residence B Zoning District, as depicted on the Town of Bedford Zoning Map, dated February 1978, as amended through October 1997. The existing site is undeveloped and characterized by upland wooded areas, forested wetlands and open meadow. The Minuteman Rail Trail extension borders the site to the North.

The Applicant proposes to build a total of fourteen (14) townhouse style rental units in three buildings (the "Project") on the Property. Of the fourteen (14) rental units, two (2) units will be market rate units and twelve (12) units will be affordable units (the "Affordable Units"). There will be two one bedroom/one bath units, eight two bedroom/one and one-half bath units, and four three bedroom/two bath units. One of the three bedroom units shall be handicap accessible. Each of the fourteen units will include an attached one-car garage and outside surface parking space located directly in front of the garage. In addition, four visitor spaces are provided along the cul-de-sac. The total number of garage and surface parking spaces is thirty-two (32), a ratio of 2.0 spaces for each residential unit or 2.25 spaces per unit if the visitor spaces are included. The Board expressed concern regarding the width of the driveway cul-de-sac. The Applicant agreed to install and maintain "NO PARKING" signs to avoid cars parking in the cul-de-sac and will do the same for the access drive if necessary.

Twelve of the fourteen units will be rented as affordable apartments to low and moderate income tenants. These twelve units will be available to families qualifying for HOME units or project based Section 8 rental assistance currently administered by Community Teamwork, Inc. The Section 8 units (50% of Median Family Income) will consist of two (2) two bedroom/1.5 bath

units and two (2) three bedroom/two bath units. The High HOME units (65% of Median Family Income) will consist of six (6) two bedroom/1.5 bath units and two (2) three bedroom/two bath units. The chart that follows summarizes the unit type, size, rents and distribution of market and Affordable Units. All of the units are townhouse style units with individual front and rear doors.

447 Concord Road: Summary of Unit Type, Rents and Distribution

Unit Type	Size	Total in Project	Total Market Rate Units	Total Affordable Units	Approx. Initial Monthly Rent
1 Bedroom/1 Bath	1,006 sf	2	2	0	\$1,150 Market
2 Bedroom/ 1.5 Baths	1,355 sf	2	0	2 (Section 8)	\$1,225*
		0		Eligibility at 50% or less of Median Family Income	
		6	0	6 (High Home)	\$1,067
3 Bedroom/2 Baths	1,630 sf	2	0	2 (Section 8)	\$1,468*
				Eligibility at 50% or less of Median Family Income	
		2	0	2 (High Home)	\$1,221
				Eligibility at 65% or less of Median Family Income	
Total		14	2	12	

* Actual rents to be paid by tenants will be based upon Section 8 guidelines.

The Applicant proposes to finance the development through Massachusetts Housing Partnership (MHP) permanent loan financing and the DHCD Pilot Program, as well as Town of Bedford Community Preservation Act (CPA) funds. The CPA funds have been or are expected to be approved by Town Meeting. Under these programs, the Applicant must comply with certain program requirements regarding the income and asset qualification of buyers and the maximum rents for the Affordable Units, as well as with other program requirements.

3. Jurisdictional Requirements

The Applicant submitted a Comprehensive Permit Application under M.G.L. Ch.40B and 760 CMR 31.00 on behalf of "447 Concord Road, LLC". The documentation provided showed that 447 Concord Road LLC has been organized as a limited dividend organization as defined by 760 CMR 30.02. The funding agencies further enforce the limited dividend nature of the development through annual compliance reporting.

The Applicant submitted a Project Eligibility Letter, dated October 21, 2005, from Massachusetts Housing Partnership (MHP), stating that the project is conditionally eligible to be financed by MHP. [1]

The Applicant has "control of the site" as defined in 760 CMR 31.01 in that the Applicant has executed a 99 year lease with the Town of Bedford. Said Town of Bedford Land Lease was executed on July 25, 2005. [1]

Based on this information, the Board finds that the Applicant has met the jurisdictional requirements to apply for a Comprehensive Permit under M.G.L. c.40B and 760 CMR 30.02.

4. Statutory Minima for Low and Moderate Income Housing

Chapter 40B Section 20 sets out three criteria for determining whether a community has satisfied its affordable housing goals and further sets forth criteria to evaluate whether requirements and conditions imposed by the Board of Appeals on a Comprehensive Permit application are "consistent with local needs".

The Applicant confirms that at the time of the application, the Town of Bedford had met the statutory minimum 10 percent (10%) threshold for low and moderate-income housing. However, small-scale affordable housing developments are desirable and articulated as desirable in the Town of Bedford Comprehensive Affordable Housing Plan dated January 17, 2002. The Project has resulted directly from of a response to a Town of Bedford Request for Proposals dated September 23, 2003 for development of an affordable housing project on the subject site. Although the Town of Bedford currently exceeds its Chapter 40B 10% statutory minima requirement, the ZBA does have the authority to approve additional Comprehensive Permit projects.

According to the 2000 U.S. Census, Bedford had 4,692 year round housing units, of which 210 units or 4.5 percent qualify as

affordable housing according to the DHCD Inventory dated April 24, 2002. However, since that time, additional units have been added to the affordable housing inventory, bringing the total number of affordable units in Bedford to 669 or 14.3 percent based upon the DHCD Chapter 40B Subsidized Housing Inventory dated January 18, 2007.

Neither Chapter 40B nor its implementing regulations at 760 CMR §31.04 precludes a local zoning board of appeals from granting a request for affordable housing, despite the fact that regulatory thresholds have been met. The proposed project would allow the town to continue to add to the affordable housing stock, beyond the minimum threshold requirement of 10%. The grant of this comprehensive permit will provide twelve affordable rental units in perpetuity and further disperse affordable housing throughout the town.

Section 20 states that Conditions are "consistent with local needs" where they are "reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements are applied as equally as possible to both subsidized and unsubsidized housing."

The Board believes that the specific conditions set forth below are reasonable when viewed in light of the need for low and moderate income housing in the Town.

5. Recommendations of Local Boards

According to M.G.L. Ch.40B Section 21, the Zoning Board of Appeals, in making its decision, shall request and "take into consideration" the recommendations from all applicable local boards.

The Board received comments from the Planning Board, the Fire Department, the Department of Public Works, the Conservation Commission, the Board of Health, the Selectman, the Bedford Housing Partnership, Massport, Bedford Arbor Resources Committee, abutters, and Board members.

None of the official recommendations and comments suggested denial of the Applicant's proposal.

6. Exceptions from Local Zoning Bylaws

The Board finds that under both 760 CMR 31.02 and the Town of Bedford Zoning Board of Appeals Rules and Regulations for a Comprehensive Permit, the Applicant is required to provide to the Board a complete list of requested exceptions from local Bylaws. The Board is obligated to rule only on requested exceptions.

On December 14, 2006, the Applicant provided a revised list (rev. date 12/14/06) of requested exceptions from local regulations. [55] The exceptions were discussed during the Hearing and Deliberation Sessions on the Application. The Board's ruling on each requested exception is summarized in Chapter III, Sections 1-4.

7. Drainage

The Applicant proposes to manage runoff from the development with a combination of catch basins, rain gardens and surface detention basins. The system is designed to control the 2, 10 and 100-year storm events. Deep sump catch basins, Stormceptor water quality inlets and rain gardens (bioretention) will provide for sediment removal. The drainage system has been designed to meet the "Storm Water Management Guidelines" as reflected in the Town of Bedford Wetland Protection Bylaws Section 2.2. and the DEP Stormwater Management Standards as outlined in a December 5, 2006 memo from Nitsch Engineering. [53]

The Engineering Department reviewed the Application and suggested certain revisions which have subsequently been made. Based upon its review of the preliminary drawings and other information submitted by the Applicant, the Engineering Department has expressed satisfaction with the revised storm water management system concept; however, final drainage calculations shall be submitted to the DPW along with the Notice of Intent submission to the Conservation Commission to ensure that the drainage will be consistent with the preliminary scheme and conform to applicable standards. Based on the information submitted by the Applicant and the Engineering Department, the Board finds that the storm water management system appears adequate to meet the needs of the Project, and should not have a detrimental effect on the property or abutting properties. However, the Applicant shall be required to submit final storm drainage engineering drawings as part of the Building Application process, and may be required to provide additional

documentation of soil transmissivity and groundwater elevation during the Conservation Commission review process.

8. Water and Sewer

The Department of Public Works reviewed the Project and feels that the design of the water and sewer system is adequate to meet the needs of the proposed development. The Department of Public Works has also provided information to the Board demonstrating that there is adequate water and sewer capacity in their respective systems to serve needs of the Project. A number of water flow tests were conducted and found satisfactory for domestic water supply. A separate 7,000 gallon fire tank and pump, including an emergency generator, is proposed to support sprinklers for fire fighting purpose in the units. Therefore, the Board finds that water and sewer supply are adequate for the project, including an emergency generator for the fire pump.

9. Traffic

A traffic study was completed by the town prior to issuing the RFP for the project. Given that only fourteen residential dwelling units have been proposed, there is not expected to be a significant impact on traffic flows.

A Sight Distance Sketch dated December 4, 2006 [53] was provided to the Board depicting safe stopping distances along Concord Road at the entrance to the proposed development. Both Eastbound and Westbound directions exceeded the AASHTO requirement of 305' for a stopping sight distance at 40 mph. Intersection sight distances will be provided to DPW prior to the issuance of the initial building permit.

Therefore, the Board finds that the anticipated traffic impacts will not be detrimental to the health or safety of the occupants of the development or other residents of the Town.

10. Building Access

At the Fire Department's request, the Applicant has proposed to provide access to two sides of each building in order to provide fire equipment access to the buildings. In addition, the end sections of each building are limited to one story providing improved fire fighting access. The internal turning radii of the proposed roadway are sufficient to allow access for fire and emergency vehicles. Fire Department personnel have indicated

that they are satisfied with the building access provided in the plans, as most recently revised by the Applicant.

11. Fire Safety

The Applicant shall install fire protection sprinklers in the buildings. The Applicant shall be required to meet all applicable fire protection building code requirements. Pursuant to results from four separate water flow tests, the Applicant shall also install a 7,000 gallon fire tank, pump and emergency generator to ensure adequate water supply for fire fighting purposes.

12. Emergency Site Access/Egress

The Applicant has met with the Fire Department and the Department of Public Works to discuss potential additional means of emergency access to and from the Property. The site is constrained by wetlands to the West. These wetlands prohibit access from Minot Road in Concord. The grades within the site as well as along Concord Road at its intersection with the Rail Trail preclude access from the Rail Trail. Given the issues involved, the Fire Department has agreed that the project proposal, including the single access drive, provides adequate measures to protect life safety.

Based on the Applicant's discussions with the Town, the Board is satisfied that the Project will provide a sufficient means of accessing the Property for emergency purposes and protecting life safety.

13. Pro Forma Evaluation

The Board's Ch. 40B advisor, Edward Marchant, found that the estimated total development cost and other financial assumptions included in the pro forma are generally consistent with industry standards.

14. Lighting

The Applicant proposes to install appropriate on-site lighting that limits light overspill onto neighboring properties. [53] Lighting shall be shielded to prevent light trespass to neighboring properties. Additional details shall be provided in the Building Permit application and shall be subject to final review by the Building Inspector and confirmation that the proposed on-site lighting system satisfies these criteria.

15. Snow Storage

The Applicant provided information as to the location of on-site snow storage in a Snow Storage Sketch drawn by Nitsch Engineering dated December 4, 2006. [53] The Board felt that the area and location of the snow storage areas is adequate for the Project; however, the Bedford Conservation Commission may further review the location of snow storage. Modification of snow storage areas by the Conservation Commission incorporated into its Order of Conditions shall not necessitate an amendment to this Comprehensive Permit.

16. Affordable Housing

Ch 40B requires the Board to balance local concerns with the mandate of M.G.L. c.40B and the need to provide affordable housing.

The Applicant proposes to finance the development through MHP permanent financing loan funds, Town of Bedford CPA funds and DHCD's "Pilot Program". The Project will include the creation of affordable units as noted above in Section 2. The Applicant has agreed to give a lottery preference to applicants satisfying the local preference criteria established by the Bedford Housing Partnership, to the maximum extent permissible by law and the respective occupancy guidelines for the loan and subsidy programs being used to finance the project. Any such local preference applicants must also satisfy the applicable income limit and any other eligibility requirements.

The Board finds that there is a continued need in Bedford for the affordable rental units that will be provided through the subject Project, particularly given that 85% of the total number of units shall be affordable, all of which will be priced to be affordable to households with income levels lower than the household income levels normally allowed in traditional Chapter 40B housing.

17. Town Services

The Project will create a limited impact on Bedford Town Services due to the small scale of the project. Impacts will include additional emergency services, school costs and municipal operating costs.

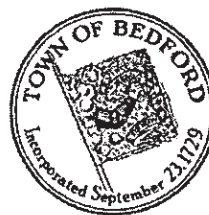
Providing for the safety of school children walking to the bus stop was a topic discussed at the Hearings. The Applicant has spoken with Bedford Charter Service regarding school bus pickup.

The driveway cul-de-sac has been designed to enable the school bus to turn around. Therefore, if there are school age children, the school bus would be able to make 447 Concord Road a turnaround stop on its route.

18. Pedestrian Access and Trail

A sidewalk is proposed along the site driveway to Concord Road. Further, a trail connection has been provided from the project sidewalks at the cul-de-sac to the Minuteman Rail Trail extension at the North of the property. The Rail Trail provides pedestrian access westerly to Great Meadows National Wildlife Refuge and the Old North Bridge in Concord and easterly to the Middle School and Depot Park, the terminus of the paved portion of the Minuteman Bikeway.

THE BOARD OF APPEALS



TOWN HALL
10 MUDGE WAY
BEDFORD, MASSACHUSETTS 01730

PETITION NUMBER: 015-06
447 CONCORD ROAD COMPREHENSIVE PERMIT

CHAPTER II. DOCUMENTS

1. November 16, 2005
Application package - Petition # 015-06 - and initial information regarding application process.
2. November 2, 2005
447 Concord Road - Abutters list for Bedford.
3. November 9, 2005
447 Concord Road - Abutters list for Concord.
4. December 20, 2005
Letter to Massport - abutter notification resent.
5. December 1, 2005
Memorandum from Adrienne St. John and Matthew Shuman, DPW, to ZBA re: comments as a result of their review of the Comprehensive Permit submittal dated November 15, 2005.
6. December 2, 2005
Fax cover sheet from ZBA Secretary to Applicant with the December 1, 2005 comments from DPW.
7. December 6, 2005
Memorandum from David Grunes, Bedford Fire Department, to Robert Ellis, ZBA Chairman, re: recommendations.
8. December 6, 2005
Email from ZBA Secretary to Applicant with the December 6, 2005, comments from the Fire Department.
9. December 6, 2005

Letter from Massachusetts Port Authority to ZBA and Planning Board re: their comments and recommendations if the project moves forward.

10. December 7, 2005

Letter from Brown & Brown to ZBA re: compliance and waiver request details. Includes List of Requested Waivers.

11. December 7, 2005

Email from ZBA Secretary to Jim Regis at S.C. Management re: the Fire Department and Massport correspondence.

12. December 8, 2005

Hearing agenda.

13. December 8, 2005

Building Inspector's synopsis.

14. December 8, 2005

Meeting minutes.

15. December 9, 2005

Agenda to internal boards for comments by January 12, 2006.

16. December 27, 2005

Memorandum from Richard Joly, Planning Director, re: their recommendations and conditions.

17. December 29, 2005

Emails to Jim Regis and Pam Brown re: Planning Director's comments dated December 27, 2005.

18. January 10, 2006

Reminder to internal boards for comments by January 12, 2006.

19. January 11, 2006

Memorandum from Dave Black, Board of Health Director, to ZBA re: comments of public water and sewer and mosquito control.

20. January 11, 2006

Email from ZBA Secretary to Jim Regis and Pam Brown re: Board of Health comments dated January 11, 2006.

21. January 12, 2006

Memorandum from Bedford Housing Partnership re: review and comments of the application.

22. January 12, 2006

Letter from Bedford Arbor Resources Committee (BARC) re: their site visit, plan review and recommendations.

23. January 12, 2006

Street Tree Policy from the Bedford Planning Board referenced in the BARC's letter dated January 12, 2006.

24. January 12-13, 2006

Emails to and from Ms. Brown, ZBA Secretary and ZBA Board members regarding the site visit which was scheduled on Saturday, January 14, 2006 at 9:15 A.M.

25. January 13 and 19, 2006

Email between Ms. Brown, ZBA Secretary and DPW re: updated plans for other Board review, request for consultant and continuation by Applicant.

26. January 13, 2006

Letter from Ms. Brown requesting a continuation to February 9, 2006.

27. January 18, 2006

Extension of Time Agreement fax cover and form.

28. January 18, 2006

Notification sent to internal boards of hearing continuation and request for comments by January 26, 2006.

29. January 19, 2006

Comment from Mr. Ward, ZBA Member and email distributing to appropriate departments.

30. January 24, 2006

Email to abutter interested in information on case re: meeting minutes from December 8, 2005 and continuation dates.

31. January 26, 2006

Email from Assessor re: comments being submitted after the next meeting on January 31, 2006.

32. January 30, 2006

Email to ZBA from Secretary re: comments from site walk on January 14, 2006. Comments from ZBA Member, Mr. McGinnis.

33. January 31, 2006

Comments re: site walk from ZBA Member, Mr. Cohen and response from Secretary.

34. February 1, 2006

Email to Pam Brown with comments from ZBA Board Members re: site visit.

35. February 2, 2006

Response from Ms. Rhodes, Associate Assessor, re: Mr. Ward's questions. Also included are emails forwarding comments to the ZBA and Pam Brown.

36. February 2, 2006

Email response to Jim Regis, SC Management, re: agenda for February 9, 2006 ZBA meeting.

37. February 3, 2006

Email to ZBA Secretary from Ms. St. John, DPW, re: meeting with Applicant and Fire Department and no new response will be provided until new plans are submitted and reviewed.

38. February 6, 2006

Comments from Mr. Feltman, Chairman Board of Selectmen re: response to Mr. Ward's questions and fax to Pam Brown.

39. February 9, 2006

Response to comments #1 from Ms. Brown.

- Attachment A - Abutter comments from February 7, 2006 neighborhood meeting
- Attachment B - Income Limits and Rents
- Attachment C - 2003 Traffic Memo
- GIS Map

40. February 9, 2006

Unsigned letter from Mr. and Mrs. Truluck-Williams, abutters at 433 Concord Road, to the ZBA.

41. February 9, 2006

Letter from BARC to Mr. Ellis, ZBA Chairman, re: site visit.

42. February 14, 2006

Email to Jim Regis, SC Management, from ZBA Secretary requesting timeline to receive updated plans.

43. February 14, 2006

Extension of time agreement fax cover and form.

44. March 7, 2006

Letter of extension, signed by Pamela Brown, esq., asking for continuation to the April 13, 2006 ZBA meeting.

45. April 13, 2006

Letter of extension, signed by Pamela Brown, esq., asking for continuation to the May 25, 2006 ZBA meeting.

46. May 25, 2006

Letter of extension, signed by Pamela Brown, esq., asking for continuation to the July 13, 2006 ZBA meeting.

47. July 13, 2006

Letter of extension, signed by Pamela Brown, Esq., asking for continuation to the September 14, 2006 ZBA meeting.

48. October 23, 2006

Revised plans - cover letter

49. October 23, 2006

Revised site plan

50. October 23, 2006

Letter from Pamela Brown re: 40B Consultant Fee

51. October 25, 2006

Letter from Adrienne St. John of DPW

52. October 26, 2006

Response to Comments #2 from Ms. Brown

53. December 6, 2006

Response to Comments #3 from Ms. Brown

- Attachment A: November 27, 2006. List of Requested Waivers, revised 11/27/06
- Attachment B: December 5, 2006, Memorandum from James Regis re: requirements for accessible units
- Attachment C: December 5, 2006, Letter from Nitsch Engineering, re: Drainage Summary and Soil Survey
- Attachment D: December 4, 2006, Soil Test Sketch
- Attachment E: December 4, 2006, Site Distance Sketch
- Attachment F: December 4, 2006, Snow Storage Sketch

54. December 12, 2006

Additional comments from Adrienne St. John of DPW

- Attached: Sample - "Stabilized Construction Entrance"

55. December 14, 2006

List of Requested Waivers (revised)

56. December 14, 2006. "Alternative Pedestrian Access" sketch plan prepared by Judith Nitsch Engineering.

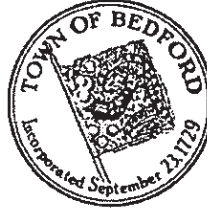
56. January 22, 2007

Comments on draft decision from Michael C. Lehane, of Town Counsel

MINUTES OF MEETINGS:

- ZBA December 8, 2005
- ZBA February 9, 2006 (extension)
- ZBA March 9, 2006 (extension)
- ZBA April 13, 2006 (extension)
- ZBA May 25, 2006 (extension)
- ZBA July 13, 2006 (extension)
- ZBA September 14, 2006 (extension)
- ZBA October 26, 2006 (extension)
- ZBA December 14, 2006 (extension)
- ZBA January 18, 2007 (deliberations)

THE BOARD OF APPEALS



TOWN HALL
10 MUDGE WAY
BEDFORD, MASSACHUSETTS 01730

PETITION NUMBER: 015-06
447 CONCORD ROAD COMPREHENSIVE PERMIT

CHAPTER III. CONDITIONS OF APPROVAL

Based upon the findings of the Bedford Zoning Board of Appeals (the "Board"), the Board GRANTS to 447 Concord Road, LLC (the Applicant) at 447 Concord Road, Bedford, Massachusetts a Comprehensive Permit to construct fourteen (14) townhouse units in three buildings and associated driveways, drainage systems and other site features in accordance with M.G.L. c. 40B, Section 20-23 and its implementing regulations 760 CMR 30-31, as well as the Comprehensive Permit Rules of the Zoning Board of Appeals of the Town of Bedford subject to the Conditions and Limitations set forth in this Decision.

The Comprehensive Permit incorporates the following requested exceptions from the Town of Bedford Zoning Bylaw (the "Bylaw"), and certain of the Town of Bedford General Bylaws, Wetland Bylaws and Rules and Regulations Governing the Subdivision of Land. In granting or denying these exceptions, the Board recognizes that the legal requirements for issuing a Comprehensive Permit have been met, and that the granting of exceptions from the Bylaw, and the Town of Bedford General Bylaws may be necessary in the public interest, to accommodate the need to provide affordable housing.

The terms and conditions of this Comprehensive Permit, together with the Massachusetts Housing Partnership Regulatory and Affordable Housing Agreement for Limited Dividend Organizations, shall control the development of the Project. To the extent the Comprehensive Permit is inconsistent with any other instrument, document, agreement or plan submitted in connection with the Project, the Comprehensive Permit shall control to the full extent permitted by law, unless such provisions are prohibited by Federal or State law.

1. Exceptions from Local Zoning Bylaws

- 1.1. Exception from Section 4.2 and Section 3.1 Table I Multi-Family Use: **GRANTED**.

A Comprehensive Permit requires allowing multi-family dwellings in the Residential B district.

- 1.2. Exception from 6.2.7 and Table II Dimensional Regulations Minimum Side Yard of 15 feet: **DENIED**

The side yard of 14.69 feet is unacceptable. The Applicant shall revise its final plans to reflect a side yard of at least 15.00 feet.

- 1.3 Exception from Section 7.4, Parking Regulations, Table III, Parking Stall Dimensions, 24 foot aisle width. **GRANTED**

The Board finds a decreased maneuvering aisle of 18 feet instead of 24 feet in that portion of the cul-de-sac as shown on the Project Plans is permissible. The roadway shall remain a private way and shall be maintained by the property management. The cul-de-sac shall have one-way circulation and a "ONE-WAY" sign shall be installed and maintained to direct one-way circulation around the cul-de-sac. The roadway and cul-de-sac have been designed with consideration of minimizing potential wetlands impacts and creating parking necessary for the residents and their guests, and will likely keep speeds within the residential community low. Appropriate "NO PARKING" signage shall be installed and maintained to prohibit parking at the cul-de-sac with the exception of the four (4) visitor spaces as shown on the Project Plans. All sign locations and signage shall be reviewed by the Building Inspector. If necessary in the future, "NO PARKING" signs or other markings shall be installed and maintained along the access drive at the request of the Building Department.

2. Exceptions from Rules and Regulations Governing the Subdivision of Land

This project does not involve a subdivision; however, the subdivision regulations determine certain design criteria.

- 2.1 Exception from Section 5.2.2, 24-foot road width. **GRANTED**

This exception allows construction of the roadway within a portion of the cul-de-sac to be eighteen feet in width. The

Board finds this permissible as the cul-de-sac is one-way and roadways within the project shall remain private ways. The roadway and the cul-de-sac have been designed to minimize impact to the resource areas and provide necessary parking and emergency access.

2.2 Exception to Section 6.6, Shade Trees on Subdivision Streets. **GRANTED IN PART**

The Board finds that granting an exception to the requirement for placing shade trees at approximately thirty foot intervals on each side of the street is acceptable. The site is wooded, and many of the existing trees have been preserved. The Board finds the proposed Landscaping Plan dated December 5, 2006 acceptable; however, a maximum of seven (7) street trees shall be field located and planted along the roadway, and/or around the cul-de-sac, based on adequate room and following consultation with the tree warden. The Board grants an exception to the requirement for 3-inch minimum caliper trees. With the limited project budget, and desire to provide affordable housing for the Town, the Board will accept 2-2½-inch minimum caliper trees.

3. Exceptions from General Bylaws

3.1. An exception of the fees associated with General By-law, Article 51, Section 51.3, 51.4 and Article 52, Section 52.4. **GRANTED FOR AFFORDABLE UNITS ONLY.**

The exceptions relating to Article 51 waive for the Affordable Units only the fees associated with Sewer System assessment and betterment fee, undeveloped land fee and new connection fees. Article 51.4 refers to the User Fees for the sewer system related to use of the system and work associated with the connection from the main to the building. The exceptions relating to Article 52 waive the fees associated with the ancillary water system operations. This waiver is allowed due to the need for affordable housing in the Town, the municipal involvement in the project, the limited size of the project and the high percentage of affordable units (85%). The fees outlined above are waived only for the Affordable Units.

3.2 An exception from any requirements of Article 51 (sewer tie-in) and requirements under Article 52 (water tie-in) of the Town of Bedford General Bylaws be paid for all units at

the commencement of construction of the first unit. **GRANTED FOR AFFORDABLE UNITS ONLY.**

Tie-in fees are waived for the Affordable Units due to the Project's limited size and maximized affordability. The Board further recognizes in granting this waiver the additional cost associated with providing a 7,000± gallon tank to supply fire fighting water due to the fact that the public water supply pressure was not adequate to provide both domestic and fire fighting service. The fees outlined above are waived only for the Affordable Units.

- 3.3 An exception from General Bylaw 54.4, Local Wetland Bylaw Fee. **GRANTED**

This exception is requested only for the local wetland fees. The Local share of the State fee shall be paid. This waiver is acceptable as this is a Town sponsored project with significant amounts of jurisdictional buffer zone involved as a result of the shape of the lot.

- 3.4 Waiver from General Bylaw 54.6, Conservation Commission ability to deny approval for failure to meet requirements of local wetland bylaw. **GRANTED ONLY FOR THE BYLAW SECTIONS EXCEPTED BY THE ZBA.**

This exception is acceptable as this is a town sponsored project with significant buffer zone involved. Relief from specific sections of the bylaw has been requested as detailed in the following paragraph. This exception only prohibits the Conservation Commission from denying a permit for failure to satisfy Bedford Wetlands Protection Regulations section 2.2.1.1, 2.2.2.1, and 2.2.2.2.

- 3.5 Exceptions from Wetlands Protection Regulations, Local Bylaw Sections 2.2.1.1, 2.2.2.1, 2.2.2.2. **GRANTED.**

An exception is requested from portions of the local bylaw to allow drainage outfall structures, retaining walls, rip-rap and grading within the 50-foot buffer to wetlands, provided that this work is not closer than 25 feet to resource areas. Impervious cover in the buffer zone will also exceed 25%, but shall not exceed 30%.

This exception is acceptable as this is a town sponsored project on a site with significant buffer zone area. The

Applicant has designed the project to limit wetlands related impacts and will further refine its design through the Conservation Commission review and approval process. Applicant must comply with all requirements of the state Wetlands Protection Act.

3.6 Exception from Building Department Fees. GRANTED FOR AFFORDABLE UNITS ONLY.

A exception from building permit, electrical, plumbing and inspections fees is acceptable for this unique project offering 85% affordable units. Significant permit fees would render the project infeasible and/or require additional public funding. The fees outlined above are waived only for the Affordable Units.

4. Compliance with Requirements

The development shall be built according to the Town of Bedford Zoning Bylaws, Rules and Regulations Governing the Subdivision of Land, General Bylaws and this Decision unless a specific exception was granted. The development shall be built in accordance with the State Wetlands Protection Act as implemented by the Bedford Conservation Commission. To the extent that the Plans show the need for additional waivers not expressly set forth in this decision, if necessary, the Applicant shall meet with the ZBA at a public meeting to determine if the additional waiver is substantial and requires a public hearing to modify the permit or is unsubstantial and does not require a public hearing to proceed with the proposed improvement.

5. General Conditions/Affordable Housing Requirements

- 5.1 The Comprehensive Permit is granted based on the latest issue of a set of preliminary engineering plans prepared by Judith Nitsch Engineering, Inc entitled "447 Concord Road, Bedford, Massachusetts," dated November 16, 2005, revised through December 4, 2006, as stamped by Sandra A. Brock, P.E. consisting of ten sheets: Layout Plan, Grading Plan (2 sheets), Utility Plan (3 sheets), Planting Plan, Details (2 sheets), and an Erosion Control Plan. In addition, the Board authorizes the construction of an "Alternate Pedestrian Access" as shown on a sketch plan dated 12/14/06 [56] provided this pedestrian access location is consistent with that approved by the Bedford Conservation Commission. In addition, the Comprehensive Permit is granted based on the latest issue of the "Project Plans". In the event of

any inconsistencies between this Decision and the "Project Plans", this Decision shall prevail. The Project must be designed and built substantially in accordance with the Project Plans except as noted in paragraph 8.1 below.

- 5.2 The Project shall contain fourteen (14) rental units and project amenities on 4.2± acres as shown on the Project Plans. The 14 units are to be constructed in three buildings. Building A shall have 4 units, Building B shall have 6 units and Building C shall have 4 units.

Each unit shall include an attached one-car parking garage. There will also be a dedicated surface parking space for each unit directly in front of each unit's garage.

- 5.3 Of the fourteen (14) rental units, two (2) units shall be market rate units and twelve (12) units shall be Affordable Units. Both of the market rate units will be one bedroom units and shall be located on the ends of Building B. Eight of the Affordable Units shall be two bedroom units and four of the Affordable Units shall be three bedroom units. Of the Affordable Units, 2 two-bedroom units, and 2 three-bedroom units shall have project based Section 8 rental assistance and shall be leased to households with annual income at or below fifty (50%) of the applicable Median Family Income, adjusted for household size. The remaining 6 two bedroom and 2 three bedroom affordable units shall be High HOME units and shall be leased to households with annual income at or below sixty-five (65%) of the applicable Median Family Income, adjusted for household size.

The Project shall comply with the Resident Selection and Affordability Commitments required by Article 9 of the Town of Bedford Land Lease dated July 25, 2005.

Each one bedroom/one bath unit will have an approximate 1,006 sf residential living area. Each two bedroom/1.5 bath unit will have an approximate 1,355 sf residential living area. Each three bedroom /two bath unit will have an approximate 1,630 sf residential living area.

The twelve Affordable Units shall contain in perpetuity affordable housing restrictions in conformance with Mass. Gen. Laws c. 184, §§ 31-33, eight of which shall be reserved for occupancy by households earning at or below sixty five percent (65%) of the Boston-Cambridge-Quincy, MA-NH HMFA Median Family Income, adjusted for household

size and the remaining four Project Based Section 8 units shall be reserved for occupancy by households earning fifty percent (50%) of the Boston-Cambridge-Quincy, MA-NH HMFA Median Family Income, adjusted for household size. ("Affordable Units").

Maximum allowable rent levels for the Affordable Units shall be established in accordance with applicable Chapter 40B guidelines and any other more restrictive DHCD program guidelines and shall be reviewed and approved by the Monitoring Agent. Normal utilities (heat, hot water, water, natural gas, sewer and electricity) shall be included within the rent or a reasonable allowance for such utilities shall be established in determining allowable rent levels. The proposed rents reflect water and sewer being paid by the Owner and all other utilities being paid by the tenant. Utility allowances have already been incorporated into the stated rents. However, final rents and utility allowances shall be determined just prior to the time of occupancy.

Affordable unit tenants who are also handicapped shall have equal access to handicapped units on an as available basis. One of the three bedroom units shall be handicap accessible. The project shall satisfy the accessibility requirements of the Americans with Disabilities Act and Massachusetts Architectural Access Board.

Household eligibility shall be recertified on an annual basis in accordance with applicable program guidelines.

If a household renting an Affordable Unit no longer qualifies for the Affordable Unit, as defined by the Regulatory Agreement, then the lease will not be renewed at the termination of the lease and the Applicant shall make diligent effort to remove the over-income tenant (unless prohibited by the Section 8 program) and to lease the unit to a new income-qualified tenant. During the period prior to termination, the tenant shall be charged rent at the maximum rent allowed by the participating program criteria and/or Regulatory Agreement. In the event that the rent charged exceeds the affordable rental rate defined herein, and only to the extent that such excess is not consumed by the costs of eviction or documented operating costs associated with re-renting the unit, such excess shall be transferred to the Town of Bedford Affordable Housing Trust Fund.

All market-rate and affordable rental units shall remain rental units in perpetuity. A covenant documenting this requirement, approved by Town Counsel, shall be recorded in the Registry of Deeds prior to the issuance of any building permit.

- 5.4 The Applicant shall finance the project through sources such as the Applicant's own funds, MHP, DHCD, the HOME program and Town of Bedford CPA funds or any combination of such sources. Proposed funding of the project from any other source, in whole or in part, shall require review by and approval by the ZBA, in accordance with Chapter 40B regulations. The Affordable Units shall be available to families who meet the income qualifications of the selected financing program with initial rents as provided in Chapter I, Section 2 of this decision. Final rents will be based upon applicable Chapter 40B and DHCD guidelines at the time of project completion near the time of occupancy.
- 5.5 This Comprehensive Permit shall be filed in the Registry of Deeds prior to filing any financing or related documents imposed or requested by said Financing Agencies or any Subsidizing Agency, lender, mortgagee, or secured party. The terms of the Comprehensive Permit shall prevail over any contrary provisions in said financing or related documents, particularly insofar as the Comprehensive Permit requires that the Affordable Units shall remain affordable in perpetuity, and the Project shall remain rental housing as long as it exists to the full extent permitted by law unless such provisions are prohibited by Federal or State law. Applicant shall provide the ZBA and the Building Department with documentation of the filing of this decision or a copy of the decision with all recording information thereon.
- 5.6 The Applicant's representative (Management Company) shall serve as lottery agent and work with the Bedford Housing Partnership or designee in this capacity.

MHP or alternate entity shall serve as the Monitoring Agent for the project. The selection of any alternate entity as Monitoring Agent shall be subject to Board approval. Prior to conducting the lottery, the Applicant shall submit a final Lottery plan to the Monitoring Agent for its review and approval. The Applicant or designee shall simultaneously submit a copy of a final Lottery plan to the Bedford Housing Partnership for its review and comments, but not approval. The Applicant shall pay all Monitoring Agent costs.

To the maximum extent permitted by law and the HOME and Section 8 programs, the Applicant or designee shall market and give preference to renting affordable units to persons with a "Bedford preference". Bedford preference is defined as someone who meets one or more of the following criteria:

1. Present resident of Bedford;
2. Past resident of Bedford;
3. Current municipal employee of the Town of Bedford;
4. Parent of a Bedford resident as defined in 1. above;
5. Child of a Bedford resident as defined in 1. above;
6. Past or present enrollment of a member of the household in the Bedford Public Schools, including METCO students;
7. Active duty military personnel currently stationed at Hanscom Air Force Base.

Prior to the advertising of the Lottery Process, the Applicant or designee shall review its local preference selection procedures with the Bedford Housing Partnership or its designee to ensure compliance with this condition. The definition of "Bedford preference" may be modified as needed based upon the mutual and written agreement of the Town and the Monitoring Agent. However, any such modifications must be done in a timely manner so as to not impede any lottery activities or the rental of any Affordable Unit.

- 5.7 A Regulatory Agreement, consistent with the terms and conditions of this Comprehensive Permit, shall be submitted to the Town of Bedford Selectmen for its review and approval.
- 5.8 Once the lottery is complete, affordable tenants will be allowed to select their units from available designated affordable units of the type that the tenant is so qualified (2 or 3 bedroom unit). Applicant shall rent affordable units simultaneously with market rate units. To make this possible, the Applicant shall prepare and submit all Lottery-related materials in a timely manner and shall conduct the Lottery in a timely manner.

6. Site Design

- 6.1. The site layout, including all setbacks from property lines, shall conform to the Project Plans as modified by this Decision, including changes made by the Bedford Conservation Commission that are not inconsistent with the intent of this decision, particularly as related to pedestrian walkways, snow storage and drainage system design.
- 6.2 Landscaping shall be carried out substantially as shown on the Project Plans. The Applicant shall coordinate with the Tree Warden at the site to locate a maximum of seven (7) street trees, 2-2½-inch caliper, to be installed along the entrance driveway.
- 6.3 There shall be a minimum of 32 parking spaces on the site, of which 14 shall be garage spaces within the buildings, another 14 are driveway surface spaces at each unit and the final 4 are within a gravel paved area adjacent to the cul-de-sac. These four spaces are shall be reserved for visitors. No additional paving beyond that shown on the Project Plans shall be allowed. There shall be no parking in any area other than the designated 32 parking spaces

7. Storm Water Management/Environmental Impact

On-site snow storage areas shall be located generally as shown on the submitted Snow Storage plan [53]. In the event that the Conservation Commission further modifies the snow storage plan, that plan shall be acceptable without return to the ZBA for approval.

8. Town Services

- 8.1 The Applicant shall comply with all Federal, State and Local requirements for the installation of fire suppression/detection systems throughout the complex. The Applicant shall satisfy the Bedford Fire Department's fire suppression concerns as directed by the department.
- 8.2 The Applicant, its successors or assigns shall accept full responsibility for all maintenance of driveways, sidewalks and emergency access, including snow removal within the development.
- 8.3 The Applicant, its successors or assigns shall accept full responsibility for refuse removal from the development and

recycling services. Garbage will be collected from individual unit trash receptacles at curbside. All trash receptacles must be stored within the unit garages, except during the collection period. The use of dumpsters shall not be allowed except during the construction period.

9. Detailed Building Plan Review

- 9.1 Prior to issuance of a building permit, the Applicant shall submit a detailed set of architectural and engineering plans acceptable to the Town of Bedford Building Inspector. Said plans shall be in compliance with all conditions of this Decision and all building code requirements, including handicap access requirements.
- 9.2 Changes in the plans following the issuance of this decision shall be identified by the Applicant and submitted to the Town of Bedford Building Inspector, who may approve minor changes. If the Building Inspector, in his opinion, determines that the proposed change is a major change, the Applicant shall appear before the Board and present the change pursuant to Chapter 40B and its regulations.
- 9.3. Any substantial changes or modifications to this Comprehensive Permit shall only be made by the Board upon written request and upon holding a public hearing in accordance with the Comprehensive Permit Rules of the Town of Bedford and the provisions of Mass. Gen. Laws c. 40B, §21 and the provisions of 760 CMR 31.03. The Board will determine whether additional information and advice is necessary from other boards and officials in the event of such a substantial change, and will then determine whether the change or requested relief is to be approved and the decision amended accordingly. "Substantial change" for the purposes of this paragraph shall include, but not be limited to, all matters defined as substantial changes in 760 CMR 31.03 (2(a)). If it deems necessary, the Board may at the Applicant's expense retain consultants to review and advise the Board regarding any proposed changes.
- 9.4 A construction-phasing and construction mitigation plan shall be submitted with the final construction plans for approval by the Town of Bedford Building Inspector. The construction mitigation plan shall include, but not be limited to, a phasing plan, including a schedule for inspections, measures to control erosion and sedimentation, types and numbers of vehicles and vehicle trips involved

with construction, tree and brush clearing and grading and general site mitigation measures.

- 9.5 During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 7:00 p.m.; construction shall not commence on Saturdays before 8:00 a.m. and shall not continue beyond 6:00 p.m. There shall be no construction on any Sunday or federal legal holiday. For this condition, construction activities shall include, but not be limited to: arrival and/or start-up of equipment or machinery, arrival/delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; demolition of existing structures, if any; removal of stumps and debris; and erection of new structures.
- 9.6 Prior to any site work, if necessary, a street opening permit shall be obtained from the Department of Public Works. In addition, a water and sewer permit must be obtained prior to the issuance of each building permit.
- 9.7 Applicant must submit a written commitment that the selected Subsidizing Agency or its agent has approved construction and permanent financing for the Project.
10. Limited Dividend Restriction/Cost Certification/Monitoring Agent Requirements
- 10.1 The Applicant's Development Fee, Development Overhead, and Distributions from Operations (Cash Flow) shall be limited to the maximum allowable amounts permitted by the most restrictive Development Fee/Overhead and limited dividend requirements required by the terms of the Town of Bedford Request for Proposals for the subject site, the Town of Bedford Land Lease, the Town of Bedford Community Preservation Act guidelines, DHCD's Pilot Program guidelines, MHP financing program guidelines, any other applicable public financing or subsidy programs and the Chapter 40B regulations. All cost certification and limited dividend reporting requirements shall be prepared in conformance with Mass. Gen. Laws c. 40B cost

certification and limited dividend return reporting requirements. Copies of all required cost certification reports shall be submitted annually to the Town of Bedford.

10.2 Any limited dividend return that exceeds the maximum allowable 10 percent limited dividend return as regulated under the Chapter 40B limited dividend policy shall be paid to the Town of Bedford for deposit in the Affordable Housing Fund.

10.3 The Monitoring Agent for this project shall be MHP, or alternate designee of the Applicant. The selection of any alternate or successor designee shall be subject to Town of Bedford approval. The Applicant has agreed to enter into an agreement with an entity to serve as the Monitoring Agent to monitor the limited dividend restrictions imposed under Chapter 40B, and to monitor compliance of the development with the Comprehensive Permit, including eligibility requirements for the Affordable units. The Applicant has agreed that the content and format of such agreement, when executed, shall be subject to approval by the Selectmen and shall be submitted and approved prior to the issuance of any Building Permit.

Should the Monitoring Agent be dissolved or become incapable of or unwilling to monitor the project, or if the Monitoring Agent consistently fails to exercise reasonable care and diligence in carrying out its responsibilities, the Town and the Applicant or its successor shall have the right to mutually appoint a successor to serve as Monitoring Agent.

11. Maintenance of Storm Drainage System

The Applicant shall be responsible for the annual maintenance of the drainage system. The detention basins shall be inspected at least twice annually, once in the Spring and once in the Fall to ensure that they are operating as intended. Inspection and maintenance of the drainage system shall include inspection of the inlet and outlet structures, and the removal of any accumulated sediment. Catch basins shall be cleaned at least annually with a vacuum truck and the street swept annually, in the early spring after the street sanding is likely to have ended.

In the event that the Town determines that the Applicant has materially failed in its obligation to maintain the drainage system in accordance with an operations and maintenance plan to be submitted by the Applicant, the Town shall have the right, upon written notice to the Applicant (and the Applicant's subsequent failure to remedy the maintenance issue within fifteen (15) days of notice thereof) to enter upon the Site to perform the required maintenance.

12.0 Engineering Related Conditions

- 12.1. Consistent with the request of DPW as noted in its comment memo dated December 12, 2006, the following additional conditions are hereby incorporated to this decision.
- 12.2. Intersection Sight Distance Calculations shall be calculated and submitted to Bedford DPW.
- 12.3. The fire hydrant at the cul-de-sac shall be located to the satisfaction of the Bedford Fire Department and DPW.
- 12.4. All water, sewer and drainage materials and/or structures shall conform to ASTM Standards; such condition shall be noted in the project specifications.
- 12.5. The Applicant shall maintain brush along Concord Road to insure adequate intersection and stopping sight distances. Brush shall be trimmed back to maintain the most restrictive sight distance requirement along Concord Road.

- 12.6. A safety barrier in the form of a wooden guard rail, handrail, or similar restraint, shall be provided adjacent to any retaining wall with a height greater than forty-two (42) inches to avoid a potential injury to a pedestrian walking in the vicinity of the wall.
- 12.7. At the time of construction of the stormwater system, both the design engineer and the Bedford DPW shall be present to witness the sub-surface soil conditions. Any deviations from the test pit data that necessitates a design modification shall be reviewed and revised design approved by DPW.
- 12.8. Plan details requested by DPW in its comment dated December 12, 2006 [54] shall be added to the final construction plan set submitted to the Building Department and construction contractors.
- 12.9. Site lighting shall be of the cut-off type to avoid light trespass onto abutting properties and shall include house side shields, in accordance with the illumination provisions provided in the Bedford Sign Bylaw.
- 12.10. Final storm drainage engineering drawings shall be part of the Building Permit Application process.
- 12.11. A separate appropriately sized fire tank and pump is proposed to support sprinklers for fire fighting purpose in the units.
- 12.12. Drainage outfall structures, retaining walls, rip-rap and grading shall not be located closer than the 25-foot buffer to wetlands.
- 12.13. Impervious cover in the buffer zone shall not exceed 30% of the buffer zone area.

13. Additional Conditions

- 13.1 Applicant shall install and maintain a buffer behind building B to discourage trespass onto the adjacent residential parcel, known as Assessors Map 74 Lot 3. The buffer shall consist of natural grasses and/or wildflowers along the property line in combination with clustered evergreen trees and deciduous shrubs as shown on schematic landscape plan. In addition, Applicant shall install

sections of split rail or similar type fencing intermittently behind Building B to visually mark the property line.

- 13.2 The Applicant shall seek the advice of the Bedford Arbor Resource Committee in identifying trees on the site that the Applicant should attempt to save.
- 13.3 In accordance with the recommendation of the Bedford Board of Health, the Applicant shall implement a reasonable mosquito control plan. Said mosquito control shall be in a manner consistent with the recommendations of the regional mosquito control project (East Middlesex Mosquito Control Project, Waltham, MA).
- 13.4 All snow storage shall be outside the 25-foot buffer zone. No salt shall be permitted for treatment of stored snow.
- 13.5 The Applicant shall utilize only clean fill and shall notify the Building Inspector regarding the timing for delivery of the fill at least 48 hours in advance to allow the opportunity for inspection.

14. Town of Bedford Land Lease

Applicant shall comply with the Town of Bedford Land Lease dated July 25, 2005.

15. General

The term "Applicant" as set forth herein shall mean the Applicant, its heirs, successors and assigns. The provisions of this Comprehensive Permit shall be binding upon the successors and assigns of 447 Concord Road, LLC, and the obligations shall run with the land. In the event that the Applicant sells, transfers or assigns any of its interest in the Project, this Comprehensive Permit shall be binding upon the purchaser, transferee or assignee. The provisions and limitation of the Limited Dividend Organization shall apply to the Project regardless of sale, transfer or assignment. The final Project audit shall include all costs, profits and fees incurred as part of all sales, transfers or assigns. The affordability component conditioned herein and within the Regulatory Agreement shall survive foreclosure and bankruptcy of the Applicant, its successors, and assigns.

16. Lapse

In accordance with the powers conferred on the Board by 760 C.M.R. 31.08(4), if construction authorized by this decision has not commenced within three (3) years of the date on which this Decision becomes final, the permit granted by this decision shall lapse. Commencement of construction shall be defined as commencement of work on utilities and/or roadways. Notwithstanding this condition, the Board may grant an extension of this deadline on a written request from the Applicant.

17. Recording

This Decision with its conditions shall be recorded with the Middlesex South Registry of Deeds. The decision shall run with the land and be binding on the Applicant and/or its successors or assigns and shall be recorded senior to any other liens.

Eugene C. Brune

Attest Middlesex S. Register