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DECISION

Return to:

Graham & Harsip.
289 Great Road
Acton, Ma 01720.

**TOWN OF ACTON, MASSACHUSETTS
ZONING BOARD OF APPEALS
DECISION UPON APPLICATION OF
FRANKLIN PLACE PARTNERS, LLC
FOR A COMPREHENSIVE PERMIT
42628-95**

A True Copy. Attest:

E. K. ...
Assistant Town Clerk Acton, Mass.

I. APPLICANT AND PUBLIC HEARING

A public hearing was held by the Acton Zoning Board of Appeals (the "ZBA") at the Acton Town Hall, 472 Main Street, Acton, Massachusetts, on May 8, 2003, commencing at 7:30 p.m., upon the application of Franklin Place Partners, LLC, a Massachusetts limited liability company (the "Applicant") for a comprehensive permit under Massachusetts General Laws Chapter 40B, §§ 20-23 ("the Act") and under Town of Acton Zoning By-Laws, to build low or moderate income housing in a development of 32-unit condominium development (the "Project") on approximately 4.9 acres of land located at 520 Main Street in Acton and identified as Lot 45 on Assessor's Map E4 (the "Site").¹ The ZBA conducted a view of the premises on July 2, 2003, at 6:00 PM and held continued public hearings on May 22, 2003 at 7:30 PM, June 24, 2003, at 7:30 p.m., August 5, 2003 at 7:30 p.m., September 2, 2003 at 7:30 p.m., September 25, 2003 at 7:30 p.m., October 14, 2003 at 7:30 p.m., November 6, 2003 at 7:30 p.m., and November 21, 2003, at 7:00 p.m. The ZBA closed the public hearing on November 21, 2003, and began its deliberations on December 2, 2003.

On December 19, 2003, before approving, executing or filing its written decision of denial with the Town Clerk, the ZBA moved to reconsider its denial vote and to re-open the public hearing for purposes of considering an amended application to be proposed by the Applicant that would substantially reduce the number of housing units in the Project. The Applicant submitted a signed consent and waiver of any claims of constructive approval or constructive denial associated with this procedure. On February 27, 2004, the Applicant submitted its formal amended application for a Revised Project consisting of 12 housing units in six duplex buildings, with three of the units designated as affordable (the "Revised Project"). After sending, publishing and posting appropriate public notice, the ZBA considered the amended application during a public hearing that re-opened on March 15, 2004. The ZBA closed the public hearing on March 24, 2004, and began its deliberations.

All sessions of the public hearing were transcribed by a court reporter, or detailed minutes were taken, and the transcripts, minutes and exhibits are available for public inspection in the ZBA's offices. A list of the Transcripts and Exhibits is contained in the record.

¹ The Applicant consented to a waiver from the statutory requirement that a public hearing open within thirty days of the ZBA's receipt of the application, so as to provide sufficient time to notify interested parties through publication in the Town's weekly newspaper. See, Exhibit 2.2.

520 MAIN ST., ACTON

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Throughout the public hearing the Applicant was represented by Mark C. O'Hagan of MCO & Associates, Inc.

Sitting as members of the ZBA and present throughout the hearing were Jonathan Wagner, Kenneth Kozik and David Black.

II. NATURE OF APPLICATION; PROCEDURE REQUIRED BY STATUTE

In conducting its hearings in this matter, the ZBA is guided by the decision of the Supreme Judicial Court in Dennis Housing Corp. v. Board of Appeals of Dennis, 439 Mass. 71, 76-77 (2003) (citations omitted), that a qualified developer proposing to build low or moderate income housing:

may submit to the zoning board of appeals "a single application to build such housing in lieu of separate applications to the applicable local boards." The zoning board is then to notify those "local boards" for their "recommendations" on the proposal; the zoning board may "request the appearance" of representatives of those "local boards" at the public hearing as may be "necessary or helpful" to the decision on the proposal; and the zoning board may "take into consideration the recommendations of the local boards" when making its decision. The zoning board then has "the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application," ... and, in some circumstances, has the power to override requirements or restrictions that would normally be imposed by those local boards. If the zoning board denies the application for comprehensive permit, or approves it only on conditions that make the project "uneconomic," the applicant may appeal to the housing appeals committee ... which also has the power to override local regulations and direct the issuance of a comprehensive permit."²

Any person aggrieved by the issuance of a comprehensive permit has a right of appeal to the Superior Court under Section 17 of the Zoning Act (Chapter 40A).

III. GOVERNING LAW

The law governing this case is The Low and Moderate Income Housing Act, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations

²

The Housing Appeals Committee's decision itself is further reviewable by the Superior Court in accordance with the State Administrative Procedure Act, G.L. c. 30A.

promulgated by the Department of Housing and Community Development (“DHCD”) Housing Appeals Committee, 760 CMR 30.00ff and 31.00ff (the “Regulations”).

The Act prevents the possible use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass. 339 (1973). 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 land 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. See, e.g., Arbor Hill Holdings Limited Partnership v Weymouth Board of Appeals, Housing Appeals Committee No. 02-09 (9/24/03).

Acton does not presently meet any of these criteria. That being the case, Acton’s Zoning Bylaw and its other local bylaws and regulations which ordinarily govern development in the Town may be overridden by a comprehensive permit issued by this Board upon a proper showing by the Applicant. Hanover v. Housing Appeals Committee, *supra*.

IV. GOVERNING PRINCIPLE

Under the Act and the Regulations, in deciding this application, the ZBA must balance the regional need for low and moderate income housing against any local objection to the proposed plan. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass 339 (1973). If a comprehensive permit is granted with conditions, those conditions must not render the project uneconomic.

V. JURISDICTIONAL ELEMENTS (760 CMR 31.01(1) and 31.02(1))

Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:

1. The applicant must be a public agency, a non-profit organization, or a limited dividend organization;
2. The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and
3. The applicant must “control the site.” 760 CMR 31.01(1).

As discussed more fully below, the ZBA finds that the Applicant has provided sufficient information to establish that it will qualify as a limited dividend organization under the Massachusetts Housing Finance Authority’s (“MassHousing”) Housing Starts subsidy program, the proposed project is fundable under a low and moderate income housing subsidy program (the

Housing Starts program), subject to final approval by MassHousing, and that it has the legal right to acquire title to the Site.

(1) Status of Applicant

Pursuant to the Regulations, an applicant for a comprehensive permit must be either a public agency, a non-profit organization, or a limited dividend organization. 760 CMR 31.01(1)(a). The Applicant proposes to satisfy this criterion by forming a limited dividend organization which agrees to legally bind itself to limit the profit it derives from a comprehensive permit development. Satisfaction of this criteria is typically accomplished through the execution of a Regulatory Agreement between the subsidizing agency and the Applicant. The Regulatory Agreement at a minimum stipulates that the Applicant's profit from the development is limited to 20% of the development costs, and provides mechanisms to enforce this requirement.

In the application submitted to the ZBA, the Applicant is identified as Franklin Place LLC and Northwest Development LLC.³ The corporate records at the office of the Secretary of the Commonwealth do not reflect any filings under the name "Franklin Place LLC." There is, however, a Franklin Place Partners, LLC, with an address of 178 Great Road, Acton, MA, and a Manager Ronald B. Peabody, the same individual who appeared before the ZBA from time to time in connection with this application. In the Purchase and Sale Agreement submitted as part of the application, the proposed buyer of the Site is Franklin Place Partners, LLC.

Accordingly, for purposes of this application, the ZBA considers Franklin Place Partners, LLC to be the sole Applicant under this application. To ensure that this entity complies with the jurisdictional requirements of the Regulations and will execute a suitable Regulatory Agreement pursuant to this comprehensive permit, the ZBA has incorporated conditions below designed to limit the profit which the Applicant derives from this comprehensive permit development and to suitably monitor and enforce that limitation.

(2) Public Subsidy Requirement

A housing development being proposed under a comprehensive permit application must be subsidized under a low and moderate income housing subsidy program. Here, the Applicant has submitted both an initial project eligibility letter, dated November 8, 2002, and a supplemental project eligibility letter, dated July 18, 2003, from the MassHousing (Tab 3 to Exhibit 3; and Exhibit 38), a public agency that provides below-market financing for the development of affordable housing across the Commonwealth.

The ZBA finds that, taken together, these project eligibility letters substantially comply with the project subsidy requirement set forth in the Regulations, 760 CMR 31.01(2).

³

Under Tab 5 in the application, Franklin Place LLC is identified as the "developer," and Northwest Development LLC is identified as the "contractor/builder."

(3) Site Control Issues

To be eligible to obtain a comprehensive permit under Chapter 40B, an applicant must demonstrate that it holds legal title to the property that is the subject of the application, or that it otherwise has a sufficient legal right to acquire title to the property, such as under a purchase and sale agreement. Here, the Applicant has presented evidence that it has executed a Purchase and Sale Agreement (the "Agreement") to purchase the Site (Tab 4 to Exhibit 3). Initially, the Agreement provided that a closing must occur no later than June 2, 2003. During the public hearings, the Applicant provided evidence that the seller consented to an extension of the Agreement to and including December 2, 2003 (Exhibits 28 and 61). In connection with the public hearing on the Revised Project, the Applicant provided evidence that the seller consented to an extension of the Agreement to and including April 22, 2004 (Exhibit A16).

Accordingly, the ZBA finds that, as of the date of issuance of this comprehensive permit, the Applicant has demonstrated that it has a sufficient legal right to acquire title to the Site under the Agreement.

VI. APPLICATION REQUIREMENTS

In addition to the above jurisdictional requirements, an applicant for a comprehensive permits must comply with the Regulations governing the content of a comprehensive permit application. Under these regulations, an application must contain certain documentation and plans. See, 760 CMR 31.02(a)-(h), and Model Local Rules §3.01.

The ZBA finds that, initially, the application was deficient in the following ways:

- §31.02(2)(a) The site development plans submitted with the application did not show the materials used for drives, parking areas, walks, and paved areas;
- §31.02(2)(a) The site development plans submitted with the application did not show proposed landscaping improvements or open areas within the site;
- §31.02(2)(a) The site development plans submitted with the application were not signed by a registered architect;
- §31.02(2)(b) The Applicant submitted a plan showing existing site conditions, and a narrative report on existing site conditions, however neither the plan nor the report identified existing traffic patterns or the character of open areas in the neighborhood.
- §31.02(2)(c) The preliminary architectural drawings provided a scaled depiction of the front elevation of the proposed buildings, but did not provide a scaled depiction of the rear or side elevations. Furthermore, a registered architect had not signed the drawings.

During the course of the public hearings, the Applicant submitted revised plans that show the materials used for drives, parking areas, walks, and paved areas, and presented a landscaping plan for the development. The remainder of these deficiencies are addressed by the conditions below.

SUMMARY OF DECISION

For the reasons stated below, the ZBA approves with the conditions set forth below the amended application of Franklin Place Partners, LLC, for a comprehensive permit for the Revised Project consisting of a twelve (12) unit condominium development in six duplex buildings under the Act.

VII. THE PROJECT

1. The Project Site as defined in the Application consists of 4.9 acres of land located at 520 Main Street in Acton and identified as Lot 45 on Assessor's Map E4 (see, Exhibit 23).

2. On or about April 4, 2003, Franklin Place LLC filed an application for a Comprehensive Permit to build low or moderate income housing in a development of 32 garden-style condominium units at the Site (see, Exhibit 3).

3. The Project was amended by the Applicant on July 29, 2003 to consist of the following principal components: (a) three main residential buildings housing 10 units, 10 units and 12 units, respectively; (b) a community building; and (c) 68 parking spaces, of which 23 are garage spaces, 45 are open air residential spaces, and 4 are visitor spaces (see, Exhibit 23; Transcript, p. 445).

4. As most recently amended by the Applicant on February 27, 2004, the Revised Project consists of the following principal components: (a) six duplex residential buildings housing two units each, and (b) 48 parking spaces, including two open air spaces and two garage spaces for each unit (see, Exhibits A2, A8).

5. Under the Revised Project, the unit count has been reduced by 20 units, or 62.5%; and the parking spaces have been reduced by 20 spaces or 29.4%.

6. The Revised Project's building areas would cover 20,280 square feet, or 9.5% of the Site; paved areas would cover 20,776 square feet; or 9.7% of the Site; and landscaped and open space would cover 173,172 square feet, or 80.8% of the Site (see, Exhibit 2A).

7. The Amended Plan for the Revised Project is entitled "Comprehensive Permit Plan for Franklin Place, 520 Main Street, Acton, Massachusetts," dated April 3, 2003, revised February 26, 2004, designed by Stamski and McNary, Inc., Acton, Massachusetts, scale: 1" = 400', and consists of the following sheets (See, Exhibit A3):

SHEET NUMBER	TITLE	REVISION DATE
1	Existing Conditions Plan and Layout Plan.	February 26, 2004
2	Grading, Drainage, and Utilities Plan.	February 26, 2004
3	Detail Sheet 1 .	February 26, 2004
4	Detail Sheet 2.	February 26, 2004

8. Each of the 12 units in the Revised Project will have 3 bedrooms and 2,000 square feet (See, Exhibit 2A).

9. The Site at issue in the present case is located within an R-2 Single Family Residential Zoning District and within an Affordable Housing Overlay Subdistrict "A." Exhibit 4.1.

10. The Applicant proposes to comply with the limited dividend requirement of G.L. c. 40B, § 20, by executing and recording a Regulatory Agreement in accordance with the rules governing the Housing Starts program, and agreeing to restrict its profit to not exceed 20% of the Revised Project's development costs.

VIII. REQUESTED WAIVERS FROM LOCAL BYLAWS AND REGULATIONS

A. Acton Zoning Bylaw

11. The Applicant has requested waivers from the following Zoning Bylaw provisions:

Section 3.1 - Table of Principle Uses - waiver to allow multi-family housing in a R-2 Residential District and waiver from site plan approval requirement; and

Section 3.3 - Residential Uses - waiver to allow construction of more than one residential building on a lot.

A.1 Density

12. Housing density is a legitimate planning, health, and safety concern to be addressed by a Board of Appeals in the context of a comprehensive permit application. In addition to the Town's Master Planning concerns, density of site development affects a variety of other matters such as sewage disposal arrangements, water drainage arrangements, fire protection, traffic circulation, and the availability of open space, all of which are relevant to comprehensive permit proceedings. 760 CMR 31.07(3). These issues become more critical, and often more challenging, as the density of housing increases.

13. The ZBA received and considered an abundance of evidence on how the original proposed Project would affect the concerns enumerated above. In particular, testimony focused on the inconsistency of the project with the Town's Master Plan, the potential impact of the on-site sewage treatment and disposal arrangements on the environment and public water supplies, and whether the proposed open space areas and proposed drainage infrastructure was adequate or suitable. These issues are considered in detail below.

a. The Town's Master Planning Concerns

14. The Town's Master Plan, originally adopted in 1990 and updated in 1998, designated five areas of the Town that would serve as "growth centers" for residential development. Exhibits 20 and 21. These areas include East Acton Village, North Acton Village, South Acton Village, West Acton Village, and Kelly's Corner. Exhibit 4.1.

15. In 1990, the Town formalized these designations by amending the Zoning Bylaw to create an Affordable Housing Overlay District, and a framework for evaluating and permitting affordable housing developments within the Overlay District. The Overlay District was split into a high-density Subdistrict "B" and a lower density Subdistrict "A." Exhibits 20, 21.

16. The five growth centers, having been identified as desirable locations for higher density development, were drawn into Overlay Subdistrict B. Other parts of town that are not within the growth centers, but otherwise deemed suitable for lower-density affordable housing development, were included in Subdistrict A. Exhibits 20, 21.

17. Under Section 4.4 of the Zoning Bylaw governing development within the Overlay District, a developer may be permitted to construct more housing units on a tract of land than what is otherwise permitted in the underlying zoning district, in exchange for agreeing to dedicate a certain percentage of the housing units for affordable housing. Developments in Subdistrict A must also obtain special permit approval under the Open Space Development provisions of Section 4.2, which, in the R-2 zoning district, require a minimum development tract size of six acres. ZBL, § 4.2.3.1. Development in Subdistrict B does not require Open Space Development approval, and the minimum tract size for all affordable housing developments in that subdistrict is 80,000 square feet (less than two acres). ZBL, §4.4.4.2.

18. The subject Site is located within Subdistrict A and in zoning district R-2, therefore the Site must be permitted as an Open Space Development as a prerequisite to density bonuses under Section 4.4 and must contain at least six acres. Since the Site consists of 4.9 acres, it is ineligible for Open Space Development approval, and cannot qualify for density bonuses under Section 4.4. The high level of density proposed in this Application is, therefore, inconsistent with the Town's Master Plan, as implemented in the Town's Zoning Bylaw.

19. The ZBA finds that the Town's Master Plan is relevant to the pending Application. 760 CMR §31.07(3)(d). In its reported decisions, the Housing Appeals Committee (the "HAC") has elaborated on the extent to which a zoning board may premise a comprehensive permit denial on an application's inconsistency with a master plan. Specifically, the HAC has indicated that it will uphold a zoning board's denial of a comprehensive permit if the Town's interests in preserving the integrity and conformity of the master plan outweigh the regional need for low and moderate income housing. See, Stuborn Ltd. Partnership v. Board of Appeals of Barnstable (known as "Stuborn II") (September 18, 2002).

20. The genuineness, or sincerity, of the Town's interests in this regard are tested through a three-part inquiry:

- (a) Is the plan bona fide? (Was it legitimately adopted, and does it continue to function as a viable planning tool in the Town?);
- (b) Does the plan promote affordable housing? and
- (c) Has the plan been implemented in the area of the site?

21. The ZBA finds that the Town's Master Plan easily satisfies this initial three-part inquiry. The Master Plan was initially adopted by Town Meeting in 1990, and updated in 1998. The affordable housing elements of the Master Plan were implemented through the adoption of Section 4.4 of the Zoning Bylaw, which provides incentives for affordable housing development in Acton and designates certain appropriate areas for such development. Since 1998, the ZBA has approved two high-density affordable housing developments under Chapter 40B, both located within Subdistrict B. The first development, Westside Village, consists of 16 single-family homes on 5.25 acres. The second development, Crossroads Village, consists of 12 townhouse condominium units on 2.23 acres. In 1999, the Planning Board approved a 16-lot subdivision located in Subdistrict B on 3.3 acres of land. Additionally, the Town has added eight "scattered site" affordable housing units to its Subsidized Housing Inventory under DHCD's Local Initiative Program since 1994, and four more are in the planning stages. Exhibits 4.0, 4.1. These units were created either through negotiated concessions from developers of market-rate housing, or under the Section 4.4 permitting process for Subdistrict A developments. See, generally, Exhibit 4.1.

22. The Department of Housing and Community Development ("DHCD") recently recognized the legitimacy of the Town's plan by providing preliminary approval on the Town's

request to use portions of the Master Plan to satisfy certain elements of the Executive Order 418 Community Development Plan requirements. See, Exhibit 84. The Town has been certified by DHCD under the Executive Order 418 community development planning process, which includes taking affirmative steps to increase housing production. Before Executive Order 418 was even promulgated, the Town had created the Acton Community Housing Corporation, charged with developing affordable housing strategies and implementing affordable housing programs in the Town. The ACHC maintains a list of income-eligible households interested in purchasing affordable housing units, and administers the purchaser/tenant selection processes for units created through comprehensive permits or under Section 4.4 of the Zoning Bylaw. The ACHC is actively pursuing development opportunities with private developers. In April, 2002, Acton Town Meeting supported the proposed redevelopment of an abandoned school building for affordable rental housing. A feasibility study for this project was completed in March, 2002 with funding from the Massachusetts Housing Partnership. Notably, Town Meeting defeated a competing petition, seeking to demolish the existing school building and use the property as recreational space for an abutting school. Exhibit 85.

23. The ZBA concludes that the Town has a genuine interest in creating affordable housing, and has taken affirmative steps to create an environment conducive to increased housing production. Several affordable housing developments have been permitted in the Affordable Housing Overlay District since the Master Plan was adopted, and the ACHC continues to promote affordable housing development in the Town.

24. The ZBA recognizes, however, that due to increased demand for, and production of, expensive, market-rate homes in Acton over the last decade, only 2.07% of the Town's 7,645 housing units currently qualify as low and moderate income housing for purposes of Chapter 40B. Exhibit 3, Tab 7.⁴ The ZBA concludes that despite the laudable efforts and modest accomplishments made in furtherance of increasing affordable housing opportunities in Acton, the Town needs more low and moderate income housing for families that live and work in Acton, and who make important contributions to the fabric of our community.

25. Significantly, some of the affordable housing units in the Revised Project can be made available exclusively for families with specific ties to Acton, such as children of Acton residents, current employees of the Town and its schools, residents of Acton, and people employed in the Town of Acton. The affordable units are expected to be sold for \$195,000 each. By comparison, the median sale price for all housing units sold in Acton in the month of June, 2003 was \$409,950, and the median sale price for all single-family homes in that same month (excluding condos) was \$479,000. Exhibit 86.

26. These factors lead us to conclude that the Town's interests in preserving the integrity of the Master Plan with respect to this particular parcel of land is, for an appropriate

⁴ The ACHC informs us that three more affordable units have been added to the Town's Subsidized Housing Inventory, bringing the percentage up to 2.15%.

project, outweighed by the current need for more moderately and affordably-priced housing in Acton.

27. Accordingly, in arriving at the appropriate density for the project on this Site, the ZBA has taken into account the fact that the project was inconsistent with the Master Plan and is to be down-sized to a more compatible project on the Site. This issue is discussed further below.

b. Sewage and Wastewater Disposal Concerns

28. There is no public sanitary sewer on Main Street in the vicinity of the Site.

29. The Applicant proposes to serve the Revised Project with an on-site sub-surface sanitary sewage disposal system. Exhibit 2A.

30. The Town of Acton's public water supply system relies exclusively on groundwater wells within the Town.

31. There is a stream located on or proximate to the Site which discharges to Conant Brook. Exhibits 4.0, 4.2, 23, and 72.

32. There are bordering vegetated wetlands proximate to the stream. Id.

33. The proposed Revised Project is adjacent to these wetlands and stream. Id.

34. The Conant public water supply well field is downgradient from the project Site. Exhibits 4.0 and 4.2.

35. Over the past 15 years, the Board of Health has measured coliform bacteria concentrations in the Town's brooks and streams, and has found that the pollution of these streams typically exceed swimming water standards, let alone drinking water standards. Exhibit 4.2

36. In response to these public health concerns, the Board of Health adopted a regulation requiring septic systems that discharge more than 2,000 gallons per day to be constructed at least 100 feet away from wetland resources. Id.

37. The proposed Revised Project will not comply with the 100-foot setback requirement. Exhibit 2A.

38. As the number of housing units on a particular parcel of land increases, so does the quantity of sewage and wastewater that is processed and discharged into the ground.

39. Accordingly, to protect the wetlands, the stream, and the Town's public water supply wells, and given the particular environmental impact concerns associated with this project, the ZBA concludes that it is appropriate, in granting any waiver from the otherwise applicable provisions of the Acton Zoning Bylaw, to limit the number of housing units in the project to that which is necessary to make the project economically feasible.

40. The ZBA finds that the 12-unit proposal as shown on the Amended Plan for the Revised Project addresses many of the environmental, health, and public safety concerns the ZBA had with the original 32-unit proposal.

c. Water Drainage Arrangements and Open Space

41. Storm water drainage is also a contributor to groundwater and wetland contamination.

42. Given the proximity of wetland resources and public water supplies, it is in the Town's interest to limit the amount of impervious surface area on the Site and to ensure that adequate storm water collection and infiltration is implemented.

43. Drainage infrastructure has a direct impact on the availability of open space for residents of the proposed development.

44. Land that is used for drainage facilities and grading that is necessary to accomplish proper storm water runoff channeling cannot be used for the active or passive recreation of residents.

45. On the Applicant's original site plan, the "back yards" of the three proposed buildings featured relatively steep contours, due primarily to the unique topography of the site, limiting the area on the Site that could be utilized for passive and active recreation.

46. The "usable" open space proposed in the original site plan was quite limited. By contrast, the Amended Plan for the Revised Project features a larger amount of open space that can be utilized by a substantially reduced number of residents, thereby significantly improving on the open space characteristics of the project.

d. Resolution of Zoning Waivers Relating to Density

47. The ZBA acknowledges the present need for affordable housing in the Town of Acton, and recognizes that, in general, where land costs are high, permitting a higher level of density will facilitate the construction of affordable housing, making it economic to build.

48. Under Chapter 40B, however, the burden is on the Applicant to demonstrate that a waiver of a local bylaw or regulation is necessary to make the development economically viable.

49. Before the Applicant had submitted its amended application for a comprehensive permit and its Amended Plan for the Revised Project showing 12 units, instead of 32 units, the Applicant argued that it needed to construct at least 32 units of housing on the Site in order to realize a reasonable return on its investment in the Project.

50. The ZBA concluded that a 32-unit Project would have been in derogation of the Town's Zoning Bylaw, specifically, Section 3.1 and 3.3. As noted above, such a high level of density would have had direct consequences on the project Site, on the neighborhood in the vicinity of the project Site, and on the quality and preservation of the Town's character and natural resources.

51. While the ZBA concluded that the density of an economically viable project on the Site could be substantially reduced from 32-units, a majority of the ZBA was reluctant to "re-design" the project by conditions imposed in an approval decision. Instead, counsel for the ZBA encouraged the Applicant to take the initiative on this issue.

52. The Applicant has done so, and has submitted the Amended Plan for the Revised Project which achieves the goal of a substantial reduction in density while still being economically feasible. Since the Applicant has submitted an Amended Plan for the Revised Project showing 12 units, and since the ZBA has concluded that this reduction in density satisfies the environmental, health, and public safety concerns the ZBA originally had with the 32-unit proposal, the ZBA need not consider the impact a further reduction in density would have on the economics of the project.

53. The ZBA grants a waiver from the above-referenced density provisions of the Zoning Bylaw, and the provision of Section 3.1 requiring site plan approval.

B. Acton Board of Health Regulations

54. For its original 32-unit proposal, the Applicant originally requested waivers from the following Board of Health regulations:

Article 11-7.3 (no sewage disposal system with a capacity of 2,000 gallons per day or over shall be constructed within 100 feet of any wetland);

Article 11-9.1 (leaching facilities for any use shall be constructed to meet the requirements delineated in Table 2); and

Article 11-9.7 (the minimum distance between sidewalls of leaching trenches must be twelve (12) feet where the area between the trenches is used for a reserve area).

55. For its Revised Project, the Applicant requests only a waiver from Article 11-7.3. The leaching area for the proposed septic system would be located within 95 feet of a wetland, and the pump chamber is located within 75 feet of a wetland. Exhibit 2A.

56. The system has been or is expected to be approved by the Board of Health under Title V of the State Environmental Code.

57. The Board of Health reviewed the Applicant's request for the waiver from Article 11-7.3 at a meeting on March 15, 2004. At that meeting, the Applicant proposed to perform certain tasks to ensure the effectiveness of the septic system and to mitigate negative impacts on the environment. Specifically, the Applicant proposed to:

- (a) install two groundwater monitoring wells, one upgradient and one downgradient of the soil absorption system. These wells will be monitored on a yearly basis for both nitrate-nitrogen and *e. coli*. The results of this monitoring program will be submitted to the Health Department within 30 days for sampling and analysis. The groundwater wells will also be tested to determine baseline conditions prior to the system being put into use;
- (b) contribute \$5,000 to a fund to be available to and administered by the Health Department to study and monitor Conant Brook downstream from the Property, as the bordering vegetated wetland and the associated stream both drain into Conant Brook;
- (c) install effluent tee filters in the outlet tees of all septic tanks to increase the retention of solids and improve the quality of the effluent that reaches the subsurface disposal area;
- (d) install dual compartment septic tanks, with storage capacity in excess of what is required under Title V.

58. The Board of Health informed the ZBA that it was satisfied that the proposed mitigation provided a level of environmental protection equivalent to that which is lost by permitting the system to be located within the 100-foot setback.

59. The ZBA concurs with the Board of Health's findings and recommendations, and waives the Applicant's strict compliance with Article 11-7.3, conditioned upon (a) the Applicant's compliance with Title V, (b) the Applicant's performance of the four mitigation tasks listed under Paragraph 61 above, and (c) establishment of a septic system repair/replacement trust account for the condominium association funded with a minimum initial deposit of five thousand dollars (\$5,000). See the conditions of approval set forth below.

C. Acton Wetlands Protection Bylaw and Conservation Commission Regulations

60. Under the state's Rivers Protection Act, Chapter 258 of the Acts of 1996, and the amended regulations of the Department of Environmental Protection defining perennial streams to exclude any streams having a watershed of less than 0.5 square miles, the Acton Conservation Commission has concluded that the watershed for the stream associated with 520 Main Street is substantially less than 0.5 square miles and therefore that the stream is an intermittent stream under the Rivers Protection Act and the Department's wetlands protection regulations. The Conservation Commission has therefore issued an Order of Conditions for the project under state law. Exhibit 72. The Department of Environmental Protection ("DEP") has issued a superceding Order of Conditions for the Project, which the Applicant shall request be amended to conform to the Revised Project.

61. Under Chapter 40B, the ZBA undertakes the authority of the Conservation Commission for purposes of administrating the Acton Wetlands Protection Bylaw (the "Wetlands Bylaw"). Under the Wetlands Bylaw, the Applicant would have had to file a Notice of Intent, seeking the Conservation Commission's approval of the development in the form of an Order of Conditions. The ZBA therefore reviewed the Applicant's compliance with the development restrictions contained within the Wetlands Bylaw, and solicited the advice and opinions of the Conservation Commission.

62. As a preliminary matter, the ZBA considered whether the amendments to the Wetlands Bylaw adopted at the Annual Town Meeting were applicable to the Project application. The ZBA concluded that the amendments, which increased the "no-cut" and "no-build" buffer zones described above, were inapplicable because: (a) the comprehensive permit application was submitted prior to the effective date of the amendments, and (b) the Conservation Commission has applied Wetlands Bylaw amendments prospectively. The ZBA concluded that it should apply the Bylaw consistent with the manner in which the Conservation Commission applies the Wetlands Bylaw.

63. The ZBA next considered substantive matters relating to the Wetlands Bylaw.

64. The Conservation Commission has concluded that the Acton Wetlands Protection Bylaw (the "Wetlands Bylaw") more strictly regulates a "riverfront area", defined as, ". . . the area of land between a river's mean annual high water line and a parallel line measured horizontally 200 feet away", within the "resource area" protected by the Bylaw. Under the Wetlands Bylaw, "Perennial streams are rivers; intermittent streams are not rivers." The Wetlands Bylaw has its own list of standards for determining flow status, which does not include the DEP's amended regulation excluding all streams with very small watersheds. Exhibit 72.

65. The Conservation Commission reported to the ZBA that there is evidence that the stream in question flows year round, despite its small size, and that the Applicant has not

submitted any evidence tending to show, through observations or otherwise, that the stream in fact dries up for any part of the year. Exhibit 72.

66. Therefore, the Conservation Commission presumed that the stream is a perennial stream for purposes of the local Wetlands Bylaw's protection. Exhibit 72.

67. Under the local Wetlands Bylaw the proposed activities are deemed to have a significant impact upon wetland interests, which include protecting public water supply, protecting groundwater, providing flood control, preventing storm damage, preventing water pollution and protecting wildlife habitat.

68. While the original project and the Revised Project meet the minimum setbacks in the applicable local Wetlands Bylaw, Section F8.3 of the Bylaw also states that, "These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the Bylaw by the Commission." Exhibit 17.

69. Based on the perennial nature of the stream and the extensive alterations proposed by the Applicant within the riverfront area, the Conservation Commission initially determined that the original 32-unit project should maintain a 100-foot undisturbed buffer in order to adequately protect the environmental interests specified in the Wetlands Bylaw. Exhibit 72.

70. The Conservation Commission met with the Applicant after making this determination, and the Applicant proposed to substantially increase the quantity and quality of the plantings, and make other changes to the site plan in order to mitigate the adverse impacts that the development would have on the abutting wetlands. Exhibit 79. The Commission continued to recommend a 100-foot buffer but also acknowledged that these improvements would "more adequately meet the [Wetlands] Bylaw's interests" than the prior plan. Exhibit 94. At a minimum, the Commission recommended that the ZBA condition its approval on the Applicant's conformity to the revised landscaping plan. Exhibit 94.

71. Since the Amended Plan depicts a substantially different development design, the Applicant appeared before the Conservation Commission on March 17, 2004 for its comments and recommendations. The Conservation Commission reviewed the Amended Plan and the revised landscaping plan (Exhibit A4), and had no additional comments, other than finding that that the Revised Plan meets all the requirements of the old Wetlands Bylaw under which the Plan was originally filed, and is substantially in compliance with the new Bylaw as well. Exhibit A12.

72. The Applicant initially requested a blanket waiver from compliance with the Wetlands Bylaw in general and from this increased setback requirement in particular.

73. The ZBA finds that the Wetlands Bylaw complements the provisions of the state Wetlands Protection Act, under which the Applicant filed a Notice of Intent with and received an Order of Conditions from the Acton Conservation Commission. The Wetlands Bylaw

regulates the development of land within protected natural resource areas, and contains certain development restrictions that are more stringent than those contained in the Wetlands Protection Act (the "WPA"). For example, under the WPA, the Conservation Commission may exercise jurisdiction over any development within a 100 feet of a protected resource area. The WPA does not preclude development within this "buffer zone," but the Conservation Commission may issue an Order of Conditions, imposing conditions on the development within the buffer zone. Under the Wetlands Bylaw, however, natural vegetation within 25 feet of the edge of a resource area may not be disturbed, and construction cannot occur within 40 feet of a resource area.

74. The ZBA finds that the Revised Project application complies with the minimum provisions of the Wetlands Bylaw in effect at the time of the submission of the application.

75. While the ZBA is not bound by the Conservation Commission's recommendations in this 40B matter, the ZBA recognizes the expertise of the Conservation Commission in protecting wetland resource areas in the Town.

76. The ZBA finds that observing the recently-amended setback requirements to the Revised Project (75-foot no-build, 50-foot no-disturbance), and the 100-foot setback from the stream on the Property, would satisfy the concerns shared by the Conservation Commission and many of the neighbors with respect to the quality of the wetlands resources on the Property (with the exception of the building containing Units #1 and #2 located closest to Main Street and the drainage infrastructure adjacent to Main Street, both as shown on the Amended Plan, where such observance is not possible). The ZBA, therefore, waives strict compliance with the provision of the Wetlands Bylaw requiring the submission of a Notice of Intent but does not waive compliance with the setback provisions of Section F.8.3 that were in effect as of April 4, 2003. These waivers are premised on the understanding that the Revised Project will conform to the 75-foot no-build and 50-foot no-disturbance restrictions except as set forth herein and on the approved plans for the Revised Project.

IX. CONCLUSORY FINDINGS

77. Based on the evidence presented by the Applicant, local boards and officials, the *pro forma* consultant, and interested parties at the public hearings, the ZBA finds as follows:

- a. Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum criteria, after which the Town would have its normal powers to apply its own bylaws, requirements and regulations to this application.
- b. The proposed 12-unit Revised Project (as depicted on the Amended Plan) will, when conforming to the conditions set forth in this Decision, adequately provide for traffic circulation, storm water drainage, sewerage,

and water, without an undue burden on the occupants of the Revised Project or on the surrounding neighborhood or the Town.

- c. The proposed 12-unit Revised 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 Revised Project, the neighborhood, or the Town.
- d. The original proposed Project with 32 units would have substantially derogated from the policies and goals set out in the Town's Master Plan, violated the Board of Health's 100-foot setback requirement for the construction of high-capacity septic systems adjacent to wetland resources, threatened the quality of the Town's public water supply and the integrity of the proximate wetland resources, provided for a significantly higher density of housing than what would otherwise be permitted under the Zoning Bylaw, resulted in buildings encroaching upon the setback that the Conservation Commission deemed necessary to protect the interests of the local Wetlands Bylaw, and provided very little "usable" open space for residents. Accordingly, the original proposed Project with 32 units would have been detrimental to the environment, to the surrounding neighborhood, and to the Town's Master Plan as a whole.
- e. The proposed 12- unit Revised Project on the Site is supported by the evidence, and as conditioned below, (i) would be less inconsistent with the Town's Master Plan and the interests protected by the local wetlands bylaw, (ii) would not be rendered uneconomic by the terms and conditions of this decision, (iii) would represent a reasonable balance of the regional need for low and moderate income housing against important local planning and environmental concerns, and (iv) would be consistent with local needs within the meaning of Massachusetts General Laws, Chapter 40B, Section 20.
- f. The following waivers from local bylaws and regulations are granted, subject to the terms and conditions set forth herein:

(i) *Zoning Bylaws:*

Section 3.1 - Table of Principle Uses - waiver to allow multi-family housing in a R-2 Residential District and waiver from site plan approval requirement; and

Section 3.3 - Residential Uses - waiver to allow construction of more than one residential building on a lot.

(ii) *Board of Health Regulations:*

Article 11-7.3 (no sewage disposal system with a capacity of 2,000 gallons per day or over shall be constructed within 100 feet of any wetland);

(iii) *Wetland Bylaw:*

The provision of the Wetlands Bylaw requiring the submission of a Notice of Intent.

X. CONDITIONS ATTACHED TO COMPREHENSIVE PERMIT:

For the foregoing reasons, the ZBA grants the application of Franklin Place Partners, LLC for a comprehensive permit for the Revised Project consisting of a 12-unit duplex-style condominium project on the Site under the Chapter 40B, subject to each and every one of the following conditions:

A. General Conditions

- A.1 Within sixty days of the effective date of this Decision, the Applicant shall submit to the ZBA a final comprehensive permit site plan, for technical review by the ZBA to ensure that it is consistent with and in conformity with this Decision, which upon such finding shall be approved and endorsed by the ZBA (the "Approved Plan"). When creating the Approved Plan, the Applicant shall make all of the changes to the Amended Plan as recommended by the Engineering Department in Exhibit A7, paragraphs 1, 2, 3, 4, 8, and 9.
- A.2 This Decision shall be appended to the endorsed Approved Plan and shall be recorded at the Middlesex South District Registry of Deeds. This Decision shall become effective upon recording. Proof of recording shall be forwarded to the ZBA prior to issuance of a building permit or to the start of construction.
- A.3 The Applicant shall comply with all local rules and regulations of the Town of Acton and its boards and commissions unless expressly waived herein or as otherwise addressed in these conditions.
- A.4 The Applicant shall pay all fees of the Town of Acton imposed generally in respect of construction projects and for the purposes of monitoring compliance of the Revised Project's building construction and occupancy in accordance with this Comprehensive Permit.
- A.5 The Applicant shall copy the ZBA and the Building Commissioner 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 Revised Project.

- A.6 The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Commissioner. The Applicant shall pay all required fees for all such building permits including any fees charged for inspections and permits.
- A.7 The Applicant shall maintain a copy of the endorsed Approved Plan and this Decision at the Site during construction.
- A.8 The Applicant shall obtain temporary easements or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting.
- A.9 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Revised Project and the use of the land does not strictly and fully conform to the requirements of the Acton Zoning Bylaw; and reference to these conditions shall be incorporated in the Master Deed and in each Unit Deed recorded for the Revised Project and for any unit in the Revised Project.
- A.10 This Decision permits the construction, use, and occupancy of twelve (12) housing 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 housing units or any other structures or infrastructure except that which is shown on the Approved Plan, without further approval of the ZBA in the form of an amendment to this Decision.
- A.11 No structure shall be built with a front elevation more than two stories as shown on the Amended Plan's elevation depiction.

B. Submission Requirements

- B.1 This comprehensive permit shall lapse at the end of six months next following the date on which this decision is filed with the Acton Town Clerk (which period shall be extended for a period equal to the duration of any appeals taken from this Decision by any person other than the Applicant), unless the Applicant has submitted to the ZBA prior to that time written evidence satisfactory to the ZBA:
 - a. From a public or private financing institution, or institutions, a written commitment to provide the major portion of the financing required for the

construction of the Revised Project as conditionally approved by this Decision; and

- b. From a federal or state subsidizing agency that both the Revised Project, as conditionally approved by this Decision, and the Site are acceptable and qualify for and will receive financial assistance under a program administered by that agency to assist the construction of low or moderate income housing, within the meaning of the Act.

B.2 Pre-Construction Submissions: Before the Applicant begins any construction of the buildings and units in the Revised Project, the Applicant shall have

- a. Delivered to the ZBA the organization papers of the non-profit or limited dividend organization which will construct the Revised Project and a certified copy of any determination by the federal or state subsidizing agency that the organization qualifies as a non-profit or limited dividend organization within the meaning of the Act and what the limitation on dividend is. If that entity is Franklin Place, LLC, it shall forthwith perfect, maintain and provide to the ZBA proof of its status as a limited dividend or non-profit organization under the provisions of M.G.L. c. 40B, § 21;
- b. Delivered to the ZBA a certified copy of the financing contract between Applicant and the federal or state agency which provides the financial aid for construction of low or moderate income housing required by the Act for a Comprehensive Permit for the Site;
- c. Obtained, and filed with this ZBA a copy of, (a) a building permit from the Acton Building Commissioner pursuant to the Massachusetts State Building Code and (b) the construction drawings submitted to obtain said building permit;
- d. Obtained, and filed with this ZBA a copy of, a written technical review from the Acton Director of Public Works of the Applicant's engineering details and proposed easement relating to its tie-in to the Acton public storm water drainage system on Main Street consistent with the terms of this Decision;
- e. Obtained, and filed with the ZBA a copy of, any approvals from the Acton Board of Health which may be required under any statute, code, or rule and regulation affecting public health not otherwise preempted by Chapter 40B, to the extent not otherwise expressly covered by this Decision;
- f. Obtained, and filed with the ZBA a copy of the final Order of Conditions or Superseding Order of Conditions under the Wetlands Protection Act, as

to any portion of the Site subject to the Wetlands Protection Act, in respect of the site and the Revised Project;

- g. Obtained and filed with the ZBA a copy of a National Pollutant Discharge Elimination System (“NPDES”) permit issued for the Revised Project;
 - h. Delivered to the ZBA final architectural drawings for all buildings shown on the Plan, providing a scaled depiction of the front, rear and side elevations, signed by a registered architect; and
 - i. Delivered to the ZBA a letter from the Massachusetts Historical Commission finding no adverse effect on historical or archaeological resources at or in the vicinity of the Site resulting from the Revised Project.
- B.3 As Built Plans: Prior to the occupancy or use of the final building constituting a part of the Revised Project, the Applicant shall submit to an ZBA an “As Built Plan” showing all pavement, buildings, drainage structures, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The plans shall be signed by a registered land surveyor or civil engineer, certifying that the Revised Project as built conforms and complies with the conditions of this Comprehensive Permit. [The purpose of this provision is to facilitate the Building Inspector’s review of the project for compliance with the comprehensive permit before the final occupancy permit is issued.]
- B.4 As Built Utilities Plan: An accurate as-built utilities plan and profile, showing actual in-ground installation of all utilities, shall be submitted to the Department of Public Works after completion of construction.

C. Site Development Construction Conditions

- C.1 The Applicant shall cause to be performed a current topographic survey on the entire Site suitable to a scale of 1-inch = 40-feet mapping with a 2-foot contour interval. Utilization of USGS topographic information for the “concept design level” is acceptable, however more accurate and detailed survey information is required as finalization of the design occurs. Final topographic information shall be provided to the ZBA prior to obtaining any other permits.
- C.2 The Applicant shall obtain all building permits and occupancy permits that may be required by the State Building Code.
- C.3 The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the Revised Project. ZBA representatives shall be permitted

access to the Site to observe and inspect the site and construction progress until such time as the Revised Project has been completed.

- C.4 The Applicant shall submit a construction and permitting schedule prior to the start of construction and bi-annually thereafter to the ZBA to assist in project status update and review.
- C.5 The Applicant shall file two complete sets of "progress submittals," including design drawings, with the Acton Building Commissioner at each of the following milestones: 50% complete, and 100% complete. Progress submittals shall include any and all updated or revised design calculations supplementing the original design plans. The Building Commissioner's and ZBA's input and guidance are critical at these milestones. The Applicant may proceed to the next milestone unless the ZBA finds substantial deviations from the this Decision and the Approved Plan, in which case the ZBA shall give notice to the Applicant and the Applicant shall not proceed until the deviations are resolved. The Applicant will be expected to provide a prompt and timely written response to any comments or questions posed by the ZBA or Building Commissioner at each milestone.
- C.6 The Applicant shall forward final architectural plans to the ZBA at the time of applying for building permits. All construction shall be inspected by the Building Commissioner and shall be in compliance with all Massachusetts State Building Code requirements.
- C.7 The Applicant shall provide temporary central mailbox units (CMU) for any project residents during project construction. These CMU's shall be approved as to style and location by the local Postmaster General of the United States Post Office. Post Office authorization shall be forwarded to the ZBA for their record.
- C.8 The Applicant shall be responsible to ensure that nuisance conditions do not exist in and around the site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- C.9 Hours - The hours of operation for any construction activities on-site shall be between 7:00 am and 7:00 pm, Monday thru Friday, 8:00 am and 5:00 pm on Saturdays, and no work shall be allowed on-site on Sundays or on Holidays as recognized by the Commonwealth of Massachusetts.
- C.10 Dust - The Applicant shall implement dust control operations, in an approved manner, whenever necessary or when directed by the Building Commissioner or the Town Engineer, even though other work on the project may be suspended as a result thereof. Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.

- C.11 Noise - The Applicant shall implement measures to ensure that noise from project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies. The Applicant shall cease any excessively loud activities when directed by the Building Commissioner.
- C.12 Vibration - The Applicant shall implement necessary controls to ensure that vibration does not extend beyond the subject site and create a nuisance or hazard for property abutters.
- C.13 Traffic - The Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the site. Any traffic problems that occur as a result of site operations and construction shall be mitigated immediately, at the expense of the Applicant. Additional traffic mitigation measures may be required as necessary, or as directed by the Building Commissioner.
- C.14 Roads – The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal roadways permitting access to residents and emergency vehicles during construction and until the Condo Association has been legally established.
- C.15 Burial of any stumps or debris onsite is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.
- C.16 Soil material to be used as backfill for pipes, roads, and/or structures (i.e. detention basins) shall be tested at the expense of the Applicant, by a firm selected by the ZBA. Testing of said backfill shall be performed in conformance with standards and frequencies established by the Building Commissioner.
- C.17 Utilities, including but not necessarily limited to electric, cable, and telephone shall be located underground. A final utility plan approved by the applicable public utilities shall be submitted to and approved by the ZBA prior to the issuance of any building permits.
- C.18 Stabilization Requirements - No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- C.19 Construction vehicles shall be parked on the Site, and off Main Street at all times.

- C. 20 Blasting - A licensed blasting professional shall do all blasting on the site after proper pre-blast inspections have been conducted and all required permits have been obtained from the Acton Fire Department.

D. Legal Requirements

- D.1 The Applicant shall establish a condominium owners' association (the "Condo Association") in a form approved by Town Counsel and shall establish a trust fund to be reserved specifically for repairs to, or replacement of, and maintenance of the common septic disposal system as set forth herein.
- D.2 Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Comprehensive Permit. This Comprehensive Permit may not be transferred to a person other than the Applicant, or to an entity of which the Applicant controls less than 50%, without the written approval of the ZBA and the execution of any instruments or documents that may be required for the perpetual enforcement of this Comprehensive Permit pursuant to Town Counsel's direction. The scope of the ZBA's review of a proposed transfer shall be limited to the review of the transferee's qualifications, experience, and capacity.
- D.3 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit.
- D.4 In setting the percentages of beneficial interest in the condominium common areas in the Condominium Master Deed, the Applicant shall ensure that the percentages assigned to the Affordable Units reflect the fair market value of the Affordable Units, taking into account the affordable housing restrictions that encumber said Units.
- D.5 The roadways, utilities, drainage systems, septic systems, and all other infrastructure shown in the Approved Plan shall remain private and the Town of Acton shall not have, now or ever, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and trash collection.

E. Traffic and Safety Conditions

- E.1 The Applicant shall provide a safe school bus stop area near the Main Street entrance to the Site for children who reside in the Revised Project.
- E.2 Traffic signage shall be consistent with the requirements of the current edition of the Manual for Uniform Traffic Control Devices (MUTCD).

- E.3 Appropriate driveways, sidewalks and curbing, sufficient for the safe separation of pedestrians from moving vehicles, shall be provided throughout the Site to allow safe vehicular and pedestrian access within the site and between all units.
- E.4 The Applicant shall install stop sign and stop bar control of exit movements from the Revised Project Driveway's "T" intersection with Main Street.
- E.5 All such improvements shall be completed in accordance with the standards set forth in the most recent edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), and shall be in place prior to project occupancy.
- E.6 The Applicant shall contribute \$7,500 as a gift to the Town's sidewalk construction fund for use in the construction and/or upgrade of a sidewalk along the front of the Site and extending from the Site toward Post Office Square, as envisioned in the Town's Master Plan 1998 Update. The gift shall be made prior to the issuance of the 6th occupancy permit for the project.
- E.7 The existing driveway on the Site shall be closed in accordance with the recommendation of the Engineering Department set forth in Exhibit A7, paragraph 2. The existing swale behind the sidewalk shall be reconstructed to ensure proper runoff from the Site consistent with the Commonwealth's Stormwater Manual. The final drainage designs shall be submitted to the Acton Engineering Department for comment prior to the issuance of any occupancy permits. See, Exhibit 4.5.
- E.8 The stone bound marking the 1927 county layout of Main Street shall be preserved in the manner recommended by the Engineering Department set forth in Exhibit A7, paragraph 1.
- E.9 All fire detection systems shall comply with the applicable state Building Code and Fire Safety Code provisions, and shall be subject to the approval of the Fire Chief consistent with his authority under said Codes.
- E.10 The Applicant shall obtain approvals from the Engineering Department, Police Chief, and Fire Chief on the street address of the condominium.
- E.11 The central fire alarm call box for the condominium shall be located in an area acceptable to the Fire Chief, and where it would not be susceptible to damage by snow plows in the winter months.

F. Landscaping Conditions

- F.1 Prior to the issuance of the final occupancy permit, the Applicant shall have fully completed the improvements and plantings shown on the revised Landscaping Plan, dated February 27, 2004, revised March 24, 2004, marked as Exhibit A15.
- F.2 The Applicant shall provide a passive recreational area on the common septic system leaching field, which shall include plantings, lawn area, benches, and tables available for use by all unit owners and residents of the Revised Project. The Applicant shall ensure that the recreational area is accessible by physically handicapped individuals. Exhibit 4.0, §5.
- F.3 The Applicant shall maintain the nature, topography, tree cover and character of the Site, pre-development, using inherent features of the land to create a natural environment with a minimum of excavation, earth moving and/or tree removal to the greatest extent possible consistent with the final Approved Plan.
- F.4 The common area landscaping shall be maintained in perpetuity by the condominium association, which obligation shall be incorporated in the condominium documents and the declaration of restrictive covenants to be executed by the Applicant pursuant to Condition L.5 below. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.

G. Affordability Requirements

- G.1 Three (3) of the units within the Revised Project shall be made available for purchase by households whose aggregate income is no greater than 80% of the area median income as published by the Department of Housing and Urban Development for the Boston Primary Metropolitan Statistical Area (the "Affordable Units").
- G.2 Sale Prices: The Affordable Units shall be sold to qualified households at prices deemed affordable to four-person households earning 80% of the area median income, utilizing cost assumptions developed under the MassHousing Housing Starts Program. The maximum sale prices for the Affordable Units shall be reviewed and approved by the Monitoring Agent, which shall initially be the Acton Board of Selectmen or its designee (the "Monitoring Agent"), at the time of lottery for the selection of buyers of the Affordable Units. Any modification or deviation from the designation of units as originally proposed and reviewed by the Monitoring Agent shall be subject to approval by the Monitoring Agent.
- G.3 Selection of Buyers for Affordable Units: The Applicant shall obtain the Monitoring Agent's approval of a Buyer Selection Plan for the sale of the

Affordable Units prior to putting the Affordable Units on the market. Buyers shall be selected through a fair lottery process (the "Lottery").

To the maximum extent permitted by law, first preference for the purchase of two of the three Affordable Units shall be given to households that meet one or more of the following "Acton Connection" preference criteria:

- (a) at least one member of the household is currently a legal 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 G.L. c. 51, §4 and would be considered a resident under the United States Census Bureau's residency guidelines.
- (b) at least one member of the household is either a son or daughter of an Acton resident.
- (c) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Unit lottery application deadline.
- (d) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Unit lottery application deadline.

The selection of purchasers for the Affordable Units, including the administration of the Lottery, shall be administered by a consultant retained by the Applicant, subject to the Monitoring Agent's approval. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Monitoring Agent. The Monitoring Agent shall oversee the lottery. The Applicant shall deposit a sum not to exceed \$500 into a municipal account established pursuant to G.L. c. 44, §53G to cover the Monitoring Agent's expenses in overseeing the Lottery.

Selected purchasers shall complete a first-time homebuyer course within three months of purchasing an affordable unit. The Monitoring Agent shall make available a list of such courses for purchasers to attend.

The Monitoring Agent shall develop rules and guidelines to carry out the provisions of this section, as necessary. Income eligibility shall be governed by the rules and regulations of MassHousing under the Housing Starts Program, or in

default, the rules and standards employed by the Department of Housing and Urban Development in the selection of income-eligible tenants for publicly subsidized housing.

Disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Monitoring Agent. A party aggrieved by qualification-related decision of the Monitoring Agent may appeal the decision to the ZBA for a final determination.

The provisions of this section are intended to complement and not to override or supersede any applicable fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

- G.4 Phasing-in of Affordable Units: Affordable Units shall be sold contemporaneous with the market-rate units in the Revised Project. No more than three certificates of occupancy shall be issued by the Building Commissioner for units designated for sale at fair market prices (the "Market Rate Units") until at least one certificate of occupancy is issued for an Affordable Unit. The proportion of Market Rate Unit certificates of occupancy issued to Affordable Unit certificates of occupancy issued shall at no time exceed 3:1.
- G.5 Perpetual Affordability Restriction: Prior to the issuance of any building permits, a Regulatory Agreement, in a form acceptable to Town Counsel shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) 25% of the units in the Revised Project will be sold and resold subject to a Deed Rider, in a form acceptable to Town Counsel, and (b) the Revised Project Owner's profit shall be limited to 20% of the total development cost of the Revised Project as defined by the Regulatory Agreement and applicable regulations. The Deed Rider, shall be attached to and recorded with the Deed for each and every Affordable Unit in the Revised Project at the time of each sale and resale, and the Deed Rider shall restrict each such affordable unit pursuant to this Decision in perpetuity in accordance with the requirements of M.G.L. c. 184, §§ 31-33.⁶ After obtaining the ZBA's final approval of the Regulatory Agreement

6 Pursuant to G.L. c. 184, § 31, an affordable housing restriction means "a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low or moderate income in either rental housing or other housing or (b) restricting the resale price of all or part of the property in order to assure its affordability by future low and moderate income purchasers or (c) in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or

and Deed Rider, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of the Department of Housing and Community Development (formerly the Executive Office of Communities and Development) ("DHCD"), if required pursuant to M.G.L. c. 184, § 32 or other law. The Applicant shall submit to the ZBA written evidence of the Applicant's efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction.

In any event, as this Decision grants permission to build the Revised Project under the comprehensive permit statute, G.L. c. 40B, §§ 20 - 23 (the "Act"), and as the Applicant has obtained the benefits of a comprehensive permit, the Revised Project shall remain subject to the restrictions imposed by the Act so long as the Revised Project is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the comprehensive permit's override of local bylaws to promote affordable housing. Accordingly, this Decision and the Deed Rider shall restrict each such Affordable Unit so long as the Revised Project is not in compliance with the Town of Acton's zoning bylaw, so that those units continue to serve the public interest for which the Revised Project was authorized.⁷ It is the express intention of this Decision that the period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

assuring creation or retention of rental and other housing for occupancy by low and moderate income persons and families" (emphasis added).

7. See *Zoning Board of Appeals of Wellesley V. Ardmore Apartments Limited Partnership*, 436 Mass. 811 (2002) ("[I]t is anomalous to suggest, as the owner does, that the legislation provides a temporal, short-term fix of insufficient affordable housing at the expense of local autonomy. Rather, the Act reflects a legislative intent to provide an incentive to developers to build affordable housing in cities and towns that are deficient in affordable housing, and a developer's commitment to help a city or town achieve its statutory goal is the *raison d'être* for the override of inhibiting zoning practices. But if housing developed under a comprehensive permit is 'affordable' only temporarily (fifteen years in this case, according to the owner), a city or town may never achieve the long-term statutory goals: each time an affordable housing project reverts to market rentals, the percentage of low income housing units in a municipality decreases, the percentage of market rate units increases, and access to a new round of comprehensive permits is triggered. We see nothing to suggest that the Legislature had in mind such an endless revolving cycle, or contemplated that over time an ever increasing number of multi-family buildings could be constructed on vacant land in areas zoned for single-family homes, as multi-family housing buildings were first added to and then subtracted from a town's statutory goal."

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

- G.6 Profit Cap: To conform to the intent of the Act that profits from the Revised Project be reasonable and limited, the Applicant shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Revised Project, exclusive of development fees (the "Profit Cap"). The Monitoring Services Agreement shall provide that upon the closing of the sale of the last unit conveyed by the Applicant, the Monitoring Agent shall cause a certified public accountant ("CPA") to review the financial records of the Revised Project to determine whether the Applicant has conformed to the Profit Cap requirements of this Comprehensive Permit Decision. The CPA shall submit to the ZBA and the Monitoring Agent a CPA certification that either the Applicant has conformed to the Profit Cap, or certifying the actual profit from the development. If the Applicant has exceeded the 20% Profit Cap, the Applicant shall donate the excess profit above the Profit Cap to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation affordable housing in the Town of Acton.

In determining whether the Applicant has conformed to the Profit Cap requirements of this Comprehensive Permit Decision, the CPA shall be required to certify that (a) the total profit to the Applicant does not exceed twenty percent (20%) of total development costs of the Revised Project, exclusive of development fees; (b) the Applicant has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Applicant or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Revised Project in order to artificially inflate the costs of development of the Revised Project; (c) there have been no commissions charged on the affordable units which are required to be sold pursuant to a lottery selection process as provided by this Comprehensive Permit; and (d) the CPA has been provided access by the Developer to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Revised Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other

expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Applicant;

All costs of enforcement of this Profit Cap condition, including legal fees incurred by the ZBA and/or the Town of Acton, shall be borne by the Applicant.

- G.7 Regulatory Agreement: Prior to applying for a building permit for the Revised Project, the Applicant shall submit to the ZBA a copy of a fully executed Regulatory Agreement between the Applicant and the Town of Acton, in a form mutually satisfactory to counsel for the Applicant and the Town, to be recorded with the Master Deed, governing the protection and administration of the affordable units covered by this Decision which shall include, without limitation, provisions to (1) designate an entity acceptable to the ZBA to monitor the selection of the purchasers of the affordable units in the Revised Project, and (2) designate an entity acceptable to the ZBA to ensure that the affordable units continue as such in accordance with the requirements of this Decision. If for any reason the designated entity shall fail or refuse to administer the affordable units or shall cease to exist, the Applicant shall notify the ZBA and the ZBA shall designate another entity to administer those units.
- G.8 Monitoring Services Agreement: Prior to commencement of any construction on the Site, the Applicant shall enter into a Monitoring Services Agreement, in a form substantially the same as the form used by MassHousing under the Housing Starts program and approved by Town Counsel, with the Monitoring Agent. The Applicant shall pay a monitoring services fee to the Monitoring Agent, which shall be deposited in a municipal account established for this purpose pursuant to G.L. c. 44, § 53G. The monitoring services fee shall be determined by the Monitoring Agent, but shall not exceed \$10,000.
- G.9 The Market Rate Units and the Affordable Units shall be indistinguishable from the exterior.

H. Surety & Covenants

- H.1 As security for the completion of the infrastructure related to the Revised Project as shown on the Approved Plan, including, but not limited to, the roadway, sidewalks, parking areas, common areas, recreational areas, drainage facilities, utilities, landscaping, and [any other specific infrastructure shown on the plan] (the "Infrastructure"), the release of occupancy permits for all housing units and the sale of all housing units in the development shall be subject to the following restrictions:

a. No occupancy permit for a unit in any building shall be issued, and no sale of any unit shall be permitted, until: (1) the base and binder course for the driveway and parking areas shown on the Plan has been installed; (2) all Infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said building, provided however, that the final coat of pavement for the driveway and parking areas need not be installed in order to obtain occupancy permits for the first 5 buildings constructed; and (3) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner. The roadway, common parking areas, individual driveways and all remaining Infrastructure must be fully completed and installed prior to the issuance of occupancy permits and the sale of any units in the 6th building constructed.

b. No occupancy permit for a unit in any building shall be issued, and no sale of any unit shall be permitted, until the Plan has been endorsed by the Board. This Comprehensive Permit shall be referenced on the Plan prior to endorsement by the Board.

c. No occupancy permit for a unit in any building shall be issued, and no sale of any unit shall be permitted, until all necessary easements have been conveyed to the Town in a form satisfactory to the Board, and evidence of recording of such easements is provided to the Building Commissioner.

I. Drainage Conditions

- I.1 Stormwater shall be managed in accordance with the Massachusetts Stormwater Policy Manual dated March, 1997 as prepared by the Massachusetts Department of Environmental Protection and Massachusetts Office of Coastal Zone Management.
- I.2 All stormwater drainage basins shall be located as to facilitate the maintenance and operation of the basins or drainage utility.
- I.3 The Applicant shall maintain and repair the drainage structures and stormwater management system on the Site located outside the proposed roadway layout as shown on the Plans until such time as the Applicant either (1) sells the Site to a new Applicant subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities to the Condo Association. The stormwater management system includes, but is not necessarily limited to detention basins, retention basins, sediment forbays, and water quality swales. A plan for the maintenance of the stormwater management system shall be provided for in the Condo Association bylaws.

- I.4 The proposed catch basin to be installed in Main Street adjacent to the Site, replacing the existing swale located behind the sidewalk, shall be designed to channel runoff to a detention basin or area that is separate from the Revised Project's drainage system. The Applicant shall grant the Town a drainage easement for this purpose, in a form acceptable to Town Counsel, prior to the issuance of any occupancy permits.

J. **Parking and Garages**

- J.1 The Revised Project shall provide for on-site parking as shown on the Amended Plan, and each Affordable Unit and each comparable Market Rate Unit shall have the same reasonable access to on-site parking.
- J.2 No on-site parking shall be sold to, rented to, licensed to or otherwise conveyed to persons who are not occupants of premises located on the project Site.
- J.3 All parking spaces shall conform to the requirements of the Acton Zoning ByLaw, Section 6.7.

K. **Outdoor Lighting**

The Applicant shall comply with Outdoor Lighting site design standards for site plan special permit as set forth under Section 10.4.3.2 of the Acton Zoning Bylaw, and the Applicant must obtain the Building Commissioner's approval of an outdoor lighting plan consistent with that section prior to the issuance of any occupancy permits, such approval not to be unreasonably withheld.

L. **Wetlands Setbacks**

- L.1 The final comprehensive permit plan shall delineate the 50-foot no-disturb and 75-foot no-construction setback distances under the Acton Wetlands Protection Bylaw, and all other limits of clearing.
- L.2 Prior to any site clearing or any other pre-construction activities on the Site, the Applicant shall mark the limits of clearing as set forth in this Decision physically on the Site using delineation methodology acceptable to the Conservation Commission
- L.3 The Applicant shall fully comply with the setback requirements of the Wetlands Bylaw, Section F8.3, in effect as of April 4, 2003 (including 25-foot no disturb/40-foot no build). The Applicant shall also comply with the more restrictive 50-foot/75-foot setback requirements that are currently in effect, except with respect to construction associated with the building containing Units #1 and

#2 and the drainage infrastructure adjacent to Main Street as shown on the Amended Plan. The Applicant shall use its best efforts to minimize intrusion into the more restrictive setbacks when constructing said building and drainage infrastructure.

- L.4 No structures shall be built, and no grading or land alteration shall occur, within 100 feet of the stream as shown on the Amended Plan.
- L.5 Prior to the issuance of any occupancy permits, the Applicant shall record a declaration of restrictive covenants, in a form subject to the approval of Town Counsel, that restricts any further construction or disturbance within the 50 foot no-disturb zone surrounding all resource areas as delineated on the Plan, and prohibits any construction within the 75 foot no-construction zone.
- L.6 With the exception of land fronting on Main Street (where clearing may occur to the property boundary in certain areas such as in the vicinity of the driveway and the storm water detention area) and land abutting the easterly property line, and subject to the wetland setbacks set forth above, no grading, vegetative disturbance or earth work shall occur within 20 feet of any property boundary.
- L.7 Once the Project is constructed, the 50-foot no-disturb and 75-foot no-build setback boundaries shall be clearly marked and identified on the Property by use of boulders or other similar permanent markers acceptable to the Town.

M. **Sewage Treatment System**

- M.1 The common septic system serving the 12 condominium units shall be designed and constructed as shown on the Amended Plan and as approved by the Board of Health.
- M.2 Prior to the issuance of the first occupancy permit for the Revised Project, but after the construction of the septic system and the Board of Health's approval of the as-built plans, the Applicant shall install two groundwater monitoring wells, one upgradient and one downgradient of the soil absorption system in locations designated by the Acton Health Department. The Applicant shall convey an irrevocable license to the Board of Health, in a form acceptable to Town Counsel, permitting the Board and its agents to enter onto the Property to obtain samples from the monitoring wells on an annual basis.
- M.3 The Applicant shall deposit five thousand dollars (\$5,000) into a fund to be available to and administered by the Health Department to perform the monitoring functions set forth in Section M.2 above, and to study and monitor Conant Brook downstream from the Property;

- M.4 In designing and constructing the common septic system, the Applicant shall install effluent tee filters in the outlet tees of all septic tanks to increase the retention of solids and improve the quality of the effluent that reaches the subsurface disposal area, and shall install dual compartment septic tanks with storage capacity in excess of what is required under Title V.
- M.5 The Applicant shall establish an interest bearing septic system repair/replacement trust account for the condominium association, and shall fund said account with an initial deposit of five thousand dollars (\$5,000). The Master Deed for the condominium shall require that, upon each sale or resale of any unit within the Revised Project, two hundred fifty dollars of the sales price shall be set aside and deposited into the septic system repair/replacement trust account. The principal and interest of said account shall be used exclusively for the repair, replacement or upgrading of the septic system and related treatment facilities on the Site.
- M.6 No condominium unit shall contain more than three bedrooms, as "bedroom" is currently defined by the Acton Board of Health regulations or by Title V, whichever is stricter. The condominium documents and the declaration of restrictive covenants executed for the Revised Project shall contain a provision prohibiting any unit from containing more than three bedrooms.

N. **Material Changes**

If, between the date this Decision is filed in the office of the Acton Town Clerk and the completion of the Revised Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Revised Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 31.03(3). 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.

O. **Expiration Date**

If construction authorized by a comprehensive permit has not begun within three 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.

P. Notice to Abutters

At least seven days prior to the start of construction, the Applicant shall provide written notice to the ZBA and to the residential abutters of the Revised Project of the anticipated construction start date and the anticipated construction schedule.

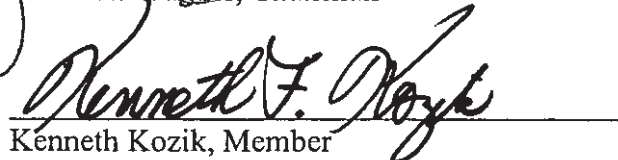
XI. CONCLUSION

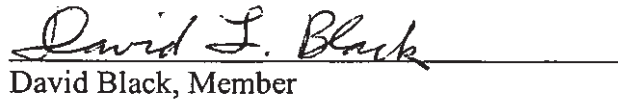
The Application for a comprehensive permit for the Revised Project is granted for the reasons stated above subject to the conditions provided herein.

This concludes the Decision of the Board.

THE ACTON ZONING BOARD OF APPEALS


Jonathan Wagner, Chairman


Kenneth Kozik, Member


David Black, Member

DATED: March 24, 2004

ACT40B-MainStreet\ApprovalDecision-Final


Lynn C. Brown
Act. Middlesex S. Register