



**TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS**

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TOWN BUILDING
41 Cochituate Road
TELEPHONE: (508) 358-3600
FAX: (508) 358-3606

AMENDED DECISION 07-35a

APPLICANT/PETITIONER 373 Commonwealth Road LLC

I, E. Michael Thomas, Member of the Board, certify that, in accordance with Massachusetts General Laws, Chapter 40A, Section 11, published in the Town Crier, a newspaper of general circulation in Wayland, on December 20, 2007, and on December 27, 2007, and that notice by mail, postage prepaid, was sent to the applicant/petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list and to the Wayland Planning Board on December 20, 2007. I further certify that notice of the Decision was mailed to each of the parties in interest as above designated on February 18, 2009.

E. Michael Thomas, Member

The record and decision was received and recorded as a public record on

2/18/09

TOWN CLERK, WAYLAND, MASSACHUSETTS

TOWN CLERK/ASSISTANT

A TRUE COPY ATTEST

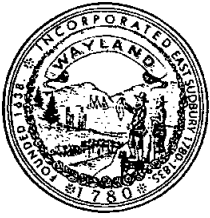
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Decision 07-35a
Page 1 of 26



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01778
BOARD OF APPEALS

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[Signature]

TOWN CLERK
TOWN OF WAYLAND

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COMMONWEALTH RESIDENCES
COMPREHENSIVE PERMIT DECISION - CORRECTED¹
AMENDED CASE #07-35a

RE: Application of 373 Commonwealth Road LLC for a Comprehensive Permit
/duna.

DATE: February 18, 2009

LOCATION: Assessors Map 52, Parcels 154 and 155; known and numbered as
371-373 Commonwealth Road, Wayland, Massachusetts

TITLE REFERENCE: Middlesex South Registry of Deeds Book 40691, Page 78 and Book
50004, Page 14.

PROCEDURAL HISTORY

1. On December 10, 2007, 373 Commonwealth Road, LLC (hereinafter, the "Applicant", which, as set forth herein, shall include its heirs, successors, transferees, and assigns) applied for a comprehensive permit from the Zoning Board of Appeals ("ZBA") pursuant to M.G.L. c. 40B, §§20-23 to construct an affordable housing project at the property located at 371-373 Commonwealth Road in the Town of Wayland (the "Application"). The Applicant proposed to construct and maintain a 56 rental units in one building to be called "Commonwealth Residences" (the "Development"). The Development would be located on what are now two parcels of land, containing a total of approximately 3.14 acres, being shown on Town of Wayland Atlas Plate 52, as Parcels 154 and 155 (the "Site" or "Property"). The Development has frontage on a public way, Commonwealth Road or Route 30, which provides access to the Site. The Site is within a single-family residential zoning district (R30) as set forth in the Town of Wayland Zoning By-Laws and the Zoning Map referenced therein ("the By-Laws").

2. A notice of the public hearing on this application, a true copy of which is on file in the Office of the Town Clerk, was:

¹ This corrected decision supersedes and replaces the ZBA's Decision re: Case #07-35 dated January 27, 2009. It differs from said decision in that 1.) in General Condition 1. b. on Page 11, the number of sheets in the Project Plans "(6)" has been replaced with "(7)"; 2.) the superfluous "has" in Condition 25(k) on Page 8 has been stricken; 3.) the word "signs" in Condition 25(s) on Page 20 has been made singular; and 4.) the word "on" has been replaced with "of" in both places that it appeared in the eighth line of Condition 36 on Page 22.

- a. Published in The Town Crier, a newspaper with general circulation in the Town of Wayland on December 20, 2007 and December 27, 2007;
- b. Posted in a conspicuous place in the Wayland Town Building on December 20, 2007, which was at least fourteen (14) days prior to the first session of the hearing at which evidence was received; and fourteen (14) days before the first session of the hearing at which evidence was received; and
- c. On December 20, 2007, which was at least fourteen (14) days prior to the first session of the hearing at which evidence was received, notice was mailed to the Applicant, abutters, owners of land directly opposite the property in question on any public or private street or way, abutters and abutters to the abutters within three hundred (300) feet of the subject property, the Planning Boards of the abutting towns. The notice was mailed to the names and addresses shown on the most recent tax list provided by the Assessors Office.

A public hearing was opened on January 8, 2008 date and continued to the following dates:

February 26, 2008;
 April 1, 2008;
 June 2, 2008;
 July 22, 2008;
 September 9, 2008;
 October 14, 2008;
 November 18, 2008;
 December 16, 2008;
 January 15, 2009; and
 January 27, 2009.

All continuances of the public hearing were agreed to by the Applicant.

3. The public hearing was closed on January 27, 2009.
4. The following documents and exhibits were submitted and received on behalf of the Applicant and/or its consultants and representatives, the Town and/or its consultants and parties in interest or other residents of the Town during the public hearing and are hereby incorporated by reference in this decision, for reference purposes:

a. Applicant's Submittals:

- Application for Comprehensive Permit, dated December 10, 2007, enclosing:
 1. Application form;
 2. Check payable to Town of Wayland for filing fee;
 3. Memorandum of Report on Existing Conditions dated December 10, 2007;
 4. LLC Documentation;

5. Project Eligibility Letter dated July 11, 2007;
 6. Deeds for 371 and 373 Commonwealth Road;
 7. Draft List of Requested Exemptions, Waivers and Permits;
 8. Superseding Order of Resource Area Delineation, dated October 25, 2007;
 9. List of Project Team Members with Contact Information;
 10. Lighting fixture and lamppost specifications;
 11. "Traffic Impact Study," prepared by Conley Associates, Inc., dated December 2007;
 12. "Hydrogeologic Mounding Analysis," prepared by JGI Eastern, Inc., dated November 9, 2007;
 13. "Preliminary Plans 'Commonwealth Residences,' Wayland, Massachusetts," prepared by Schofield Brothers of New England, Inc., dated December 7, 2007:
 - a. "Topographic Plan of Land in Wayland, Massachusetts," prepared by Schofield Brothers of New England, Inc., dated May 1, 2006, with revisions through September 29, 2006;
 - b. Sheet CE-1, "Building and Parking Layout Plan," prepared by Schofield Brothers of New England, Inc., dated December 7, 2007;
 - c. Sheet CE-2, "Proposed Grading and Drainage Plan," prepared by Schofield Brothers of New England, Inc., dated December 7, 2007;
 - d. Sheet CE-3, "Site Utilities Plan," prepared by Schofield Brothers of New England, Inc., dated December 7, 2007;
 - e. Sheet L-1, "Schematic Planting and Lighting Plan," prepared by Larson Associates Landscape Architects, dated December 7, 2007;
 14. Preliminary Architecture Plans entitled "Commonwealth Residences, 373 Commonwealth Road, MA," prepared by O'Sullivan Architects, Inc., dated December 7, 2007, sheets 1-7:
 - a. Elevation Plan - North and South;
 - b. Elevation Plan - East and West;
 - c. Garage Level Plan;
 - d. First Floor Plan;
 - e. Second Floor Plan;
 - f. Third Floor Plan;
 - g. Typical Unit Floor Plans
- Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated January 11, 2008 regarding Marchionda & Associates, L.P. peer review
 - Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated January 29, 2008, enclosing Conley Associates, Inc.'s First Supplement to Traffic Impact Study, dated January 23, 2008
 - Responsiveness Submission No. 1, dated February 19, 2008
 - Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated February 27, 2008, enclosing:
 1. Photographs of 373 Commonwealth Road and Environs;
 2. 367 Commonwealth Road - Schematic Planting, Fencing and Lighting Plan; and
 3. Lighting Product Specifications Report

Decision 07-35a

Page 4 of 26

- Letter from Brian C. Levey, Esquire to Eric Knapp, Chairman of Wayland Board of Road Commissioners, dated March 6, 2008 regarding review by Board of Road Commissioners
- Letter from Brian C. Levey, Esquire to Kevin Chu, dated March 7, 2008 regarding sidewalk installation on Commonwealth Road
- Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated March 20, 2008 regarding Notice of Intent
- Responsiveness Submission No. 2, dated March 24, 2008
- Joseph Walsh Memorandum to Zoning Board of Appeals, dated March 24, 2008
- Letter from Brian C. Levey, Esquire to Michael H. Jacobs of MHJ Associates, dated March 27, 2008 regarding appraisals
- Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated March 28, 2008, enclosing:
 1. Series of four revised landscape plans entitled, "Commonwealth Residences," prepared by Larson Associates Landscape Architects and dated March 24, 2008;
 2. Memorandum regarding Fire and Life Safety Compliance prepared by Joseph J. Walsh, AIA, and dated March 24, 2008;
 3. Series of three plans entitled "Fire Truck Turn Around," prepared by Schofield Brothers of New England, Inc. and dated March 12, 2008;
 4. Sketches of parking area entitled, "Exhibit Plan," prepared by Schofield Brothers of New England, Inc. and dated March 20, 2008;
 5. Section diagrams showing fire ladder access entitled, "Section through Front Parking and Building," and alternates, prepared by O'Sullivan Architects, Inc. and dated March 14, 2008;
 6. Diagram entitled "Elevator Cab Plan," prepared by O'Sullivan Architects, Inc. and dated March 19, 2008;
 7. Plan entitled "Roof Floor Plan," prepared by O'Sullivan Architects, Inc. and dated March 14, 2008;
 8. Plan entitled "Garage Level Plan," prepared by O'Sullivan Architects, Inc., dated December 7, 2007, with revisions through March 14, 2008;
 9. Plan entitled, "First Floor Plan," prepared by O'Sullivan Architects, dated December 7, 2007, with revisions through March 14, 2008;
 10. Plan of land entitled "Building and Parking Layout Plan," prepared by Schofield Brothers of New England, Inc., dated December 7, 2007 with revisions through March 4, 2008;
 11. "Trip Generation Worksheet," prepared by Conley Associates;
 12. Parking survey entitled "The Goddard School, Anticipated Staff Parking Pattern, Wayland, MA";
 13. Letter dated March 21, 2008 from Richard A. Mason, Deputy Director of Lending, Massachusetts Housing Partnership to Mr. Russell Tanner enclosing appraisals commissioned by Massachusetts Housing Partnership for 371 Commonwealth Road (Uniform Residential Appraisal Report dated as of March 21, 2007) and 373 Commonwealth Road (The Appraisers Group, Complete Self-Contained Appraisal Report dated as of March 1, 2006); and
 14. Exhaust Fan Specifications entitled "Typical Installations"

Decision 07-35a

Page 5 of 26

- Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated May 21, 2008, enclosing the Supplemental Hydrogeological Mounding Analysis for Commonwealth Residences prepared by JGI Eastern, Inc.
- Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated May 29, 2008, enclosing:
 1. Responsiveness Submission No. 3, dated May 27, 2008;
 2. Letter from Mark J. Lanza, Wayland Town Counsel, to the Board of Health dated May 20, 2008;
 3. Letter from Mark J. Lanza, Wayland Town Counsel, to the Board of Health dated May 16, 2008;
 4. Letter from James A. Ierardi, Ph.D., P.E. to Wayland Zoning Board of Appeals dated May 27, 2008;
 5. Resume for James A. Ierardi, Ph.D., P.E. of R.W. Sullivan, Inc.;
 6. Memorandum from Brian C. Levey, Esq. and Krista A. Hawley, Esq. to Wayland Zoning Board of Appeals dated May 27, 2008;
 7. Memorandum from Russell Tanner, Principal of R. Tanner Consulting to Wayland Zoning Board of Appeals dated May 27, 2008; and
 8. Photographs of other suburban, multi-family projects referenced in Mr. Tanner's Memorandum
- Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated June 17, 2008, enclosing "Lighting Layout Plan," prepared by Warner Larson Landscape Architects and dated June 13, 2008
- Responsiveness Submission No. 4, dated July 15, 2008
- Letter from Brian C. Levey, Esquire to E. Michael Thomas, dated July 21, 2008, enclosing:
 1. Phase I Environmental Site Assessment, 371-373 Commonwealth Road, Wayland Massachusetts, prepared by Goldman Environmental Consultants, Inc. ("GEC") for 373 Commonwealth Road, LLC, and dated May 20, 2008; and
 2. GEC Supplemental Phase I Environmental Site Assessment dated July 10, 2008
- Memorandum from Schofield Brothers to Wayland Board of Appeals and dated July 22, 2008 re: Building Masses
- Responsiveness Submission No. 5, dated September 2, 2008
- Letter from Michael R. Burke (Terracon Consulting Engineers) to E. Michael Thomas, dated September 2, 2008
- Memorandum from Brian C. Levey, Esq., to Wayland Zoning Board of Appeals and dated December 15, 2008, re: Final, Conceptual Building Plan Options
- Letter from Jeanine L.G. Grachuk, Esq., to E. Michael Thomas, dated January 21, 2009.

b. Town Department Correspondence:

- Letter from Frederic Turkington, Jr., Town Administrator dated March 7, 2006 to Richard A. Mason of the Massachusetts Housing Partnership in comment of the Comprehensive Permit.

Decision 07-35a

Page 6 of 26

- Interoffice Memo from Robert Irving, Chief of Police dated December 17, 2007
- Interoffice Memo from Joy Buhler dated January 8, 2008 to Daniel Bennett commenting for the school department.
- Interoffice Memo from Nancy McShea dated January 8, 2008 to Dan Bennett with comments from the Recreation Department.
- Memo from Steve Calichman, Director of Public Health dated January 8, 2008 to the ZBA with comments regarding Board of Health.
- Interoffice Memo from Brian Monahan, Conservation Administrator dated January 8, 2008 to ZBA commenting for the Conservation Commission.
- Interoffice Memo from Stephen Kadlik, Director of Highway Operations dated January 9, 2008 to Daniel Bennett for recommendations of this Comprehensive Permit.
- Interoffice Memo of comments from Robert F. Loomer, Fire Chief dated January 9, 2008 to Daniel Bennett.
- Interoffice Memo from Daniel Bennett dated January 24, 2008 to the ZBA listing documents and information missing from application of the Comprehensive Permit.
- Interoffice Memo from Stephen Kadlik, Director of Highway Operations dated February 4, 2008 to Daniel Bennett with additional recommendations.
- Memo from Don Millett, Acting Superintendent dated February 21, 2008 to Daniel Bennett with comments for the Water Department.
- Letter to Zoning Board of Appeals from Wayland Housing Authority dated March 30, 2008 regarding comments to this project.
- Memo from Steve Calichman, Director of Public Health dated June 3, 2008 to the ZBA with recommendations of requested waivers
- Interoffice Memo from Joseph Laydon, Town Planner dated July 15, 2008 with comments from the Planning Board.
- Memorandum from Brian J. Monahan, Conservation Administrator, dated January 14, 2009 to the ZBA regarding requested waivers.

c. Town Consultants' Correspondence:

- Letter from Marchionda & Associates dated February 11, 2008 to Daniel Bennett
- Letter from Coughlin Environmental Services, LLC dated February 11, 2008 to Daniel Bennett regarding the Hydrogeologic Mounding Analysis.
- Letter from TEC dated February 25, 2008 to Daniel Bennett regarding the Traffic Engineering Review.
- E-Mail from Sean Kennedy of Terracon dated April 25, 2008 to Daniel Bennett regarding information on the soil horizons and groundwater levels.
- Staff Report from Joseph Laydon, Town Planner dated June 1, 2008.
- Letter from Coughlin Environmental Services, LLC dated July 14, 2008 to Daniel Bennett regarding the septic system mounding.

d. Neighborhood and Public Comments:

- E-mail from Ted Hatch of 201 Willow Brook Drive sent January 8, 2008 to Daniel Bennett regarding their opposition to the project.
- E-mail from Cynthia Lavenson of 40 Mitchell Street sent January 9, 2008 to James Grumbach and forwarded to Daniel Bennett regarding their concerns.

- Letter dated February 9, 2008 from Robert & Patricia Schofield of 13 Oak Street to the Zoning Board of Appeals regarding their concerns.
- Letter dated February 10, 2008 from Pauline M. DiCesare of 35 Dean Road to the Zoning Board of Appeals regarding their concerns.
- Letter dated February 10, 2008 from Carol & Richard Repose of 14 Dean Road to the Building Commissioner regarding their concerns and opposition to the project.
- Letter dated February 14, 2008 from Michele Holbrook of 315 Willow Brook Drive to the Daniel Bennett regarding their concerns.
- Letter dated February 14, 2008 from Carol Kee of 378 Commonwealth Road to Daniel Bennett regarding several issues.
- Letter dated February 15, 2008 from Warren Kindred of 4 Dean Road to Daniel Bennett with a summary of their concerns.
- E-mail from Alexia Obar of 18 Dean Road sent February 15, 2008 to Daniel Bennett stating their concerns.
- Letter dated February 15, 2008 from Robert Lurie, President of the Board of Trustees for the Willow Brook Condominiums to Daniel Bennett regarding their concerns.
- Letter dated February 15, 2008 from Susan Bernstein (Attorney representing residents) to the Zoning Board of Appeals with comments and concerns of the neighborhood.
- Letter received February 16, 2008 from Steven & Carrie Antonini of 17 Oak Street to Daniel Bennett commenting on the project.
- Letter dated February 28, 2008 from Pauline M. DiCesare of 35 Dean road to the Zoning Board of Appeals in response to comments dated February 19, 2008.
- Letter dated March 4, 2008 from Carl King (Attorney for residents) to Zoning Board of Appeals stating comments and suggestions in response to Mr. Grumbach's request.
- Letter dated March 12, 2008 from Paul Pescosolido of 374 Commonwealth Road to Daniel Bennett stating his concerns of this project.
- Letter dated March 13, 2008 from Kevin Chu to Brian Levey (Attorney for applicant) denying the applicant's request for two easements on his property.
- Letter dated March 14, 2008 from Lorna Hebert of 18 Snake Brook Road to the Zoning Board of Appeals stating her concerns of the project.
- Letter dated March 17, 2008 from Carol Kee of 378 Commonwealth Road to Daniel Bennett stating concerns about health and life/safety issues.
- Letter dated March 18, 2008 from Susan Bernstein (Attorney for residents) to Zoning Board of Appeals submitting a third set of comments.
- Letter dated March 18, 2008 from Carole Plumb of 17 Bald Rock Road to Daniel Bennett writing in opposition of the project.
- Questions submitted on April 4, 2008 by Robert & Diane Michelson of 19 Dean Road to the Zoning Board of Appeals.
- Letter dated April 8, 2008 from Renate B. Breuning of 129 School Street to the Zoning Board of Appeals with concerns about the traffic issues.
- Letter dated April 18, 2008 from Susan Bernstein to Steve Calichman, Director of Board of Health regarding septic comments.
- Letter dated May 16, 2008 from Susan Bernstein to the Zoning Board of Appeals with new issues and concerns.
- Letter dated June 12, 2008 from Carl King to the Zoning Board of Appeals regarding fire issues.

- Letter dated July 14, 2008 from Susan Bernstein to the Zoning Board of Appeals with a fifth comment letter.
- Letter dated July 14, 2008 from Susan Bernstein to the Conservation Commission regarding DEP File #NE-0699.
- Letter dated July 22, 2008 from Carol Kee of 378 Commonwealth Road to Zoning Board of Appeals regarding the flooding along Commonwealth Road.
- Letter dated July 22, 2008 from Susan Bernstein to the Conservation Commission regarding DEP File #NE-0699.
- Letter dated July 22, 2008 from Susan Bernstein to the Zoning Board of Appeals regarding comments from peer review on septic system mounding study.
- Letter dated July 24, 2008 from Susan Bernstein to the Zoning Board of Appeals with further explanation of comments to mounding summary.
- Letter dated January 15, 2009 from David MacIntosh of 6 Dean Road to the Zoning Board of Appeals.

Any document or other evidence received during the public hearing not listed above is unintentionally omitted. All documents and plans received during the public hearing are part of the record on file relative to this decision.

During the public hearing and/or through written submissions, the Applicant, through its manager, J. Matthew O'Connor; its attorney, Brian C. Levey, Esq., Beveridge & Diamond, P.C.; its engineer, Fred King, P.E., of Schofield Brothers of New England; its architect, Joseph J. Walsh, AIA, O'Sullivan Architects; its landscape architect, Gary Larson, R.L.A., Warner Larson Associates; its traffic engineer, Brian J. Beisel, Connelly Associates; its hydrogeologist, Michael R. Burke, PG, LSP, Terracon Consulting Engineers and Scientists; its fire protection expert, James A. Ierardi, Ph.D., P.E., R.W. Sullivan, Inc.; and its 40B consultant, Russ Tanner, R. Tanner Consulting, presented the ZBA with the Applicant's plans and supporting materials. Representatives of the Applicant were present at all sessions of the public hearing at which evidence was presented and received.

Pursuant to M.G.L. c. 44, §53G and its rules and regulations relative to comprehensive permits, at the Applicant's expense, the ZBA engaged the services of and received advice from the following consultants concerning the following aspects of the Applicant's proposed project:

- Civil Engineers: John Barrows, P.E., Marchionda Associates, LP, Stoneham, MA;
- Hydrogeologist: Daniel J. Coughlin, P.E., Coughlin Environmental Services, LLC, Stoneham, MA;
- Traffic Engineer: Kevin R. Dandrade, P.E., PTOE, TEC, Inc. Lawrence, MA;
- Special Legal Counsel: Mark J. Lanza, Esq., Concord, MA; and
- Chapter 40B and Financial Consultant: Michael Jacobs of MHJ Associates, Brookline, MA

The ZBA sought and received input and recommendations relative to the Applicant's proposed Development from various Town boards, committees and officials including the Board of Selectmen, Planning Board, Board of Health, Conservation Commission, Building Commissioner, Fire Department, Police Department, Water Department, Board of Road Commissioners, Wayland Housing Authority, Wayland Public Schools, Park and Recreation Department, Building Commissioner and the Wayland Housing Authority.

Parties in interest, persons residing in the area of the Subject Property and other residents of the Town appeared at the public hearing and gave the ZBA input relative to the anticipated impacts of the proposed Development.

During the public hearing, the Applicant agreed to make numerous revisions to its plans for the Development in response to concerns, comments and recommendations made by the ZBA, other Town boards and committees, Town officials, the ZBA's consultants, parties in interest and other persons residing in the area of the Property.

A working group composed of representatives of both the Town and Applicant met on September 5, October 1, October 10, and November 13 2008 to discuss various project changes. The Town was represented in the working group by individuals including ZBA Chairman E. Michael Thomas, Building Commissioner Daniel Bennett, 40B consultant Michael H. Jacobs, Conservation Administrator Brian Monahan, Town Planner Joe Laydon, and Fire Chief Robert Loomer. The Applicant was represented by 40B consultant Russell Tanner, Fred King, P.E., Joseph J. Walsh, AIA, and Matt O'Connor. The results of these meetings were reported back to the ZBA and the public during the public hearing and all results of those meetings were incorporated into the public record.

The ZBA deliberated on this decision at its meeting on January 27, 2009 (after closing the public hearing), and made the following findings and decision based on the evidence submitted at the public hearing.

FINDINGS

1. The Applicant submitted the following information pursuant to 760 CMR 56.00:²
 - a. Information demonstrating that it is or will become a "limited dividend corporation" by executing a Regulatory Agreement as that term is used in M.G.L. c. 40B, § 21 and 760 CMR 56.04(1)(a) prior to the issuance of any building permits to construct the building authorized by this comprehensive permit;
2. The application for the Development was filed on December 10, 2007, prior to the effective date of the new M.G.L. c. 40B regulations (February 22, 2008), 760 CMR 56.00. However, these new regulations apply to the Development, with certain exceptions, as set forth in 760 CMR 56.08(3)(d).

- b. The project eligibility determination letter dated July 11, 2007, issued by the Massachusetts Housing Partnership ("MHP"), hereinafter referred to as the "Eligibility Letter," establishing fundability by a subsidizing agency under a low and moderate income housing program pursuant to 760 CMR 56.04(1)(b); and
 - c. Information demonstrating that it has "control of the site" as that term is used in 760 CMR 56.04(1)(c), by virtue of a deeds recorded in the Middlesex South Registry of Deeds into 373 Commonwealth Road, LLC for 371 Commonwealth Road (deed dated August 23, 2007 and recorded at Book 50004, Page 14) and for 373 Commonwealth Road (deed dated August 26, 2003 and recorded at Book 40691, Page 78).
 2. Less than ten percent (10%) of the total number of housing units in the Town of Wayland are "low or moderate income housing" units within the meaning of M.G.L. c. 40B, § 20 or 760 CMR 56.03(1)(a) and 56.03(3)(a).
 3. Low or moderate income housing does not exist on sites comprising one and one-half percent (1.5%) or more of the total land area in the Town of Wayland zoned for residential, commercial or industrial use per 760 CMR 56.03(1)(a) and 56.03(3)(b).
 4. The approval of the Applicant's Development would not result in the commencement of construction of low or moderate income housing on sites comprising more than three-tenths of one percent (3/10th's of 1%) of the total land area in the Town of Wayland zoned for residential, commercial or industrial use or ten (10) acres, whichever is larger, in any one calendar year per 760 CMR 56.03(1)(a) and 56.03(3)(c).
 5. At least .75% of housing units have not been produced in the Town within the last year in accordance with a Massachusetts Department of Housing and Community Development ("DHCD") approved affordable housing plan per 760 CMR 56.03(1)(b) and 56.03(4).³
 6. Nor is the Development barred by any of the following quantitative measures: 760 CMR 56.03(1)(c) and 56.03(5)(Recent Progress), 760 CMR 56.03(1)(d) and 56.03(6)(Large Project),⁴ and 760 CMR 56.03(1)(e) and 56.03(7)(Related Application).
 7. The Site will be accessed from Route 30 as shown on the plans entitled "Preliminary Plans, 'Commonwealth Residences,' Wayland, Massachusetts" prepared by Schofield Brothers of New England, dated December 7, 2007, consisting of six (6) sheets (Cover Sheet and Locus Map, Existing Conditions Plan entitled "Topographic Plan of Land in Wayland, Massachusetts," and CE-1 through CE-3), as modified by a plan entitled "Commonwealth Residences, Exhibit Plan, Building Modifications and Possible Site Changes," sheet EX-2, prepared by Schofield Brothers of New England, dated September 29, 2008 and revised January 20, 2009 (hereinafter
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3. Per 760 CMR 56.08(3)(d), the change in the goal for annual housing production found in 760 CMR 56.03(4)(c)(2) from .75% to .50% does not apply to the Development.
 4. Per 760 CMR 56.08(3)(d), the change in the numeric standard for Large Projects found in 760 CMR 56.03(6)(d) does not apply to the Development.

referred to as the "Site Plans"), which are hereby incorporated into and made a part of this decision, including any revisions thereto necessitated by this decision.

8. At the time the application was filed, the Site contained two structures, a one-story brick building that formerly was used as a 58-bed nursing home at 373 Commonwealth Road and a one and one-half story, wood-framed, single-family home at 371 Commonwealth Road. These buildings covered 15,439 square feet of the Site while pavement, walks and patios covered an additional 24,578 square feet. The total impervious surface on the Property was 40,026 square feet or 29.1 percent of the Site. The existing conditions of the Property are shown on the "Topographic Plan of Land in Wayland, Massachusetts" included in the Site Plans, except that that plan does not reflect the demolition of the single-family home at 371 Commonwealth Road.
9. The Property is zoned Single-Family Residential.
10. Certain provisions of the Bylaws, the Board of Health's Rules and Regulations and the Town's Wetlands and Water Resource Protection By-Law, Wetlands and Water Resources Rules and Regulations as applied to the Applicant's proposed Development, are not consistent with local housing needs.
11. If developed in accordance with the conditions set forth herein, the proposed Development will be consistent with local housing needs.

DECISION

Pursuant to M.G.L. c. 40B, §§20-23, based on the above findings and the evidence submitted at the public hearing, the ZBA hereby grants a comprehensive permit to the Applicant for the construction and maintenance of fifty-two (52) rental units with eighty-two (82) bedrooms in one building with ninety-eight (98) parking spaces at the Site including twenty-five (25) percent or thirteen (13) Affordable Units. Of the 52 units, there will be a total of four (4) three-bedroom units, twenty-two (22) two-bedroom units, twenty-two (22) one-bedroom units, and four (4) studio units, in a single building, with associated infrastructure and improvements, subject to the following conditions. The thirteen (13) affordable units shall be spread among the three-bedroom, two-bedroom, one-bedroom and studio units such that twenty-five (25) percent of each type of unit will be affordable. At the Applicant's option, one studio unit may be converted to a management/maintenance office and up to 25 percent of the parking spaces may be converted to compact parking spaces.

General Conditions

1. The Property, as shown on the Site Plans and the following plans, shall not be substantially changed, altered, or reconfigured or used in any way, except as provided in this Comprehensive Permit:
 - a. A plan entitled "Final Schematic Planting and Lighting Plan, Commonwealth Residences, Wayland, Massachusetts," prepared by Warner Larson Landscape Architects, dated October 14, 2008 and revised January 21, 2009, consisting of two (2) sheets (L-1 and L-2) (the "Landscaping Plans");

b. Plans entitled "Commonwealth Residences, 373 Commonwealth Road, Wayland, MA," prepared by O'Sullivan Architects, Inc., consisting of seven (7) sheets which are as follows:

- i. North/South Elevations, Proposed Option 1, dated December 16, 2008 and revised January 7, 2009;
- ii. East/West Elevations, Proposed Option 1, dated December 16, 2008 and revised January 7, 2009;
- iii. Garage Level Plan, dated December 16, 2008 and revised January 7, 2009;
- iv. First Floor Plan, dated December 16, 2008 and revised January 7, 2009;
- v. Second Floor Plan, dated December 16, 2008 and revised January 7, 2009;
- vi. Third Floor Plan, dated December 16, 2008 and revised January 7, 2009; and
- vii. Roof Floor Plan, dated March 14, 2008 and revised January 7, 2009 (the "Architectural Plans");

c. A plan entitled "Plan of Land in Wayland, Massachusetts," prepared for 373 Commonwealth Road, LLC by Schofield Brothers of New England, and dated January 8, 2009.

The Site Plans and the plans or plan sets listed above shall be referred to collectively as the "Project Plans."

The Development shall be constructed in substantial conformance with the Project Plans and this Decision. Minor or *de minimis* changes or modifications may be made, without review and approval by the ZBA upon approval of the Building Inspector. For purposes of this decision minor or *de minimis* changes or modifications include but are not limited to those which:

- a. vary from a dimensional requirement, limitation or condition stated in terms of feet by six inches or less;
- b. vary from a dimensional requirement, limitation or condition stated in terms of square feet by one-half of one percent or less; or
- c. vary from a dimensional requirement, limitation or condition stated in terms of a percentage of a whole by one-half of one percent or less.

Any changes or modifications, which are not minor or *de minimis* may only be made after review and approval by the ZBA pursuant to a written application by the Applicant. Within twenty (20) days after receipt of any such application, the ZBA, without a hearing, shall determine whether such proposed change or modification (other than minor or *de minimis* changes) is substantial or insubstantial in accordance with 760 CMR 56.00 regulations and guidelines, and notify the Applicant of its ruling. If the change or modification is determined to be insubstantial, the ZBA may act on it, without a hearing. If the ZBA determines that the proposed change or modification is substantial, the ZBA shall hold a hearing and act on it in accordance with 760 CMR 56.05(11). Notwithstanding the foregoing, at the Applicant's option, and without any further approval of the ZBA, may convert one studio unit to a management/maintenance office and/or convert up to 25 percent of the parking spaces into compact parking spaces.

Decision 07-35a

Page 13 of 26

2. Duly authorized agents of the Town, including, but not limited to the Building Commissioner, the Fire Chief, and their respective assistants and staff, shall have the right, with reasonable notice to the Applicant or its on-site project manager, which notice may be oral, to enter upon the common areas of the Property and any common areas of the buildings thereon to ensure compliance with the terms and provisions of this Comprehensive Permit.
3. During construction, all local, state and federal laws and regulations shall be followed regarding noise (by concussion or otherwise), vibration, dust and blocking Town ways. At all times the Applicant shall use reasonable means to minimize inconvenience to the residents in the area of the Site. Construction shall not commence on any day before 7:00 A.M. and shall not continue beyond 6:00 P.M. There shall be no construction or other related activities, which are audible to persons off-site on any Sunday or state or federal legal holiday. All trucks delivering earth materials of any type to the Site shall be covered in compliance with state law.
4. The Applicant shall comply with all by-laws, rules and regulations, guidelines and codes of the Town and rules, regulations, codes and laws of the Commonwealth of Massachusetts pertaining to the development of the Site and all pertinent requirements of the Americans with Disabilities Act ("ADA") or other applicable federal laws, unless specifically waived herein.
5. Before beginning construction under this Comprehensive Permit, the Applicant shall:
 - a. Furnish evidence to the Building Commissioner, adequate in the opinion of the Town Counsel, that Applicant is a limited dividend organization.
 - b. Furnish evidence to the Building Commissioner, adequate in the opinion of Town Counsel, that the status of the Development has been preserved as fundable by a subsidizing agency under a low and moderate income housing as set forth in the MHP approval referenced above or any substitute project eligibility letter and that all necessary extensions have been granted.
6. Prior to the issuance of a building permit under this Comprehensive Permit, the Applicant shall furnish evidence to the Building Commissioner that a copy of this decision has been recorded with the Middlesex South Registry of Deeds.
7. Prior to the issuance of a building permit under this Comprehensive Permit, the Applicant shall furnish evidence to the Building Commissioner that a copy of a Regulatory Agreement has been recorded with the Middlesex South Registry of Deeds.
8. In the event that there is a separate Monitoring Services Agreement, prior to the issuance of a building permit under this Comprehensive Permit, the Applicant shall furnish a fully-executed copy of this Agreement to the Building Commissioner. All costs associated with monitoring shall be borne by the Applicant. The Applicant shall provide the ZBA with copies of all submissions made to the subsidizing agency and all reports issued by the subsidizing agency with respect to the subsidizing agency's monitoring functions. The Applicant will provide the ZBA with the same information, in the event that, in place of the subsidizing agency, there is a monitoring agent. The Town reserves the option to select its own independent monitoring agent, at the Town's expense, which may be a Certified Public Accountant ("CPA") to review the financial work of the subsidizing agency or monitoring agent. The CPA shall be provided reasonable access by the Applicant to any financial information necessary to make these determinations and to verify the

income and expenses of the Development. For cost certification purposes, General Conditions, Builder's General Overhead, Developer's Overhead, and Builders Profit must be in accordance with the requirements of the subsidy program and DHCD's Comprehensive Permit Guidelines effective February 22, 2008 as amended from time to time. In the case of any inconsistencies, the requirements of the subsidy program shall supersede these Guidelines.

Unit and Bedroom Restriction

9. The Development shall be limited to fifty-two (52) rental units and eighty-two (82) bedrooms. Twenty-five (25) percent or thirteen (13) rentals will be governed by the affordability restrictions discussed herein. Of the 52 units, there will be a total of four (4) three-bedroom units, twenty-two (22) two-bedroom units, twenty-two (22) one-bedroom units and four (4) studio units. The thirteen (13) affordable units shall be spread among the three-bedroom, two-bedroom, one-bedroom and studio units such that approximately twenty-five (25) percent of each type of unit will be affordable. In addition, one studio unit may be converted to an on-site managerial/maintenance office.

Affordability Conditions

10. Twenty five percent (25%) of the dwelling units (the "Affordable Units"), shall be reserved in perpetuity for rental to households earning no more than eighty percent (80%) of the median household income for the Boston MSA as defined by the U.S. Department of Housing and Urban Development, or as otherwise modified by the Massachusetts Department of Housing and Community Development (DHCD) or the Subsidizing Agency if not DHCD, for purposes of calculating qualifying income under the applicable housing program. The rental price for the Affordable Units shall be set at the rental rate permitted by the Subsidizing Agency for affordable units under the applicable subsidy program, such rental rates to be adjusted for the relevant number of bedrooms, household size, and applicable utility allowances as established by the Wayland Housing Authority for tenant-paid utilities.

11. The Applicant's submission is for the Development to be financed through the Permanent Rental Financing Program of the Massachusetts Housing Partnership ("MHP"), which is currently designated as the Subsidizing Agency for the Development. However, in accordance with 760 CMR 56.00, the Applicant may seek to change the Development's Subsidizing Agency and/or subsidy program together with any required changes in qualifying income limits and/or number of affordable units of the subsidy program. If the Development is funded by the New England Fund of the Federal Home Loan Bank of Boston, rent levels shall be in accordance with the "Guidelines for Housing Programs in which Funding is Provided through a Nongovernmental Entity," as published by the Massachusetts Department of Housing and Community Development (DHCD).

12. The Applicant and the Borrower shall execute and record a Regulatory Agreement substantially in accordance with MHP's form regulatory agreement as it may be amended from time

to time. Town Counsel shall review the form and substance of the Regulatory Agreement for consistency with this decision.

13. In the event that the affordability restrictions imposed by MHP expire, the Applicant shall enter a new Regulatory Agreement with the new Subsidizing Agency or, in the absence of a new Subsidizing Agency, with the ZBA in order to ensure that such affordability restrictions remain in place in perpetuity. Moreover, if required under the new subsidy program, the Applicant shall enter into a Monitoring Services Agreement and the Applicant shall consult with Town Counsel as to the form of this Agreement. Any such new Regulatory Agreement and/or Monitoring Services Agreement shall be consistent with the terms of this Decision. In all events, the Applicant shall bear all costs associated with the implementation of any Monitoring Services Agreement.

14. To the extent permitted by law and the Subsidizing Agency, preference for the rental of seventy percent (70%) (or a lesser level if required by the Subsidizing Agency), of the Affordable Units in the initial lease up of the Development and at all subsequent times shall be given to persons or families who are either (a) Wayland residents, regardless of duration of residency; or (b) are employees (including new hires who have not started work) who work for the Town of Wayland, regardless of duration of employment; or (c) have a child enrolled in the Wayland Public Schools at the time of application. The local preference shall be implemented by the Applicant or its agent, after consultation with the ZBA.

Tenants of the Affordable Units shall be selected in accordance with a tenant selection and assignment plan and a marketing plan consistent with these preferences to the extent permitted by law and the guidelines and requirements of the Subsidizing Agency.

15. The Regulatory Agreement with MHP or other designated Subsidizing Agency shall contain, at a minimum, the following terms:

- a. The Affordable Units shall be reserved in perpetuity to households earning no more than eighty percent (80%) of the median household income for the Boston MSA.
- b. The Affordable Units shall be of comparable quality to the other units in the Development and, to the greatest extent practicable, shall be dispersed evenly throughout the Development.
- c. Throughout the term of the Regulatory Agreement, the Subsidizing Agency shall monitor the Applicant's compliance with the terms of the Agreement.

16. The Applicant obligations to certify and/or recertify to the Subsidizing Agency the continuing eligibility of the tenant of any Affordable Unit shall be governed by the Regulatory Agreement and the subsidy program. The applicable provisions of the Regulatory Agreement and subsidy program shall also govern the timing and amount of rent increases chargeable to tenants whose income exceeds allowable income levels during the term of tenancy; provided, however, that the Applicant shall convert, at the next change of tenant in a market rate unit within the Development, a comparable market rate unit to an affordable unit in accordance with the Regulatory Agreement.

Construction Conditions

17. A preconstruction conference with Town departments shall be held prior to the commencement of construction. For the purposes of this decision, "commencement of construction" shall occur when the clearing and grubbing (removal of stumps and topsoil) for construction of the Development (as opposed to further testing and investigation such as installation of monitoring wells) has been initiated. The Applicant's contractor shall request such conference at least (1) one week prior to commencing construction by contacting the Building Commissioner in writing. At the conference, a schedule of inspections shall be agreed upon by the Applicant and the Town officials and boards responsible for the inspections and the location of the construction and storage trailers, if any, shall be agreed upon.

18. All utilities (gas, telephone, electric, fire alarm, cable television, data transmission, wastewater disposal and water) shall be installed underground and in pipes or conduits, as the case may be.

19. During construction the Site shall be secured in a manner approved by the Building Commissioner so as to prevent injury or property damage to the residents of the Town.

20. Blasting, if any, shall be performed in accordance with the regulations of the Commonwealth of Massachusetts, 527 CMR 13.00 and in accordance with any existing written regulations for blasting issued by the Town's Fire Department.

21. The Applicant will comply with all rules and regulations of the State Building Code for Fire Suppression Systems; provided, however, that (a) the sprinkler system will be upgraded to a NFPA 13 system, (b) a system of pervious pavers and reinforced turf will be installed in the rear of the building to provide complete access around the building for emergency vehicles in accordance with the Sheet EX-2 included in the Site Plans, (c) the roof will be built and maintained as shown in the Roof Floor Plan included in the Architectural Plans; and (d) a 10-foot roll-up door allowing access to the parking garage from the rear of the building will be built and maintained as shown in the South (Rear) Elevation Plan of the Architectural Plans.

22. A street number will be provided for the building in accordance with Section 158-4 of the Code of the Town of Wayland. Individual apartments will also be numbered.

23. The final design of the wastewater disposal system shall be submitted to the Board of Health for its review and approval pursuant to Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems except in those instances where the ZBA has waived compliance with these local regulations as set forth in "Waivers and Permits Granted" attached as Ex. A hereto, and in such cases, Title V of the State Sanitary Code shall apply. As provided in Ex. A, there shall be no garbage grinders at the Development and the septic system shall be sized for 85 bedrooms notwithstanding that this Decision limits the Development to 82 bedrooms. Further, the Director of Public Health shall be present during the excavation of the existing septic system/leaching field.

Plan Conditions

24. Prior to the issuance of a building permit, the Applicant shall submit the following final plans for review and approval as consistent with this decision by the ZBA, unless the Building Commissioner determines that such final plans have heretofore been submitted. If the ZBA determines that any of the final plans are not consistent with the terms of this decision, it shall

provide the Applicant with a statement identifying the inconsistency. The ZBA may distribute such plan(s) to its consultants and/or Town boards and officials for a written recommendation or report.

- a. Landscaping, fencing, and planting plan;
- b. Grading and Stormwater plan;
- c. Erosion control plan;
- d. Architectural plans, including all principal and accessory structures;
- e. Utilities plan including water, hydrants, fire alarms, gas, electric, cable, data transmission and telephone;
- f. Signage plan;
- g. Snow storage plan; and
- h. Operation and maintenance plan for the drainage system (including pretreatment facilities and underground infiltration chambers) and reinforced turf material (used for the emergency vehicle access).

In addition to the above, the Applicant shall provide the ZBA with a copy of any wastewater disposal application and plan (including Operation and Maintenance plan for the wastewater disposal system)_submitted to and approved by the Board of Health under said Title V.

25. In addition to other specific elements of the Development noted above, the Applicant shall design such final plans with the following specifications:

- a.) The permanent sign for the Development at the Site shall be as provided in the Project Plans.
- b.) Exterior lighting for the Project at the Site shall be as provided in the Project Plans. Exterior Lighting shall be designed to use energy efficient light bulbs that produce natural white light and shall be the minimum wattage necessary to provide safe movement on the Property. Mercury vapor and low/high pressure sodium lighting shall not be used. Exterior lighting affixed to buildings shall be provided with motion detectors. Exterior lighting units shall be shielded or directed so that they do not shine onto adjacent properties.
- c.) The final plans shall identify the height of the buildings from the lowest grade to the highest roof element which shall be no higher than 50.5 feet above the lowest surrounding grade.
- d.) At the Applicant's option, building siding shall be either vinyl clapboards and vinyl shakes or cementitious clapboards and cementitious shakes. Roof material shall be architectural asphalt shingles and/or EDPM rubber roofing. Trims, corner boards, and rake boards shall be aluminum wrapped wood.

- e.) The snow storage plan shall provide that the emergency vehicle access and parking areas will be cleared of snow as soon as is reasonably possible following a snow storm and will be kept cleared of snow as much as is reasonably possible, with priority given to the emergency vehicle access in order to ensure access for emergency vehicles on all access areas including all pervious pavers and reinforced turf access in the rear of building.
- f.) In addition to the landscaping shown on the Project Plans, off-site landscaping may be provided as follows: with respect to the residences known and numbered as 6, 7, and 10 Dean Road, (i) the Applicant has agreed to escrow (in an interest-bearing account), upon the issuance of the building permit for the Development, a total of ten thousand dollars (\$10,000.00) with the Building Commissioner solely for the purpose of funding the planting of plants, shrubs or and/or trees on these off-site properties to enhance the screening of the Development from these properties; (ii) the Town Planner has agreed to work with the owners of these properties on all aspects of these off-site plantings including, but not limited, the location, type and size of landscaping, and the creation of a single, coordinated landscaping plan for this purpose; (iii) upon submission to the Building Commissioner and the Applicant of (a) the landscaping plan, (b) the Town Planner's (or Planning Board chair's) certification that the owners have all consented to the plan and that it effectuates the purpose stated herein and (c) receipts evidencing the purchase of plants, shrubs and/or trees for installation at 6, 7 and/or 10 Dean Road, the Building Commissioner shall release the escrowed funds to the property owners to reimburse them for the cost of said landscaping up to the amount of the escrowed funds; (iv) in the event that there are any funds left in the escrow account one year after the date of the final certificate of occupancy for the Development, said funds shall be forthwith returned to the Applicant upon its written request to the Building Commissioner; (v) provided, however, that the owners of these properties, at their own cost, shall be responsible for obtaining any and all necessary approvals from the Wayland Conservation Commission for said plantings and providing evidence of said approvals to the Town Planner, Building Commissioner and the Applicant prior to the release of the escrowed funds.
- g.) Lighting details for inside the parking garage shall be provided.
- h.) At least one picnic table in the rear of the Property shall be provided. Applicant to consider additional table(s) in accordance with tenant usage and demand.
- i.) If deemed necessary by the Building Commissioner, additional plans and specifications for the free-standing sign for the Development substantially in accordance with the Architectural Plans shall be provided.
- j.) The Applicant will pay for the cost of two standard, metal warning signs (e.g., "Driveway Ahead" or similar) on Commonwealth Road (one in each direction) and will confer with the Highway Department regarding the final location of that signage.

- k.) The Applicant shall escrow (in an interest bearing account), upon issuance of the building permit for the Development, a total of forty thousand (\$40,000.00) with the Town for the sole purpose of designing, permitting and installing a flashing, pedestrian-activated traffic signal located on Commonwealth Road (Rt. 30) at or near the existing crosswalk to the west of the Property, between Loker Street and Old Tavern Road (the "Traffic Signal"). These funds shall be used solely for the Traffic Signal and their use will be subject to the Town and/or its agents obtaining all necessary permits and approvals, securing all necessary site control, and performing all work associated with the installation of the Traffic Signal. If the Town or its agents are unable either to obtain all necessary permits and approvals, site control or otherwise fail to complete installation of the Traffic Signal within three years of the issuance of the building permit for the Development, then all remaining funds in the escrow account shall forthwith be returned to the Applicant upon its written request. If there are any funds remaining in the escrow account after the completion of the installation of the Traffic Signal, those funds shall be released and returned to the Applicant upon its written request. Except as provided below, in no event shall the Applicant be responsible for the design, permitting or installation of the Traffic Signal nor shall it be responsible, under any circumstances, for providing additional funds for the Traffic Signal. Notwithstanding anything in this subparagraph to the contrary, the Applicant may, in its sole discretion, elect to design, obtain all necessary permits and approvals for and install the Traffic Signal. In this event, the Traffic Signal's plans and specifications shall be approved by the appropriate municipal and state authorities and the installation shall be in accordance with the terms and conditions of a written agreement between the Applicant and the appropriate municipal authorities including a provision governing the release of funds from the escrow account. In all events, the Applicant shall fully cooperate with the Town's efforts to construct the Traffic Signal.
- l.) There shall be no exterior dumpster at the Property. Instead, the Development will use a garbage compactor located in the garage. Tenants on each floor will have access to the compactor by way of a garbage chute. It is estimated that the compactor will be emptied twice weekly.
- m.) Two handicapped spaces in the garage parking area shall be provided.
- n.) Within six months of the building permit application, a pressure and flow test must be conducted on the water main to determine if there is any need for a booster pump to provide adequate pressure and volume for domestic water and fire flows.
- o.) Only the shrubbery growing around the base of an ash tree in the front of the Property poses a visual obstruction to site distance for traffic. The Applicant will prune those shrubs as needed so that the sight line is unobstructed.
- p.) Painted crosswalks connecting internal sidewalks on the Property and across the driveway shall be provided as shown on the Site Plans. The crosswalk

from the front door plaza across the parking lot shall be a raised plane table to act as a speed control.

- q.) A standard, metal "stop" sign at the intersection of the driveway and Commonwealth Road shall be installed.
- r.) Shade trees/shrubs will be located so as not to interfere with drainage pipes.
- s.) A standard, metal "no parking" (R8-3) sign to the emergency vehicle driveway that runs along the east side of the building and the access driveway to the garage shall be installed.
- t.) Two or three striped parking spaces with appropriate signage shall be provided for visitor parking.
- u.) Applicant shall make grading adjustments to eastern and western driveways so that they are at a eight (8) percent maximum grade.
- v.) Applicant shall make all other grading adjustments to the Site in accordance with generally accepted engineering principles to bring the grading into conformity with the building and site layout shown on EX-2.
- w.) Any grading or drainage changes to the Project Plans required by the Conservation Commission in accordance with its issuance of an Order of Conditions under G.L. c. 131, § 40, shall be deemed acceptable modifications to the Project Plans and incorporated therein; provided, however, that the ZBA recommends against said Order of Conditions including any requirement for a "green roof" in light of the expressed position of the Fire Chief that the roof should be available for fire fighting purposes.

26. The Applicant shall provide to the Building Commissioner all documents, certifications and plans and follow all procedures required under the State Building Code prior to the issuance of the certificate of occupancy for the building.

Development, Driveways and Systems

27. The ZBA hereby requires that the following aspects of the Development shall be and shall remain private, unless the Town determines otherwise and the Applicant agrees to grant any necessary rights to the Town, and that the Town of Wayland shall not have any legal responsibility for operation, maintenance, repair or replacement of same:

- All driveways, sidewalks and parking areas
- Storm water management facilities, including detention basins
- Snow plowing
- On-site Landscaping
- Trash removal
- Street and site lighting
- Building repair and maintenance

- On-site water mains and water services
- On-site septic system and service lines
- Drainage structures and facilities

28. The Applicant shall be responsible for the installation and maintenance of all aspects of the common or private facilities set forth above. In the event that a management company is engaged, the Applicant shall provide the ZBA with a copy of the contract with such management company.

29. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the septic system if required by the Board of Health or its agent.

30. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system subject to the approval of the Conservation Commission or its agent.

31. In the event a management company is engaged, the snow storage plan and the operation and maintenance plans for the septic and stormwater management systems shall be incorporated by reference into the management contract with such management company.

32. In the event that the Applicant, and then its successors in title, fails to maintain the septic system and/or the stormwater management system, the Town may conduct such emergency maintenance or repairs, and the Applicant and its successors in title shall permit entry onto the Property, with reasonable notice, to implement all such necessary measures. In the event the Town conducts such maintenance or repairs, the Applicant, during its ownership of the property, shall promptly reimburse the Town for all reasonable costs and expenses associated therewith within thirty (30) days after receipt of a demand therefore from the Town. In the event the Town conducts such maintenance or repairs after the Applicant has divested itself of ownership of the property, the then owners shall promptly reimburse the Town for all reasonable costs and expenses associated therewith within thirty (30) days after receipt of a demand from the Town. If the Applicant, or its successors in ownership, as the case may be, fails to so reimburse the Town, the Town may place a municipal charge lien on the Development to secure such payment.

33. Garbage grinders are prohibited in any of the units. Once every five years, the professional responsible for operation and maintenance of the septic system shall inspect each unit for garbage grinders and shall prepare and submit a report to the ZBA disclosing the results of his or her inspection. The Applicant shall include in the leases for all the units at the Development provisions prohibiting the installation of garbage grinders and granting access to units for purpose of the above-referenced inspection.

Miscellaneous Conditions

34. The Applicant shall promptly pay the reasonable fees of the ZBA's legal counsel and the ZBA's consulting engineers for their work on the Development or for the ZBA's consulting engineer's further review of plans or documents described herein and inspections during the construction phase. The results of any inspections shall be provided to the ZBA in written format. The ZBA hereby requires the establishment of an escrow account to assure payment of the ZBA's consulting engineer's and legal counsel's fees in connection with further review of plans or

documents described herein and inspections during the construction phase, with an initial deposit of \$5,000.00, subject to replenishment when the balance falls below \$1,000.00.

Transfer of Comprehensive Permit

35. Upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b), and upon written notice to the ZBA, the Applicant may transfer this Comprehensive Permit in accordance with the procedures set forth in 760 CMR 56.05(12)(b).

Finality and Lapse of Comprehensive Permit

36. This comprehensive permit shall become final on the date that this 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, provided however that if it is subject to legal appeal, the Applicant may elect to proceed at risk with construction of the Development in accordance with the provisions of 760 CMR 56.05(12)(a). If construction authorized by this Comprehensive Permit has not begun within three (3) years of the date on which it becomes final, except for good cause, it shall lapse in accordance with the provisions of 760 CMR 56.05(12)(c). This time period shall be tolled for the time required to pursue or await the determination of any appeal of any other state or federal permit or approval required for the Development. Upon written application by the Applicant, the ZBA may extend said lapse date. An extension may not be unreasonably denied or denied due to other affordable housing projects built or approved in the interim. The provisions of 760 CMR 56.05(12) shall govern the finality and lapse of this Comprehensive Permit.

Compliance with State and Federal Regulations

37. The Development, and all construction, dwelling units, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Development, shall comply with all applicable state and federal regulations. The Applicant shall provide the ZBA with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.

38. The Development shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing (a) the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §§ 40-40A and 310 CMR 10.00; (b) rules, regulations, filing and permit requirements and certifications required by the Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, and best management practices; (c) said Title V regulations (310 CMR 15) relative to septic system design and installation except as provided herein; and (d) the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H, if applicable. Where approvals by the Town are required by this decision, such approvals shall not be unreasonably denied, delayed or conditioned.

Waivers

39. The Applicant has requested, and the ZBA hereby grants, (1) a waiver of all building permit fees (for building permits, electrical permits, gas and plumbing permits issued by the Town's

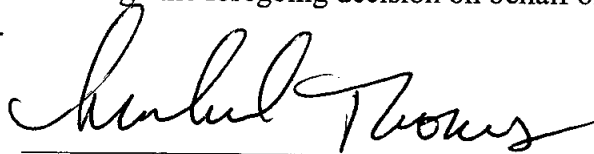
Building Department) associated with the Affordable Units within the Development; and (2) those waivers and permits that are listed in the attachment hereto identified as Ex. A entitled "Waivers and Permits Granted," which exhibit is part of this Decision.

40. To the extent the Project Plans are silent on a particular requirement, the appropriate Town by-law, rule, regulation or code provision shall apply. In the event the Applicant or the ZBA's consulting engineer determines, in the final design of the Development, that additional waivers, not shown on the Project Plans are required, the Applicant shall be required to obtain such additional waivers through written request to the ZBA. The ZBA may grant such additional waivers in accordance with the law. Certain provisions of the Bylaws, Town's Board of Health Rules and Regulations, and the Town's Wetlands and Water Resources Protection Bylaw and Rules and Regulations, which are expressly waived below, as applied to the Applicant's proposed Development, are not consistent with local housing needs for purposes of granting a comprehensive permit under M.G.L. c. 40B, §§20-23.

41. By issuing this Comprehensive Permit, the ZBA hereby grants all local permits and approvals for the Development per Project Plans (including Earth Movement Special Permit, Physical Alteration Permit, and Street and Sidewalk Opening Permit) which are required under the provisions of Town by-laws and/or rules and regulations promulgated by local boards.

RECORD OF VOTE

The following members of the ZBA voted 5-0-0 (Jerry L. Boos, Aida Gennis⁵, Eric B. Goldberg, James E. Grumbach and Chairman E. Michael Thomas) to grant the foregoing comprehensive permit subject to the above-stated terms, conditions and limitations, and to authorize Chairman E. Michael Thomas to sign the foregoing decision on behalf of the ZBA and file it with the Town Clerk's Office.



E. Michael Thomas, Chairman

Filed with the Town Clerk on February 18, 2009

⁵ Associate member sitting in lieu of Member Steven Fugarazzo by designation of the Chairman.

EXHIBIT A**WAIVERS GRANTED**

<u>Local Regulation</u>	<u>Requirement</u>	<u>Proposed and Granted</u>
1. Zoning Bylaw, § 198-501; Signs and exterior lighting.	30 ft. front yard setback applies to signage and exterior lighting fixtures.	Signs and exterior lighting fixtures setbacks allowed per Project Plans with light pole and sign at driveway entrance setback 20 ft. and 10 ft., respectively.
2. Zoning Bylaw, §§198-501 and 198-901.1.2.3; Signs and exterior lighting.	Signage in residential districts limited to that allowed in Bylaw; Home occupation signage limited to one sign not larger than 2 s.f.	Signage for multi-family housing in Residential district per Project Plans; One 20± sq. ft. sign mounted on a 50± sq. ft. stone wall monument approximately 5.0± ft. high.
3. Zoning Bylaw § 198-502, Temporary Signs.	Temporary subdivision signage up to 15 square feet allowed upon issuance of building permit and removed upon completion of construction or the issuance of a certificate of occupancy, whichever comes first; provided, however, that said sign shall be removed if construction activities have halted for six (6) months and may be reinstalled upon approval of Building Commissioner.	Temporary signage at the Site shall be no greater than four feet tall by six feet wide. Such temporary sign may be erected prior to the commencement of construction activities and may remain installed for four months after the substantial completion of construction.
4. Zoning Bylaw, § 198-506.1; Off-street parking.	Site Plan Approval Granting Authority to determine number of necessary parking spaces.	Parking pursuant to Site Plan and Architectural Plans: 54 indoor spaces, including 4 compact spaces and 2 handicapped spaces; and 44 outdoor spaces, including 2 handicapped spaces for a total of 98 spaces; provided, however, that the Applicant, may increase the total number of compact parking spaces to 25 percent of the total number of spaces.

Local Regulation	Requirement	Proposed and Granted
5. Zoning Bylaw, § 198-506.7.5; Off-street parking.	Dimensional requirements for parking spaces: for 90 degree two-way parking, stall size of 9 feet by 18.5 feet and maneuvering aisle of 24 feet.	Indoor parking pursuant to Project Plans: 2 of 54 spaces at 9 feet by 17.5 feet, and 2 of 54 spaces at 8.5 feet by 18.5 feet. These are noted as "Compact Car Spaces." All other spaces are full size (9 ft. x 18.5 ft.); provided, however, that the Applicant, may increase the total number of compact parking spaces to 25 percent of the total number of spaces.
6. Zoning Bylaw, § 198-701.1; Height regulations; Table 198-801.	Building height: the lesser of 35 feet or 2 1/2 stories.	Building height of 45 feet, 9 1/4 inches or 3 stories.
7. Zoning Bylaw, § 198-901; Permitted uses; Table of Permitted Uses.	Multifamily dwelling allowed in Single Residence District by Special Permit in accordance with Article 18 Conservation Cluster Development District.	ZBA grants permission for multifamily dwelling in Single Residence District.
8. Zoning Bylaw, § 198-901; Permitted Uses; Table of Permitted Uses; Table of Accessory Uses.	Office use in Single Residence district prohibited.	ZBA grants permission for one on-site managerial/management office.
9. Zoning Bylaw, Article 22: Inclusion of affordable housing.	Construction of multiple units allowed by Special Permit from the Planning Board.	ZBA grants permission for multifamily dwelling.
10. Wetlands and Water Resources Protection Chapter 194: Local Wetland Bylaw.	Local Wetland Bylaw.	Compliance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u>
11. Wetlands and Water Resources Protection Chapter 194 ("Chapter 194"), § 194-1: Purpose.	Protection and regulation of areas beyond the scope of Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and implementing regulations.	Compliance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u>
12. Chapter 194, § 194-3: Procedure.	Written application and filing fee for Request for Determination or Notice of Intent required in conjunction with filings under G.L. c. 131, § 40.	Compliance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u>
13. Chapter 194, § 194-4: Public Hearing.	Notice and hearing procedures; review by other Town boards and officials; issuance of "wetlands and water resources permit" in conjunction with order of conditions pursuant to G.L. c. 131, § 40; permit expiration and extension procedures.	Compliance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u>
14. Chapter 194, § 194-8:	Applicant bears burden of	Compliance with the

<u>Local Regulation</u>	<u>Requirement</u>	<u>Proposed and Granted</u>
Burden of Proof.	demonstrating work will not cause harm to values protected by Chapter 194.	Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u>
15. Chapter 194, § 194-9: Security.	Commission may require security in addition to any security required by any other Town or state board, commission or agency.	Compliance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u>
16. Wetlands and Water Resources Protection Rules and Regulations ("Rules and Regulations"): A.2 Submission of Applications.	Requirements for abutter notification; application documentation and forms; fees; consultant fees; performance guarantees.	Compliance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u>
17. Rules and Regulations: A.3 and C1(Bullet Point 4)	Lawn Irrigation, Sprinklers and Underground watering systems	At the Commission's request, the Applicant plans to construct and maintain a rain-capture cistern system with an underground watering system partially within the 100 foot buffer zone.
18. Rules and Regulations: A.3 Items to Consider, Where Applicable.	Thirty-foot vegetated "no disturb" buffer zone required for new construction.	Compliance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and 310 CMR 10.00 <u>et. seq.</u> , including a vegetated buffer zone averaging greater than 30 ft. wide.
19. Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems, § II.C.1.	Septic system design flow of 165 gallons per day ("GPD") per bedroom for new construction.	Compliance with Massachusetts Title 5 (310 CMR 15.00) including septic system design flow of 110 GPD per bedroom for new construction as garbage grinders are prohibited.
20. Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems, § II.C.2.	Minimum leaching area in excess of Title 5 requirement. Based on 85 bedrooms, a leaching area of 17,000 sq. ft. would be required.	Compliance with Massachusetts Title 5 (310 CMR 15.00) including minimum leaching area of 12,636 sq. ft. based on 85 bedrooms (even though Project will be limited to 82 bedrooms).
21. Wayland Board of Health Regulations for On-Site Subsurface Disposal Systems, § II.C.5.	Separation distance between leaching trenches is 10 ft. minimum.	Compliance with Massachusetts Title 5 (310 CMR 15.00) including separation distance between trenches at 6 ft. minimum.

END OF DECISION



**TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS**

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3600

AMENDED DECISION NO. 07-35a

NAME OF APPLICANTS:

373 Commonwealth Road LLC

APPLICATION FOR:

Any necessary approvals, as may be required for a Comprehensive Permit to construct a 56 Unit affordable housing development. (three story apartment building) with associated site work under Massachusetts General Laws Chapter 40B Sections 20-23 (Chapter 774 of the Acts of 1969). This property is located at 371-373 Commonwealth Road, more specifically Assessors map – Plate 52 Parcel 154 & 155, which is in a Single Residence District.

DATES OF HEARING:

January 8, 2008, February 26, 2008, June 3, 2008, July 22, 2008, September 9, 2008, October 14, 2008, November 18, 2008, December 16, 2008, January 15, 2009 and January 27, 2009

BOARD CONDUCTING HEARING AND RENDERING DECISION:

Eric Goldberg, E. Michael Thomas, James Grumbach, Jerry Boos, and Aida Gennis

DECISION:

Comprehensive Permit Granted with conditions

VOTE OF BOARD:

Unanimous 5 - 0

The decision and the reasons therefore are on file with the Town Clerk. Any person aggrieved by a decision of the Board of Appeals may appeal to the Superior Court of Middlesex County by bringing an action within twenty days after the decision has been filed in the office of the Town Clerk. Appeal, if any, shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17. Notice of appeal action with a copy of the complaint shall be given to the Town Clerk so as to be received within the same twenty-day appeal period.

E. Michael Thomas
Steven Fugarazzo
Jerry Boos
Eric Goldberg

James Grumbach
Shaunt Sarian, Associate
Aida Gennis, Associate
Linda Segal, Associate



TOWN OF WAYLAND
MASSACHUSETTS
01778

TOWN BUILDING
41 COCHITUATE ROAD

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LOIS M. TOOMBS, CMC
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ASSISTANT TOWN CLERK
KATHLEEN H. SIRACUSA
KSIRACUSA@WAYLAND.MA.US

NOTICE
NO APPEAL

March 11, 2009

I hereby certify that a copy of the decision of the Town of Wayland Zoning Board of Appeals relating to the 373 Commonwealth Road LLC (Commonwealth Residences) application #07-35 and amended decision #07-35a for a comprehensive permit were filed in this office on February 9, 2009 and February 18, 2009, respectively, and that no notice of appeal was filed during the twenty (20) days next after this date.

A true copy, Attest:

Lois M. Toombs, CMC
Town Clerk