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**Board of Appeals**

**TOWN OF ACTON**  
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**DECISION**  
#20-02

**Comprehensive Permit**  
**Apartments at Powder Mill**  
**2, 4, & 12 Powder Mill Road**

August 4, 2020

GRANTED with Conditions

This is a Decision (the “Decision”) of the Acton Zoning Board of Appeals (hereinafter the “Board”) on the request for a Comprehensive Permit under Massachusetts General Laws (“M.G.L.”) Chapter 40B, §20-23 (the “Act”), made by the Applicant, Apartments at Powder Mill, LLC, 205 Willow Street, Waltham, MA 02453 (hereinafter the “Applicant”) for the property located at 2, 4, & 12 Powder Mill Road in Acton, Massachusetts (the “Site”). The Site is identified on the Acton Town Atlas map as parcels J3, Lots 39, 42, 43, 44 & 45.

This Decision is in response to an application for a comprehensive permit for a rental housing development. The proposed project consists of 4 buildings (including 2 residential structures, a garage and a clubhouse) with 230 rental units and additional resident amenities including outdoor amenities. The comprehensive permit application was submitted to the Board of Appeals on February 11, 2020. The Board opened a duly noticed public hearing on June 9, 2020. The hearing was continued to July 7, 2020, August 4, 2020 and closed on August 4, 2020. Throughout the duration of the hearing sessions, the Board heard testimony from the Applicant, Town staff, and abutters to the Project and Acton residents. Board members Kenneth Kozik (Chair), Adam Hoffman (Member), and R. Scott Robb (Member) were present throughout the hearings. The minutes of the hearings and submissions on which this Decision is based may be referred to in the Town Clerk’s office or the office of the Board at Acton Town Hall.

## **1 EXHIBITS**

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

- 1.1 The application for a Comprehensive Permit entitled "Comprehensive Permit Application Proposed Residential 40B – The Apartments at Powder Mill" was filed with the Town Clerk on February 11, 2020. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:
  - Cover Letter, Comprehensive Permit Fee, & Table of Contents;
  - Application for Comprehensive Permit;
  - Development Impact Report;
  - Unit Composition;
  - Development Schedule;
  - Development Pro Forma;
  - List of Requested Exceptions to Local Requirements & Regulations;
  - Use Description;
  - Water Balance Calculations;
  - Earth Removal Calculations;
  - Recorded Plan and Deeds;
  - Secretary of State Cover Sheet;
  - Agreement to Convey;
  - Letter from Acton Board of Selectmen to DHCD dated June 3, 2019;
  - Letter from Equity Alliance LLC to DHCD dated July 21, 2019;
  - Letter from DHCD to Acton Board of Selectmen dated January 3, 2020;
  - Drainage Report prepared by Bohler dated February 5, 2020;
  - Traffic Impact and Access Study prepared by GPI dated December 2017;
  - Comprehensive Permit Site Plan Set prepared by Bohler dated February 10, 2020;
  - Architectural Plans prepared by Gate 17 Architecture dated July 5, 2019.
  - Memorandum of Agreement between the Town of Acton and the Apartments at Powder Mill, LLC dated January 2020.
- 1.2 Additional, supplemental, revised, and corrected plans and documentation submitted as part of the application included in the following:
  - Revised Site Plans, dated May 26, 2020;
  - Trash Truck Turn Exhibit, dated May 26, 2020;
  - GPI Letter & Attachments, dated May 26, 2020;
  - Responses to Peer Review Comment, dated May 26, 2020;
  - Powder Mill ZBA Hearing Exhibits, submitted June 9, 2020;
  - Signed ANR Plan, dated June 15, 2020.
  - Architectural Plans for Clubhouse prepared by Gate 17 Architecture dated July 23, 2020;
  - Additional Waiver Letter, dated July 27, 2020;
  - Off-Site Improvements Letter, dated July 29, 2020.
- 1.3 Interdepartmental communications were received from:
  - RHSO comments, dated March 11, 2019;
  - Acton Community Housing Corporation comments, dated March 10, 2020;
  - Health Division comments, dated March 18, 2020;
  - Acton Water District memo, dated March 20, 2020;
  - Planning Division memo, dated March 30, 2020, updated July 1, 2020;
  - GCG Associates Memo, dated May 1, 2020 and updated June 5, 2020;
  - Design Review Board memo, dated May 28, 2020;

- GIS Comments, dated June 1, 2020;
- Fire Chief Comments, dated June 25, 2020 and updated July 17, 2020;
- GCG Comments, dated August 3, 2020;
- Engineering Department Comments, dated August 4, 2020.

1.4 Public Comments/ Other Correspondence

- Alissa Nicol, dated June 9, 2020;
- Terra Friedrichs, dated June 9 and July 5, 2020;
- Olivia Marble, dated July 5, 2020;
- Eleanor Matthews, dated July 5, 2020;
- Mandela Franciscono, dated July 6, 2020
- Isabel Carey, dated July 7, 2020;
- Janet Adachi, dated July 7, 2020;
- Town of Maynard Powdermill Material, submitted July 20, 24, and 29, 2020.

1.5 Extension Agreements:

- Agreement to open the public hearing to April 14, 2020;
- Consent and Agreement to Extension of Hearing to June 9, 2020;
- Consent and Agreement to Extension of Hearing to July 7, 2020;
- Consent and Agreement to Extension of Hearing to August 4, 2020.

## **2 FINDINGS AND CONCLUSIONS**

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

- 2.1 The submitted application substantially complies with the Board's comprehensive permit application requirements as stated in the Town of Acton's "Rules and Regulations for Comprehensive Permits" adopted July 1, 2019, and the subsequent regulations of the Department of Housing and Community Development's ("DHCD") Housing Appeals Committee entitled "Comprehensive Permit; Low or Moderate Income Housing," 760 CMR 56.00 (the "Regulations").
- 2.2 According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI) as of November 2019, Acton's SHI percentage is 7.72%. As a result Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum 10% criterion.
- 2.3 Last year, the Board approved Acton Avalon Phase II comprehensive permit. This project consists of 86 rental housing units, which equal 1% of the subsidized housing inventory under the Town's Certified Housing Production Plan. Subsequently, DHCD granted the town two years of safe harbor until July 2021, which allows the Board to decide which comprehensive permit application it wanted to hear. For this case, the Board decided to hear the Comprehensive Permit application.
- 2.4 The Site is located within the PM (Powder Mill Road) Zoning District and the Ground Water Protection District Zone 3.
- 2.5 The subject property totals approximately 10.49 acres in area.
- 2.6 The project consists of 2 residential buildings containing 230 rental apartment units with a mixture of 1, 2, 3 bedrooms.
- 2.7 The project includes amenities including a clubhouse, community pool, garden area, grill area, a kayak/canoe launch, and a clubhouse for the residents.
- 2.8 There are 421 parking spaces are shown on the site plans. 370 parking spaces are shown in the proposed parking garages within the residential buildings and 51 parking spaces in the surface parking lot.

- 2.9 The proposed access driveways will have a pavement width between 20' and 24'.
- 2.10 The project is less than 1/2 mile from and is connected by partial sidewalks to the Powder Mill shopping plaza, which includes restaurants, coffee shop, pharmacy, services, and a grocery store.
- 2.11 There are existing sidewalks on both sides of the street that partially connect to the commercial area in Acton. There are sidewalks that connect to downtown Maynard in the other direction. The applicant also proposes a 5.5-foot sidewalk along the entire frontage of the property. The applicant proposes sidewalks within the project to connect the sidewalks to various buildings and amenities.
- 2.12 The Applicant requested waivers from the following Town of Acton Bylaws and Rules and Regulations:

Zoning Board of Appeals 40B Rules and Regulations:

- Section 3.9 – Letter Authorizing Completion of Improvements
- Section 3.10 - Legal Documents
- Section 3.14 - Subdivision
- Section 3.16.15.3 - Topography at 2-foot intervals
- Section 3.16.5.9 - Show location of affordable housing lots and units
- Section 3.16.6 - Plan and Profile of streets and ways
- Section 3.19 - Market Study
- Section 3.20 - Features & Amnesties

Zoning Bylaw provisions:

- Section 3 - Multifamily dwelling is not a permitted use in Powder Mill District
- Section 3.3 - Not more than one building for dwelling purposes shall be located upon a lot
- Section 5 - Maximum FAR of 0.20
- Section 5 - Maximum building height of 40'
- Section 6.3.1.1 - Two parking spaces for each dwelling unit (460 spaces required)
- Section 6.5 - 90° parking stalls shall be 9.0' x 18.5'
- Section 6.7.1 - Parking requirements shall be met by utilization of parking lot cells
- Section 6.7.3 – Driveways shall be 200 ft. apart
- Section 6.7.6 - All parking lots with more than 5 spaces shall be bordered on all sides with a minimum of a 10' wide landscaped strip
- Section 6.7.7 - A minimum of 10% of the interior area of a parking lot containing more than 25 spaces must be planted as landscaped island areas
- Section 6.9 - Special provisions for parking in the Powder Mill District
- Section 7.4.4.1 – Limitations as to the number of signs permitted.
- Section 7.5.10 – A dwelling sign shall not exceed 6 square feet.
- Section 7.5.11 – A development sign shall not exceed 6 square feet.
- Section 7.13 – Signs requiring a Special Permit from the Planning Board

Acton Stormwater Management and Erosion Control Regulations:

- Section 3.4.5.1 Reduction in stormwater runoff rate from pre-development to post-development for the 2- and 25-year storm events.

Acton Wetland Protection Bylaw:

- Section F8.2 – No activity shall be allowed within 50’ foot buffer of undisturbed natural vegetation.
- Section F8.3 – No activity shall be allowed within 75’ to the edge of driveways, roadways, and structures.

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

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

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

The Applicant has satisfied this requirement. Only public agencies, non-profit organization, or limited dividend organizations may apply for Comprehensive Permits under M.G.L. Ch.40B. DHCD regulations define Limited Dividend Organization: Limited Dividend Organization means any entity which proposes to sponsor a project under M.G.L. c.40B, §§ 20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the project.

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

The Applicant has satisfied this requirement through the submission of a project Eligibility Letter dated January 3, 2020 from Department of Housing Community Development indicating that the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program

2.15 The Applicant and the Town of Acton through its Board of Selectmen executed the Memorandum of Agreement” dated February 18, 2020, which sets forth:

- a. Sewer Connection and Improvements.
- b. Contributions for Transportation Improvements and Mitigation to the town.
- c. Reimbursements to the Town of Acton for out-of-pocket costs, up to a maximum amount of \$50,000, incurred in connection with additional building and other inspectors necessitated by and during the construction of the project.

2.16 As set forth in, and pursuant to the terms of, Section 4.4.4(i) below, the Applicant has agreed to pay to the Town of Acton an annual \$2,100 monitoring services fee for monitoring and the existence and retention of the Affordable Units (to be defined hereinafter) in the project.

- 2.17 The proposed project, when conforming to the conditions set forth in this Decision, will adequately provide for stormwater drainage and sewage, will not be detrimental or injurious to the surrounding neighborhood, will provide for convenient and safe vehicular and pedestrian movement within and through the site, all without an undue burden on the occupants of the project or on the surrounding neighborhood or the Town.
- 2.18 The proposed project will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the project, the neighborhood, or the Town.
- 2.19 The proposed project as supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this Decision, and (ii) would represent a reasonable accommodation of the need for low and moderate income housing.
- 2.20 The Board received comments from various Town departments, which are listed in exhibit 1.3 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this Decision as deemed appropriate by the Board.
- 2.21 This Decision has been issued and filed with the Town Clerk within the time frame specified in the Act and as agreed upon by the Applicant.

### **3 GOVERNING LAW & JURISDICTIONAL ELEMENTS**

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

### **4 BOARD ACTION**

Therefore, the Board voted unanimously on August 4, 2020 to GRANT the requested Comprehensive Permit for the Project as described herein and as presented in the application, subject to and with the benefit of the following Plan modifications, conditions, and limitations.

#### **4.1 PLAN MODIFICATIONS**

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

- 4.1.1 The applicant shall modify the photometric plan to comply with the outdoor lighting regulations in Section 10.6 of the Zoning Bylaw.
- 4.1.2 The applicant shall show a walking path in the abutting non-disturbed land.
- 4.1.3 The applicant shall show a small playground in close proximity to the proposed buildings.
- 4.1.4 The applicant shall show a total of 6 electric vehicle charging stations in the proposed parking garages.

- 4.1.5 The final site and building plans shall satisfy the Fire Department as required per the Fire Department Memo dated July 17, 2020.
- 4.1.6 The applicant shall show a total of 24 bicycle spaces within the proposed parking garages. The bicycle parking shall be located reasonable approximately of the elevators and staircases.

#### 4.2 **CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns in Perpetuity. The Town of Acton may elect to enforce compliance with this Decision using any and all powers available to it under the law.

- 4.2.1 The Applicant shall submit a membership application and \$5,500 fee to CrossTownConnect prior to issuance of any occupancy permit.
- 4.2.2 The Affirmative Fair Housing Marketing Plan (hereafter referred to “AFHM”) shall be approved by DHCD. The Town shall execute a letter from the Chief Executive Officer which states that the tenant selection and local preference have been approved by the Municipality and that the Municipality will perform certain aspects of the AFHM Plan. before the issuance of a building permit.
- 4.2.3 The Applicant shall comply with the Acton Water District memo dated March 10, 2020.
- 4.2.4 The buildings shall be tested for radon prior to the issuance of any certificate of occupancy; if radon is detected above an acceptable level for residential dwellings, an appropriate radon mitigation system shall be installed prior to occupancy.
- 4.2.5 The applicant shall comply with the following items contained in GCG Associates May 1, 2020 Memo and updated June 5, 2020.
  - a. Plan Sheet 3 of 18 – Demolition Plan
    - Comment 4: The Applicant shall further investigate the remaining drainage system capacity and impacts to the remaining pavement area as the existing drainage system appears to be in the middle of the paved parking lot low area.
  - b. Plan Sheet 6 of 18 – Grading Plan Comments
    - i. Comment 1: The Applicant shall add spot grades to the stone dust path within the final plans.
    - ii. Comment 2: The Applicant shall investigate as part of the final plans the impacts along the limit of work line/Town Line, including the proposed grading between the remaining pavement areas and new stone dust path on the southwest side of Building ‘B’.
    - iii. Comment 3: The Applicant shall provide spot grade along the two landscape retaining walls as part of the final plans.
  - c. Plan Sheet 7 of 18 – Drainage Plan Comments
    - i. Comment 1: The Applicant shall update the final plans so stormwater runoff entering Powder Mill Road will be either maintained or decreased in the proposed condition.
    - ii. Comment 2: The Applicant shall modify the invert elevations for the 6” roof drain invert at the southerly Building ‘B’ corner so that the 6” invert elevation (146.10) is almost identical to the 15” pipe invert (146.09) at cleanout.
    - iii. Comment 3: The Applicant shall modify the final plan to be consistent with the Concrete Encasement at Utility Crossing Detail, which recommends 6” minimum separation.

- iv. Comment 4: The Applicant shall provide in the final plans that the 12” and 15” pipes invert in DMH#3 should have matching crown.
- d. Plan Sheet 8 of 18 – Utility Plan Comments
- i. Comment 1: The Applicant shall modify the final sewer line locations and associated inverts when coordinating with the Architectural and MEP Plans once they are available to ensure sufficient slopes are feasible for all residential units. If necessary, the Applicant shall provide, in the final plans, additional sewer exit locations for Building “B”.
  - ii. Comment 2: The Applicant shall provide a minimum 10-foot horizontal separation and a minimum of 18” vertical separation at crossing when installing the sewer below the water system.
  - iii. Comment 3: The Applicant shall update the final plans to provide insulation for sewer lines with less than 4 feet of cover.
  - iv. Comment 4: The Applicant shall continue to work with the Acton Water District to provide adequate flows and pressure for the project. Additional Water flow test should be performed if required by the Acton Water District.
- g. Plan Sheet 13 of 18 – Construction Detail Sheet Comments
- i. Comment 1: The Applicant shall modify the final plans to show Outlet control Structure Detail (OCS-1) – and revise the 3” PVC capped sleeve invert.
- h. Plan Sheet 14 of 18 – Construction Detail Sheet Comments
- i. Comment 1: The Applicant shall modify the final plans by specifying the minimum concrete encasement thickness on top of the upper utility line to verify the 12” cover over the utility meet H20 loading requirements. This detail is not applicable for water and sewer crossing which should meet 18 inches separation requirements or construction of a mechanical-joint pipe.
  - ii. Comment 2: The Applicant shall provide in the final plans a Typical Utility Trench Detail – and detail minimum cover over water and sewer pipes, insulated sewer pipes with less than 4’ of cover.
- i. Plan Sheet 15 of 18 – Construction Detail Sheet Comments
- i. Comment 1: The Applicant shall, in the final plans, modify the Check Installation Note for MC-3500 Chamber System, revise non supportive font. MC-3500 Cross Section Detail. Additionally, the Applicant shall modify the system elevation based on the ESHGW elevations encountered.
  - ii. Comment 2: The Applicant shall modify, on the final plan, the details for the typical utility trench for minimum cover over water and sewer pipes, insulated sewer pipes with less than 4’ of cover.
- j. Plan Sheet L-1 – Landscape Plan Comments
- i. Comment 1: The Applicant shall, in the final plans, relocate proposed street trees along Powder Mill Road to avoid conflicts with sight distances.
  - ii. Comment 3: The Applicant shall, in the final plans, provide a detailed landscape plan.
- k. Drainage Comments
- i. Comment 1: The Applicant shall provide, as part of the final plan, evidence that the modified stormwater management system will comply with MassDEP’s redevelopment standards including a reduction for the 10-year storm event.



- ii. Comment 2: The Applicant shall investigate, as part of the final plans, the stormwater conditions and associated impacts along the limit of work line / Town line to minimize any ponding conditions.
- iii. Comment 3: The Applicant shall ensure, as part of the final plans, that stormwater runoff entering Powder Mill Road will be either maintained or decreased in the proposed condition.
- iv. Comment 4: The Applicant shall modify, as part of the final plan, the subsurface infiltration system to provide 2 feet of separation to the ESHGW. The chamber shall be registered with the Commonwealth as a shallow UIC Class V Injection Well.
- v. Comment 5: The Applicant will provide water mounding calculations with the final plans.
- vi. Comment 9: The Applicant shall provide along with the final plan notes to the Operation and Maintenance Plan to include Chapter X. 3.4.10.4 note, and 3.4.11.2; 3.4.11.4; 3.4.13.1; 3.5.2.3(b); 3.5.2.6 and 3.5.2.7 conditions.

- 4.2.6 The following signs are permitted not to exceed: Primary project freestanding ground sign – 32 sq. f.t; secondary drive freestanding ground sign – 24 sq. ft.; internal building directory freestanding ground sign – 18 sq. ft.; clubhouse freestanding ground sign – 18 sq. ft.; building identification sign – 18 sq. ft. for each structure/building; appropriate traffic control signage; and miscellaneous signs indicating the location of the project amenities; provided, however, the number and size of the signs may be increased as reasonably necessary to properly support the project.
- 4.2.7 All taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to the issuance of the 1<sup>st</sup> the building permit
- 4.2.8 The Applicant shall not be required or obligated to make any off-site improvements but shall be required to complete the sewer work as required in the Memorandum of Agreement.
- 4.2.9 Final architectural plans submitted for building permit shall be substantially in accordance with the Approved Plan and the renderings presented at the public hearing and approved hereunder.
- 4.2.10 Prior to the issuance of any certificate of occupancy, the Applicant shall submit, to the satisfaction of the Zoning Enforcement Officer, an adequate plan for the operation and maintenance of the stormwater management system.
- 4.2.11 The proposed project shall be constructed in compliance with any and all applicable requirements promulgated by the Acton Board of Health, the Acton Water District, and the Acton Fire Department, except as waived herein.
- 4.2.12 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.2.13 The Applicant shall be diligent to ensure that no construction debris or material from the site enter any of the abutting properties.
- 4.2.14 The Applicant shall make every attempt to minimize any adverse or nuisance construction conditions (such as, but not limited to dust, noise, vibrations, etc.) from existing in and around the Site and affecting neighboring and abutting properties during construction. The Applicant shall at all times use all reasonable means, including where necessary temporary construction fencing or screening, to minimize inconvenience to residents in the general area.
- 4.2.15 All construction activity on the property relating to this Decision shall be limited to the hours of: Monday – Friday: 7:00am – 6:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays as recognized by the Commonwealth of Massachusetts: no work permitted.

- 4.2.16 In the event that blasting should be required for the project, the Applicant shall develop, agree upon and execute a mutually satisfactory safety and public notice protocol with the building commissioner and fire department prior to the first blast.
- 4.2.17 All work on the Site shall be conducted in accordance with the terms of this Decision and shall conform with and be limited to the improvements shown on the Approved Plan and as modified herein.
- 4.2.18 Prior to commencement of any construction, not including demolition, land clearing or grading, the Applicant shall submit to the Zoning Enforcement Officer for review and approval a final electronic set of engineering drawings, landscape plans, and architectural plans for the Project which shall be substantially in conformance with those cited in Section 1 – Exhibits (above) of this Decision except that they shall be updated in accordance with the requirements of this Decision. Each plan sheet shall be signed by and show the appropriate registered professional seal of the individual(s) drawing the plan sheet as appropriate to the data on the sheet. The submission shall in addition include a list of the specific changes made to conform to the requirements of this Decision; this list and the final set of Engineering Drawings and Landscape Plans shall be signed and stamped by the Design Engineer. Upon the Zoning Enforcement Officer’s finding that the Engineering Drawings and Landscape Plans conform to this Decision, he shall mark electronically “Approved” on the final set of Engineering Drawings and Landscape Plans which shall thereupon constitute the final “Approved Plan” under this Decision and shall be filed with the records of the Board (the “Approved Plan”). If the Zoning Enforcement Officer fails to take action within 30 days after receipt of such drawings and plans, they shall be deemed “Approved”.
- 4.2.19 In the event the Zoning Enforcement Officer determines that the Applicant’s construction drawings submitted with its building permit application(s) materially deviate from the final Approved Plan in such a manner that, in his professional opinion, they do not conform to the requirements and conditions imposed by this Decision, the Zoning Enforcement Officer shall notify the Applicant of the specific deviations, and the Applicant shall either bring the construction drawings into conformity with this Decision or seek modification of this Decision in accordance with 760 CMR 56.05(11). In the event of a disagreement between the Zoning Enforcement Officer and the Applicant with respect thereto, they shall notify the Board which shall thereupon determine whether the building permit construction drawings (with any necessary revisions) do conform to this Decision. The Board shall endorse those construction drawings if so requested by the Applicant. Any change or modification to the Approved Plan, which in the opinion of the Zoning Enforcement Officer are deemed to be de minimis in nature, shall be deemed to be within the scope of this Decision.
- 4.2.20 By granting waivers from the local bylaws and regulations identified herein, it is the intention of this Decision to permit construction of the Project as shown on the final Approved Plan. If, in reviewing the Applicant’s building permit application(s), the Zoning Enforcement Officer determines that any additional waivers from local zoning, wetlands, health, or subdivision regulations is necessary to permit construction to proceed as shown on the final Approved Plan, the Zoning Enforcement Officer shall proceed as follows: (a) any matter of de minimis nature shall be deemed within the scope of the waivers granted by this Decision; and (b) any matter of a substantive nature, including those having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant’s request for a waiver therefrom. Once the project has been constructed in accordance with the Approved Plan, neither this Decision nor the Waivers set forth herein shall authorize any further waiver of the Town of Acton Zoning Bylaw or other local by-laws, rules and regulations.
- 4.2.21 Except as waived herein or otherwise waived by the Board of Selectmen, the Applicant shall pay all fees of the Town of Acton generally imposed with respect to construction projects.

- 4.2.22 The Applicant shall copy the Zoning Enforcement Officer on all correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all testing results, official filings and other permits issued for the Project.
- 4.2.23 Prior to any building permit being issued, this Decision shall be recorded at the Middlesex South District Registry of Deeds or the Middlesex Registry District of the Land Court. Proof of recording shall be forwarded to the Zoning Enforcement Officer prior to the issuance of any building permit.
- 4.2.24 The Applicant shall comply with the State Building Code.
- 4.2.25 The Applicant shall maintain a copy of the endorsed Approved Plan and this Decision at the Site during construction.
- 4.2.26 Prior to issuance of the certificate of occupancy for the last building on the Site or for any dwelling unit within that building, the Applicant shall submit to the Board an “As-Built Plan” showing all drainage structures and sewer facilities as they exist on the site, including appropriate grades and elevation. The Applicant shall also submit proof that an As-Built Plan has been prepared for all utilities including water, gas, electric, and cable, acceptable to the utility company. Each plan sheet shall be signed and show the seal of a Registered Professional Engineer, or Registered Land Surveyor certifying that the Project, as built, conforms with the Approved Plan.
- 4.2.27 Prior to issuance of the certificate of occupancy for the last building on the Site or for any dwelling unit within that building, the Applicant shall have fully completed the infrastructure improvements and plantings shown on the approved Landscaping Plan. Notwithstanding the foregoing, if in the judgment of the Zoning Enforcement Officer landscaping cannot reasonably be completed because the time of year is inhospitable thereto, landscaping may be treated separately from infrastructure such that the Applicant may post a bond or other performance guarantee securing the completion of the landscaping; provided that the Applicant shall complete the landscaping no later than the next growing season or the bond or other performance guarantee shall be forfeited.
- 4.2.28 The Applicant shall ensure safe and convenient vehicular access into and around the Site during the entire duration of the project construction. Any traffic problems that occur as a result of construction shall be mitigated as soon as reasonably practical, at the expense of the Applicant. Additional traffic enforcement or management measures may be required as reasonably necessary, or as reasonably directed by the Zoning Enforcement Officer or Building Commissioner upon consultation with the Applicant. The Board’s representatives shall be permitted access to the Site, subject to conformance with applicable safety standards, to observe and inspect the Site and construction progress until such time as the Project has been completed.
- 4.2.29 All construction vehicles shall be parked on the Site at all times.
- 4.2.30 The project shall be limited to the 230 units in 2 apartment buildings and the improvements and amenities shown and labeled on the Approved Plan.
- 4.2.31 The landscaping shall be maintained in Perpetuity by the Applicant or its successor. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions. As used in this Decision, the term “Perpetuity” shall mean for so long as the Project and the use of the Site do not strictly and fully conform to the requirements of the Town of Acton Zoning Bylaw.
- 4.2.32 The Applicant shall adhere to the DEP Stormwater Management Policy and Guidelines.

- 4.2.33 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns in Perpetuity.
- 4.2.34 At least seven days prior to the start of construction, the Applicant shall provide written notice to the Zoning Enforcement Officer of the anticipated construction start date.
- 4.2.35 The "Memorandum of Agreement" dated February 18, 2020 in its entirety is hereby made part of this Decision, and the Applicant shall comply with the term of said Agreement like with any other condition set forth herein.

#### **4.3 CONDITIONS - LEGAL REQUIREMENTS**

- 4.3.1 In Perpetuity, any sale or transfer of rights or interests in all or any part of the Site (excluding residential leases and any mortgages) shall include a condition that successors are bound by the terms and conditions of this Decision.
- 4.3.2 The Applicant shall provide notice of any transfer prior to substantial completion of the Project as set forth in 760 CMR 56.05(12) (b).
- 4.3.3 Transfer of Permits. Prior to substantial completion of a Project or a phase thereof, a comprehensive permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the applicable Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1) (a) and (b), and upon written notice to the Board and the Committee (in the case of a Project granted a comprehensive permit under 760 CMR 56.07). Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a comprehensive permit shall be deemed to run with the land.
- 4.3.4 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Decision.
- 4.3.5 The, driveway, parking lot, utilities, drainage systems, and all other infrastructure shown in the Approved Plan shall remain privately owned. The Town of Acton shall not have, now or ever, responsibility for the operation or maintenance of this infrastructure, including but not limited to snow removal and trash collection.

#### **4.4 CONDITIONS - AFFORDABILITY REQUIREMENTS**

To the extent permitted by the Department of Housing and Community Development ("DHCD"), the following conditions shall apply. Without limiting the generality of the foregoing, in the event DHCD or other Subsidizing Agency determines that it cannot accept or otherwise accommodate any of the conditions in this Decision since they are inconsistent with the holding of the Supreme Judicial Court in Zoning Board of Appeals of Amesbury v. H.A.C., 457 Mass 748 (2010), such conditions shall be null and void. In addition, to the extent that there exists any inconsistency or conflict between this Decision and the terms of the Act, the Regulations or any regulatory agreement entered into between the Applicant and the Subsidizing Agency (the "Regulatory Agreement"), the terms of the Act, Regulations or Regulatory Agreement, as applicable, shall govern.

- 4.4.1 Affordable Units: 59 of the units (approximately 25%) (the "Affordable Units") shall be made available for rental by households whose aggregate income is no greater than 80% of the area median income (the "Area Median Income") as published by the Department of Housing and Urban Development (HUD) for the Boston Metropolitan Primary Statistical Area (BMPSA).
- 4.4.2 ADA Units: All units will be accessible as both buildings have elevators. 5% of the units in the project will be ADA adaptable.

- 4.4.3 Rental Price: The Affordable Units shall be rented to qualified households at prices deemed affordable utilizing cost assumptions developed under the DHCD Comprehensive Permit Program and subject to condition 4.4.1 above. Applicable household sizes shall be determined in accordance with DHCD regulations. The maximum rental prices for the Affordable Units shall be reviewed and approved by the Monitoring Agent in accordance with applicable DHCD regulations.
- 4.4.4 Monitoring: Pursuant to 760 CMR 56.04(8)(a), the Town shall be responsible for the monitoring and enforcement of these Use Restrictions, subject to the Subsidizing Agency's right to delegate such functions as set forth in 760 CMR 56.02 (the Subsidizing Agency or its delegee of such functions is referred to herein as the "Monitoring Agent"). Any modification or deviation from the designation of Affordable Units as set forth herein shall be subject to approval of the Monitoring Agent and the Board. In addition, the Applicant shall provide the Town of Acton with all DHCD required annual compliance reports with tenant certifications, and certify that the project and units are in compliance with all regulatory terms and conditions.
- i. The Applicant shall execute a Monitoring Agreement with the Town prior to issuance of the first building permit.
  - ii. The Applicant shall pay \$2,100 to the Town of Acton for the monitoring of the Affordable Units prior to the 1<sup>st</sup> Affordable Dwelling Occupancy Permit. Afterward, the Applicant shall pay the town \$2,100 each year for monitoring on July 1st, starting July 1, 2022.
  - iii. The regulatory agreement between the developer and the town shall require that the affordable units are "floating" within the development.
- 4.4.5 Selection of tenants for Affordable Units: The Applicant shall present to DHCD and the Town a Fair Housing Marketing Plan that will confirm DHCD's approval of the tenant selection plan for the rental of the Affordable Units prior to conducting the tenant selection process for the Affordable Units. Tenants shall be selected through a fair lottery process (the "Lottery"), administered by the Applicant or a consultant retained and funded by the Applicant, in accordance with the Regulations.
- 4.4.5.1 70% of the Units in the initial lease-up of the Project shall be first offered, pursuant to the Applicants Affirmative Fair Housing Marketing Plan acceptable to DHCD, to households that meet one or more of the following "Acton Connection" preference criteria, it being understood that the Town of Acton shall have the burden to demonstrate to the Subsidizing Agency the need for "local preference" and failure to demonstrate such a need in a timely manner shall not preclude, subject to DHCD approval, the rental of any of the units in the project:
- (i) Currently a resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to M.G.L. Ch. 51, §4 and would be considered a resident under the United States Census Bureau's residency guidelines. "Usual residence" has been defined as the place where the person lives and sleeps most of the time. Also, non-citizens who are living in the United States are included, regardless of their immigration status.
  - (ii) Currently an employee of the Town of Acton, the Acton-Boxborough Regional School District, or the Acton Water District, including those with a bona fide offer of employment by one of those entities.
  - (iii) A person who is currently an employee of a business located within the Town of Acton, including those with a bona fide offer of employment by such a business.

(iv) A family with a child who attends a school within the Acton Boxborough Regional School District.

- 4.4.5.2 Renters whose selection is based on any of the above “Acton Connection” preference criteria shall continually meet at least one of these criteria from the time of selection at the time of the lease commencement. Such a renter’s failure to meet at least one of these criteria during this time period shall be a cause for that renter’s disqualification and selection of a new renter in accordance with the procedures contained in the Affirmative Fair Housing Marketing Plan.
- 4.4.5.3 The selection of renters for the Affordable Units, including the administration of the Lottery, shall be administered by the Applicant or a consultant retained and funded by the Applicant. The Lottery shall be implemented pursuant to a Lottery Plan developed by the Applicant or the Lottery consultant, as applicable, and approved by the DHCD. The Town of Acton or its designee, as permitted by the DHCD, shall oversee the Lottery. The Applicant shall fund the expenses of the Lottery.
- 4.4.5.4 Income eligibility shall be governed by the rules and regulations of DHCD, or in default, the rules and standards employed by HUD in the selection of income-eligible households for publicly subsidized housing. The prime objective is that the units must count on the Acton Subsidized Housing Inventory.
- 4.4.5.5 The provisions of this section are intended to complement and not to override or supersede any rules, regulations, or requirements of DHCD, the Massachusetts Commission Against Discrimination, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.
- 4.4.5.6 In the event that the aforesaid paragraphs for the selection of renters for the units are inconsistent with DHCD requirements, including any requirements set forth by the Town of Acton in its approval of the buyer selection plan, DHCD requirements shall prevail.
- 4.4.5.7 Perpetual Affordability Restriction: As a “limited dividend organization” at the time of financing and construction, the Applicant’s initial profit shall not exceed more than 10% of the owner’s equity in the Development in any given year. The owner’s equity, as initially set and subsequently reset, is specifically defined under G.L. c. 40B regulations. Any profit in excess of that amount shall be paid to the Town, in a form that will allow the Town to use said funds to facilitate the development of affordable housing. Review of the Applicant’s limited dividend obligations shall be done in accordance with the Regulatory Agreement. The Applicant shall provide to the Development’s subsidizing agency a full certification of total development costs and total revenues, prepared and certified by a certified public accountant, in a form and upon a schedule determined by the Guidelines. All cost certification and other reporting requirements shall be prepared in accordance with the limited dividend guidelines and reporting requirements of G.L. c. 40B, §§20-23, 750 CMR 56.04(8) and the Guidelines. Notwithstanding the forgoing, in no event shall anything in this Decision be construed to require that the Applicant, its successors and assigns, remain a “limited dividend organization” beyond the duration required by the Regulatory Agreement.

Prior to the issuance of any building permit in the Development, the Applicant shall execute and record the Regulatory Agreement between the Applicant, DHCD, and the Town of Acton. The form of agreement to be used shall be the form generated by DHCD designed, in part, to preserve the affordability restriction in the event of foreclosure by a lender.

In any event, as this Decision grants permission to build the project under the Act, and as the Applicant has obtained the benefits of a comprehensive permit, the Project shall

remain subject to the restrictions imposed by the Act so long as the Project is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Project but for the comprehensive permit's override of local bylaws to promote affordable housing. This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. The term of this Agreement, the rental restrictions, and other requirements provided herein shall be perpetual.

4.4.5.8 Substitute for Regulatory Agreement with Subsidizing Agency: If and when the Regulatory Agreement is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another subsidizing agency, the Applicant or his/her legal successor(s) shall enter into a permanent regulatory agreement with the Town, in a form and substance reasonably acceptable to the Board and Town Counsel (the "Town Regulatory Agreement"), which shall be signed by all necessary parties, including all mortgagees and lien holders of record, and recorded with the Middlesex South District Registry of Deeds or the Land Court. The Town Regulatory Agreement, at a minimum: (i) shall require that twenty-five percent of the dwellings in the Project shall remain be affordable to low and moderate income households in Perpetuity as set forth in this Decision; and (iii) shall restrict the number of allowed dwelling units to not more than 230 units. The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property. It shall be enforceable by the Town and shall require that the Units shall remain affordable in Perpetuity.

4.4.5.9 DHCD and Financial Information: In addition to the Applicant's obligations to DHCD to provide financial information and documentation, promptly following the issuance of a final certificate of occupancy for all of the Units (but not as a condition thereto), the Applicant shall provide a copy of all such DHCD submittals. The Applicant shall provide any back-up and supporting documentation reasonably requested by the Town for all Project costs and income sources.

## 4.5 LIMITATIONS

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

- 4.5.1 The foregoing required conditions, legal requirements and affordability requirements have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 4.5.2 If, between the date this Decision is filed in the office of the Acton Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 56.05(11). In no case shall the Applicant be allowed to implement a Project change that increases the number of units, changes the mix of affordable and market rate units, or increases the height of the buildings on the Site, without submitting a new application and undergoing a new public hearing and decision process. Without limitation, in the event any subsequent permitting process results in a change to the Approved Plans that triggers the need for further waivers from local bylaws, rules, or regulations, any such matter shall be treated as a project change and the procedures in 760 CMR 56.05(11) and paragraph 4.2.20 of this Decision shall be followed.
- 4.5.3 This Comprehensive Permit applies only to the Site identified in this decision and to the proposed development as shown on the plans submitted to the Board in accordance with the modifications required by this decision.

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

4.5.5 This Decision permits the construction, use, and occupancy of 230 Dwelling Units on the Site. The construction and use of the Site shall be in conformity with the Approved Plan, and there shall be no further subdivision of the Site, or the creation of additional Dwelling Units or any other structures or Infrastructure except that which is shown on the Approved Plan, without further approval by the Board in the form of an amendment to this Decision.

4.5.6 If construction authorized by this Comprehensive Permit Decision has not commenced within three (3) years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The Board may grant an extension of the three year lapse date for good cause shown, which shall include without limitation delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party appeal of a governmental permit or approval required for the Project. Any request for extensions shall be made at least thirty (30) days prior to expiration. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension.

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

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

## 5 APPEALS

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

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

The Town of Acton Zoning Board of Appeals



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Kenneth F. Kozik, Chairman

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Adam Hoffman, Member

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R. Scott Robb, Member

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



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The Town of Acton Zoning Board of Appeals

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Kenneth F. Kozik, Chairman

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\_\_\_\_\_  
Adam Hoffman, Member

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R. Scott Robb, Member

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The Town of Acton Zoning Board of Appeals

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Kenneth F. Kozik, Chairman

\_\_\_\_\_  
Adam Hoffman, Member

DocuSigned by:  
  
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 R. Scott Robb, Member

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Eva K. Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Acton Water District  
GIS

Land Use Department  
Engineering Department  
Town Manager  
Police Department  
Board of Selectmen  
Historical Commission

RHSO  
Assessor's Office  
Design Review Board  
Owner  
ACHC