

25

25



TOWN OF WAYLAND
MASSACHUSETTS
01778

TOWN BUILDING
41 COCHITUATE ROAD

TEL: (508) 358-3630
(508) 358-3631

WWW.WAYLAND.MA.US

TOWN CLERK
LOIS M. TOOMBS, CMC
LTOOMBS@WAYLAND.MA.US

ASSISTANT TOWN CLERK
KATHLEEN H. SIRACUSA
KSIRACUSA@WAYLAND.MA.US



2007 00200314

Bk: 50309 Pg: 93 Doc: DECIS
Page: 1 of 25 11/02/2007 02:47 PM

NOTICE
NO APPEAL

October 29, 2007

I hereby certify that a copy of the decision of the Town of Wayland Zoning Board of Appeals relating to the WAYLAND FOREST INC application #06-37 for a variance/special permit/comprehensive permit was filed in this office on October 1, 2007 and that no notice of appeal was filed during the twenty (20) days next after this date.

A true copy, Attest:

Lois M. Toombs, CMC
Town Clerk

137 Boston Post Rd, Wayland

LATHAM, LATHAM & LAMOND, P.C.
643 MAIN STREET
READING, MA 01867



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

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

DECISION 06-37

APPLICANT/PETITIONER WAYLAND FOREST INC

I, Eric Goldberg, Member of the Board, certify that, in accordance with Massachusetts General Laws, Chapter 40A, Section 11, published in the Town Crier, a newspaper of general circulation in Wayland, on December 5, 2006, and on December 12, 2006, and that notice by mail, postage prepaid, was sent to the applicant/petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list and to the Wayland Planning Board on December 5, 2006. I further certify that notice of the Decision was mailed to each of the parties in interest as above designated on October 1, 2007.

Eric Goldberg sc

Eric Goldberg, Member

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

October 1, 2007

TOWN CLERK, WAYLAND, MASSACHUSETTS

Kathleen Srouse

TOWN CLERK/ASSISTANT

2007 OCT 1 AM 9:25
RECEIVED
TOWN OF WAYLAND
TOWN CLERK



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

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

BOSTON POST ROAD VILLAGE AT WAYLAND WOODS
COMPREHENSIVE PERMIT DECISION CASE #06-37

owner:
RE: Application of Wayland Forest, Inc. for a Comprehensive Permit

DATE: September 25, 2007

LOCATION: Assessors Map 29, Parcel 041; at 137 Boston Post Road,
Wayland, Massachusetts

TITLE REFERENCE: Middlesex South Registry of Deeds Book 48139, Page 477.

PROCEDURAL HISTORY

1. On November 27, 2006, Wayland Forest, Inc. (hereinafter, the "Applicant"), applied for a comprehensive permit from the Zoning Board of Appeals ("ZBA"), pursuant to M.G.L. c. 40B, §§20-23 to construct an affordable housing project at the property located at 137 Boston Post Road in the Town of Wayland (the "Application"). The Applicant proposed to construct "for sale" sixteen (16) home ownership townhouse and garden style condominium dwelling units to be called "Wayland Forest" (the "Development"). As proposed, the Development would be located on a parcel of land, totaling approximately three acres of land, being shown on Town of Wayland Atlas Plate 29, as Parcel 041 (hereinafter, the "Subject Property"). Access is by a private drive. The Subject Property is zoned Single-Residential as set forth in the Wayland Zoning By-Laws and the Zoning Map referenced therein ("the By-Laws").

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

- a.) Published in The Town Crier, a newspaper with general circulation in the Town of Wayland on December 5, 2006 and December 12, 2006;
- b.) Posted in a conspicuous place in the Wayland Town Building on December 5, 2006, which was at least fourteen (14) days prior to the

first session of the hearing at which evidence was received; and fourteen (14) days before the first session of the hearing at which evidence was received.

- c.) On December 5, 2006, which was at least fourteen (14) days prior to the first session of the hearing at which evidence was received, notice was mailed to the Applicant, abutters, owners of land directly opposite the property in question on any public or private street or way, abutters and abutters to the abutters within three hundred (300) feet of the subject property, the Planning Boards of the abutting towns. The notice was mailed to the names and addresses shown on the most recent tax list provided by the Assessors Office.

A public hearing was opened on December 19, 2006 (no evidence was received on that date), and immediately continued to the following dates (at which evidence was received):

January 23, 2007;
March 27, 2007;
May 8, 2007;
June 12, 2007;
July 10, 2007; and
August 28, 2007.

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

With the Applicant's consent, the ZBA, various other Town board members, Town officials and residents of the Town have been allowed to walk and inspect the Subject Property.

3. The public hearing was closed on August 28, 2007.
4. The following documents and exhibits were received during the public hearing and are hereby incorporated by reference in this decision, for reference purposes:
 - Application, with supportive materials, submitted on November 27, 2006.
 - Wetlands Notice of Intent plans and documentation including detailed drainage plans, Erosion and Sedimentation Control Plan and Stormwater Management Report submitted to the Town's Engineer, dated November 2006.
 - Park and Recreation Department memorandum dated December 7, 2006.
 - Building Department memorandum dated December 18, 2006.
 - Fire Department memorandum dated January 18, 2007.
 - Conservation Commission memorandum dated January 23, 2007.
 - Board of Health memorandum dated February 5, 2007.
 - Housing Authority memorandum dated February 26, 2007.

- West Suburban YMCA letter dated February 27, 2007.
- Planning Board memorandum dated March 6, 2007.
- Police Department memorandum dated March 20, 2007.
- Housing Partnership Committee memorandum dated March 27, 2007.
- Marchionda & Associates letter dated April 9, 2007.
- Massachusetts Housing Finance Agency ("MassHousing") letter dated April 23, 2007.
- Wayland Water Department memorandum dated May 15, 2007.
- Wayland Director of Public Health memorandum dated June 12, 2007.
- Housing Partnership Committee memorandum dated June 12, 2007.
- Wayland Water Department letter dated June 19, 2007.
- Modified *Proforma*, with a three-bedroom affordable townhouse unit, dated June 19, 2007.
- Hayes Engineering, Inc. letter to Marchionda & Associates, L.P. dated June 18, 2007.
- MHJ Associates Wayland Forest Financial Analysis dated June 22, 2007.
- MHJ Associates Wayland Forest Economic Alternative Analysis dated June 22, 2007.
- Marchionda & Associates, L.P. letter dated July 2, 2007.
- Wayland Forest, Inc. letter dated July 2007, with photographs of trees and specifications as to affordable units.
- Wayland Forest, Inc. letter, dated July 2007, with MassHousing forms of regulatory agreement (form revision date 8/31/06), Affordable Housing Restriction (MASSHousing UNIFORM INSTRUMENT Form B-114) and Monitoring Services Agreement (form revision date 8/31/06).
- Building Department Memorandum dated December 1, 2007.
- Wayland Highway Department Memorandum dated February 6, 2007.
- Traffic Impact and Access Study by Hayes Engineering dated March 16, 2007.
- Letter from ZBA Chairman E. Michael Thomas to Attorney Latham dated April 17, 2007 concerning jurisdiction Applicant's "Response to Comments" dated April 30, 2007.
- Applicant's "Response to Comments" dated June 12, 2007.
- Soil Investigations Report by Hayes Engineering, Inc. dated May 18, 2007.
- Second Modified Proforma from Ted Moore, dated June 21, 2007.
- Letter from Mass Housing to Ted Moore dated July 23, 2007 extending project eligibility for 12 months.

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

During the public hearing, the Applicant, through its Attorney, O. Bradley Latham of Latham, Latham & Lamond, P.C., Reading, Massachusetts, and its Engineer, William Bergeron, P.E., of Hayes Engineering, Inc., Wakefield, Massachusetts, and its

Architect, James Valleco of Grazado Velleco Architects, Marblehead, Massachusetts, and Edward T. Moore, agent for the Applicant, presented the ZBA with the Applicant's plans and supporting materials. Representatives of the Applicant were present at all sessions of the public hearing at which evidence was presented and received.

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

- Civil Engineers: Clifford Carlson, P.E., Marchionda Associates, LP;
- Town Counsel: Mark J. Lanza, Esq., Concord, MA; and
- Chapter 40B and Financial Consultant: Michael Jacobs of MHJ Associates, Brookline, MA

The ZBA sought and received input and recommendations relative to the Applicant's proposed Development from various Town boards, committees and officials including the Board of Selectmen, Town Administrator, Planning Board, Board of Health, Conservation Commission, Police Chief, Fire Chief, Housing Partnership, Building Commissioner, Historic District Commission and the Wayland Wastewater Management District Commission and the Wayland Housing Authority ("WHA").

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

During the public hearing, the Applicant made numerous revisions to its plans for the Development in response to concerns, comments and recommendations made by the ZBA, other Town boards and committees, Town officials, the ZBA's consultants, parties in interest and other persons residing in the area of the Subject Property. Substantively, the Applicant modified its project plans by making the revisions shown on the Project Plans referenced below.

The ZBA deliberated on this decision at its meeting of August 28, 2007, September 11, 2007 and September 25, 2007 and made the following findings and decision based on the evidence submitted at the public hearing.

FINDINGS

1. The Applicant submitted the following information pursuant to 760 CMR 31.01:
 - a) Information demonstrating that it is or will become a "limited dividend corporation" by executing a Regulatory Agreement as that term is used in M.G.L. c. 40B, § 21 and 760 CMR 31.01 (1) prior to the issuance of any

building permits to construct dwelling units authorized by this comprehensive permit;

- b) The project eligibility/site approval determination letter dated May 26, 2004 issued by the Massachusetts Housing Finance Agency ("MassHousing"), as amended by subsequent letters dated June 20, 2006, April 23, 2007 and July 23, 2007 (collectively hereinafter referred to as the "Eligibility Letter") establishing fundability by a subsidizing agency under a low and moderate income housing program; and
- c) Information demonstrating that it has "control of the site" as that term is used in 760 CMR 31.01, by virtue of a deed of the property to the Applicant recorded at the Middlesex South District Registry of Deeds at Book 48139, Page 477.

2. Less than ten percent (10%) of the total number of housing units in the Town of Wayland are "low or moderate income housing" units within the meaning of M.G.L. c. 40B, §20 or 760 CMR 31.04.

3. Low or moderate income housing does not exist on sites comprising one and one-half percent (1.5%) or more of the total land area in the Town of Wayland zoned for residential, commercial or industrial use.

4. The approval of the Applicant's proposed Development would not result in the commencement of construction of low or moderate income housing on sites comprising more than three-tenths of one percent (3/10th's of 1%) of the total land area in the Town of Wayland zoned for residential, commercial or industrial use or ten (10) acres, whichever is larger, in any one calendar year.

5. At least .75% of housing units have not been produced in the Town within the last year accordance with a Massachusetts Department of Housing and Community Development ("DHCD") approved affordable housing plan.

6. The Subject Property will be accessed from Boston Post Road as shown on the plans entitled, "Boston Post Road Village At Wayland Woods-Wayland, Massachusetts, prepared by Hayes Engineering, Inc., dated November 1, 2006 Revised through June 25, 2007, and consisting of seven (7) sheets (cover sheet, 1 through detail sheet 7) (hereinafter referred to as the "Site Plans"), which are hereby incorporated into and made a part of this decision, including any revisions thereto necessitated by this decision.

7. There is currently one two-family dwelling on the property. The existing conditions of the Property are shown on the Site Plans.

8. The Subject Property is zoned Single-Family Residential.

9. Certain provisions of the Bylaws and the Board of Health's Rules and Regulations and the Town's Wetlands and Water Resource Protection By-Law, as applied to the Applicant's proposed Development, are not consistent with local housing needs.

10. If developed in accordance with the conditions set forth herein, the proposed Development will be consistent with local housing needs.

DECISION

Pursuant to M.G.L. c. 40B, §§20-23, based on the above findings and the evidence submitted at the public hearing, the ZBA hereby grants a comprehensive permit to the Applicant for the construction on the Subject Property of sixteen (16) home ownership condominium dwelling units (four (4) three-bedroom units and twelve (12) two bedroom units, comprised of seven (7) town house style units and nine (9) garden style units) with associated infrastructure and improvements, subject to the following conditions. The term "Applicant" as set forth herein shall mean the Applicant, its heirs, successors, transferees, and assigns.

CONDITIONS

General Conditions

1. The Subject Property, as shown on the Site Plans and the following plans, shall not be substantially changed, altered, or reconfigured or used in any way, except as provided in this Comprehensive Permit:

- a.) The plan of land entitled "Boston Post Road Village At Wayland Woods", prepared by Hayes Engineering, Inc. dated November 1, 2007, as revised Through June 25, 2007, (the "Landscaping Plans") Prepared by Grazado Velleco Architects dated November 1, 2006 as revised through June 25, 2007;
- b.) The architectural plans entitled " Boston Post Road Village At Wayland Woods" prepared by Grazado Velleco Architects dated November 1, 2006, as revised through June 25, 2007, consisting of floor plans and Front, side and rear elevations (the "Revised Architectural Plans");
- c.) The plans detailing fire truck turning movement entitled "Boston Post Road Village At Wayland Woods" dated April 20, 2007, as revised through June 25, 2007, prepared by Hayes Engineering, Inc.;
- d.) The Notice of Intent entitled "Boston Post Road Village at Wayland Woods", dated November 1, 2006 and last revised June 25, 2007 (the "Notice of Intent Plan").

The plans referenced in subparagraphs (a.) through (d.) of this condition are hereinabove and hereinafter referred to collectively as the "Project Plans".

2. Duly authorized agents of the Town, including, but not limited to the Building Commissioner, the Fire Chief, the Town Engineer their respective assistants and staff, shall have the right, with reasonable notice to the on-site project manager, which notice may be oral, to enter upon the common areas of the Subject Property and any common areas of the buildings thereon to ensure compliance with the terms and provisions of this Comprehensive Permit.

3. During construction, all local, state and federal laws and regulations shall be followed regarding noise (by concussion or otherwise), vibration, dust and blocking Town ways. At all times the Applicant shall use reasonable means to minimize inconvenience to the residents in the area of the Subject Property. Construction shall not commence on any day before 7:00 A.M. and shall not continue beyond 6:00 P.M. There shall be no construction or other related activities, which are audible to persons off-site on any Sunday or state or federal legal holiday. All trucks delivering earth materials of any type to the Subject Property shall be covered in compliance with state law.

4. The Applicant shall comply with all by-laws, rules and regulations, guidelines and codes of the Town and rules, regulations, codes and laws of the Commonwealth of Massachusetts pertaining to the development of the Subject Property and all pertinent requirements of the Americans with Disabilities Act ("ADA"), unless specifically waived herein.

5. Before beginning any dwelling unit construction under this Comprehensive Permit, except for the requirements set forth in General Conditions 7 and 8 below, the Applicant shall:

- a.) Furnish evidence to the Building Commissioner, adequate in the reasonable opinion of the Town Counsel, that Applicant is a limited dividend organization.
- b.) Furnish evidence to the Building Commissioner, adequate in the reasonable opinion of Town Counsel, that the status of the Development has been preserved as fundable by a subsidizing agency under a low and moderate income housing as set forth in the MassHousing approval referenced above and that all necessary extensions have been granted..

6. Prior to the issuance of the first building permit for a dwelling unit under this Comprehensive Permit, the Applicant shall furnish evidence to the Building Commissioner that a copy of this decision has been recorded with the Middlesex South Registry of Deeds.

7. Prior to the issuance of the first building permit for the first affordable housing unit, the Applicant shall prepare and submit to the Building Commissioner the regulatory agreement with proposed deed rider and those portions of the condominium documents that especially affect the affordable units and not the condominium generally, so as to be reviewed by

Town Counsel for compliance with all of the terms and conditions of this Comprehensive Permit.

8. Prior to the issuance of the first building permit for any housing unit, the Applicant shall prepare and submit to the Building Commissioner, a monitoring services agreement between the Applicant, MassHousing and the monitoring entity ("Monitoring Agent"), approved by MassHousing, and in a form reasonably acceptable to Town Counsel.

Bedroom Restriction

9. The Development shall be limited to sixteen (16) dwelling units. All of the dwelling units shall have the number of bedrooms as reflected on the Project Plans.

Affordability Conditions

10. The Affordable Condominium Units created within Wayland Forest shall be "affordable" as that term is defined by Massachusetts General Laws Chapter 40B and DHCD's regulations, in perpetuity, or as long as legally permissible. Twenty-five percent (25%) of the dwelling units, which, as proposed, is four (4) of the dwelling units (the "Affordable Units"), shall be reserved, in perpetuity, for sale to households earning no more than eighty percent (80%) of the median household income for the region / Boston PMSA, or the otherwise applicable PMSA in the event of a change. The initial sale price for the affordable two bedroom condominium units may not exceed \$155,789, as same may be increased based on DHCD standards. The initial sale price for the affordable three bedroom condominium units may not exceed \$174,737 as same may be increased based on DHCD standards. Thereafter, the price for such Affordable Units shall be set at seventy percent (70%) of the median household income in the region / Boston PMSA, adjusted for household size, with a five percent (5%) down payment used to calculate such price. In determining the sales price base of 70% of the area median income (Family of 3), insurance is to be based on full value and condominium fees are to be based on value in accordance with Massachusetts General Laws Chapter 183A (Condominium Law). The condominium fees for the Affordable Units shall be those fees as have been stated in the budget calculations that have been presented to and reviewed by the Board's designated Chapter 40B and financial consultant,. If the Development is funded by the New England Fund of the Federal Home Loan Bank of Boston, pricing shall be in accordance with the "Guidelines for Housing Programs in which Funding is Provided through a Nongovernmental Entity," as published by DHCD.

11. To the extent permitted by law, preference for the sale of seventy percent (70%) of the Affordable Units in the initial round of sales and to re-sales shall be given to persons or families who are first-time buyers and who (a) are Wayland residents, regardless of duration of residency; or (b) have a parent, grandparent or child, whether by birth, adoption, step-relation or marriage, residing in Wayland at the time of application; or (c) are employees (including new hires who haven't started work) who work for the Town of Wayland, regardless of duration of employment; or (d) have resided in Wayland within five years immediately prior to the time of application; or (e) have a child enrolled in the

Wayland Public Schools at the time of application. The Town of Wayland shall retain the right to further define "local preference." A Lottery Agent approved by the ZBA shall implement the local preference. Prior to conducting the Lottery, the Lottery agent shall submit a final Lottery plan to the ZBA, or its agent for its approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.

12. Prior to the issuance of the building permit for the first Affordable Unit, the Applicant shall prepare the final draft of a Regulatory Agreement and an Affordable Housing Restriction ("Deed Rider") and submit same to the ZBA for approval as to form and substance by Town Counsel and for execution by and with the appropriate Town Board or official, which documents shall be in MassHousing approved forms. Should the Town request any substantial or material change, the Town will need to receive approval from legal counsel of the appropriate federal and state agencies. Such document(s) shall contain at a minimum, the following terms:

- (a) The Affordable Units shall be reserved for sale in perpetuity to households earning not more than eighty percent (80%) of the median household income for the Boston PMSA. The initial sale price for the affordable two bedroom condominium units may not exceed \$155,789, as same may be increased based on DHCD standards. The initial sale price for the affordable three bedroom condominium units may not exceed \$174,737 as same may be increased based on DHCD standards. Thereafter, the price for such Affordable Unit shall be set at seventy percent (70%) of the median household income in the Boston PMSA, adjusted for household size, with a five percent (5%) down payment used to calculate such price.
- (b) After the initial sales of the Affordable Units, the Monitoring Agent shall be the Resale Agent responsible for all Affordable Unit resales within Wayland Woods.
- (c) The actual Affordable Units shall be identified in the Regulatory Agreement..
- (d) The Affordable Units shall be owner-occupied and the principal residence of the owner-occupant only; provided, however, that the monitoring agent, with the approval of the ZBA, in accordance with the Regulatory Agreement, Deed Rider and Monitoring Services Agreement, , may authorize the temporary rental of such unit at a price affordable to a household earning not more than 80% of area median household income where the owner demonstrates that there is a bona fide reason for same, such as military duty, or the like. Rental fees charged cannot exceed 30% of 70% of the applicable Area Median Income as defined by the U.S. Department of Housing and Urban Development.
- (e) The Affordable Units shall remain affordable, in perpetuity.

- (f) The project shall be subject to a cost and income certification in accordance with the Regulatory Agreement paid for by the developer on behalf of the Town and the monitoring agent.
- (g) The owners and occupants of the Affordable Units shall cooperate with and provide all information reasonable requested by the monitoring agent(s).
- (h) Once the Applicant has sold an affordable unit, the amount of any loan or loans secured by a mortgage on an Affordable Unit shall not exceed the maximum initial or re-sale price of the Affordable Unit.

All Affordable Units shall remain affordable in perpetuity or the longest period allowed by law but in no case less than ninety-nine (99) years. Simultaneously with the recording of the condominium documents creating the first affordable condominium unit, an affordable housing restriction, enforceable by the Town of Wayland, requiring that the affordable units remain affordable in perpetuity, in the form approved by Town Counsel, shall be recorded senior to any liens on the affordable units to protect the continued availability of and requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale.. The Applicant shall not receive a certificate of occupancy for the first affordable unit until evidence of the recording of affordable housing restriction has been provided to the ZBA. The Condominium Documents shall provide that the affordable units described in the Master Deed are subject to the terms and provisions of this restriction and that any amendment purporting to alter, amend or delete this restriction shall be void and of no force and effect unless in compliance with the termination and extinguishment provisions of this restriction.

13. Prior to the issuance of a building permit for the first Affordable Unit, the Applicant shall enter into a monitoring agreement with the monitoring agent, approved as to form by Town Counsel. Such agreement(s) shall be consistent with the terms of this decision.. All costs associated with monitoring shall be borne by the Applicant, and, after the first round of sales, by the sellers of the Affordable Units. The Monitoring Agent shall be subject to the approval of the ZBA, said approval not to be unreasonably withheld. A monitoring agent approved by MassHousing, containing terms consistent with this paragraph, shall be acceptable to the ZBA. All reports of the Monitoring Agent shall be provided by certified mail to the ZBA. The Town reserves the option to select its own independent monitoring agent, at the Town's expense, which may be a Certified Public Accountant ("CPA") to review the financial work of the Monitoring Agent. The CPA shall be provided reasonable access by the Applicant to any financial information necessary to make these determinations and to verify the income and expenses of the Development. Additionally, the Town, or, alternatively, WHA may, at its option, retain the services of an independent monitoring agent to oversee the Monitoring Agent to monitor compliance with the terms and conditions of the Affordable Unit deed riders at the Applicant's expense, which shall not exceed \$3,000.00.

The following project cost guidelines or standards shall be used by Monitoring Agent or any independent CPA retained by the Town:

- (1) For cost certification purposes, General Conditions, Builder's General Overhead, Developer's Overhead, and Builders Profit must be consistent with normally accepted industry standards and "Local 40B Review and Decision Guidelines" dated November 2005 signed by the Department of Housing and Community Development, MassHousing Partnership, MassHousing and MassDevelopment.
- (2) Should there be an identity of interest between the Applicant and the real estate broker; the brokerage fee, including advertising costs but not applicable costs attributable to a model unit, shall not exceed 5% on Market-rate units.

14. The Affordable Units shall be situated and shall be of the design as are shown on the Project Plans.

15. All financial information submitted by the Applicant to the Monitoring Agent and the Town for the cost certification after all initial sales shall be provided by certified mail to the ZBA at the same time. The required cost certification shall be conducted not later than 60 days after the conveyance of the final dwelling unit in the Development.

16. While the Affordable Condominium Units need not be given the same interior finishes and amenities as the market-rate Condominium Units, the Building Commissioner shall determine that the interiors meet the standards of the specifications as have been provided to the ZBA by the Applicant and the State Building Code. The Condominium master insurance policy shall include an "all-in" clause (HO6) insurance for all dwelling units providing coverage for loss of or damage to improvements and betterments that are not common elements or common facilities.

17. In the case of all winners of the lottery for an Affordable Condominium Unit who have a disability, the Applicant shall adapt the Affordable Condominium Unit to the disability in accordance with the ADA at no cost to the homebuyer(s).

18. Building permits and certificates of occupancy shall be issued in the following sequence: The garden style building at the rear of the site (containing two Affordable Units) shall be built first. Next, the three-unit townhouse style building, situated directly north of and in front of the garden style building shall be built. Lastly, the four-unit townhouse style building (containing two Affordable Units), situated northerly of the other townhouse building, shall be built. The building permit for the thirteenth housing unit shall not be issued until the certificates of occupancy for the third and fourth affordable housing units have been issued.

19. The prior written approval of the ZBA shall be required; in addition to that of Monitoring Agent, before an Affordable Condominium Unit owner subsequent to the Applicant may lease, refinance, encumber, or mortgage the property (except for the original mortgage(s) necessary to finance the purchase of the Unit) to ensure that the Affordable Unit remains affordable.

20. All Affordable Condominium Unit Owners shall grant the Town or its designee the right, but not the obligation, to purchase the residence, in the event that the Town has notice of a pending mortgage (other than by the first mortgage holder) or other lien foreclosure or similar proceeding (e.g., a sheriff's sale against the residence) or has notice that the residence is being taken for unpaid taxes. Monitoring Agent shall have 90 days to find an eligible purchaser for an Affordable Unit and that the Town or its designee shall have 90 days to purchase the Affordable Unit.

21. After the initial sale of a unit by the developer, upon notice by the Affordable Condominium Unit Owner of intention to resell the Unit, Monitoring Agent shall have 90 days to find an eligible purchaser and the Town (or its designee) shall have 90 days to purchase the Unit.

Construction Conditions

22. A preconstruction conference with Town departments shall be held prior to the commencement of construction. For the purposes of this decision, "commencement of construction" shall occur when the clearing and grubbing (removal of stumps and topsoil) has been initiated. The contractor shall request such conference at least (1) one week prior to commencing construction by contacting the Building Commissioner in writing. At the conference, a schedule of inspections shall be agreed upon by the Applicant and the Town officials and boards responsible for the inspections. Prior to its placement on the Subject Property, the proposed location of the construction trailer, if any, shall be shown on a plan which shall be submitted to the ZBA for its approval..

23. All utilities (gas, telephone, electric, fire alarm, cable television, sewer and water) shall be installed underground and in pipes or conduits, as the case may be.

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

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

26. After review and approval by the Chief of the Town's Fire Department, the Applicant shall install in each dwelling unit the type and kind of fire sprinklers, which shall be determined at construction level detail. The Applicant will comply with all rules and regulations of the State Building Code for Fire Suppression Systems.

27. Street numbers will be provided on each Condominium Unit in accordance with Section 158-4 of the Code of the Town of Wayland.

28. The Applicant shall provide a ten feet (10') horizontal and eighteen inches (18") vertical separation for water mains and sewers, or drainage and sewers, to the extent practicable. Sleeving ten feet (10') in each direction will be provided on both sides of crossing and at other locations where this separation cannot be obtained. Construction details and material specifications for sleeving shall be provided in construction documents.

29. The final design of the sewer disposal system will be provided to the Wayland Health Department for its review and approval pursuant to Title 5.

30. Drainage structures and basins shall remain in private ownership and as such shall be maintained by the condominium unit owner's association. Oil separators and precast containment structures (catch basins) shall be incorporated into the drainage system.

Plan Conditions

31. The Development shall be constructed in substantial conformance with the Site Plans, Project Plans and this decision, except for *de minimis* deviations. Any other deviation from said plans shall require a modification of this Comprehensive Permit by the ZBA.

32. The Units shall be constructed in substantial conformance with the Project Plans.

33. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final plans for review and approval by the ZBA, unless the Building Commissioner determines that such final plans have heretofore been submitted. The ZBA may distribute such plan(s) to its consultants and/or Town boards and officials for a written recommendation or report.

- a. Lighting plan;
- b. Landscaping, fencing, and planting plan;
- c. Grading plan;
- d. Erosion control plan;
- e. Architectural plan, including all principal and accessory structures;
- f. Utilities plan including water, hydrants, gas, electric, cable, and telephone;
- g. Signage plan, including signs during the marketing phase;

- h. Stormwater management plan consistent with the DEP's Storm water Management Policy;
- i. Snow storage and refuse disposal plan;
- j. Any wastewater disposal application and plan submitted to the Board of Health whether under Title V or the local Board of Health regulations; and
- k. Fire sprinkler plan, which shall be submitted to the Fire Department for its review and approval, prior to submission to the ZBA.

34. The Applicant shall design such final plans with the following specifications:

- a. The Applicant shall conform with all pertinent requirements of the ADA and Massachusetts Architectural Access Board, if applicable. In the event that the buyer of an Affordable Unit in the first round of sales is a disabled person, the Applicant shall adapt such dwelling unit to accommodate the buyer's disability, but no elevator or lift shall be required for an affordable townhouse unit.
- b. A decorative stonewall with lettering identifying the project, like that submitted to the ZBA as part of its application, is allowed at the entranceway, provided it is situated so as not to obstruct snow removal or vehicle sight distances. Low intensity landscape lighting of that stonewall shall be allowed if it does not shine onto abutting property. Any other signage, including signs to promote sales, shall comply with all provisions of the Town's By-Laws relative to signs, except as waived by this decision, and shall be maintained in a slightly condition by the Unit Owners Association in conformance therewith.

35. The Applicant shall provide a building location footprint "as-built" plan to the ZBA and Building Department prior to the issuance of the certificate of occupancy for the final dwelling unit in the Development in accordance with applicable regulations, which shall be reviewed and approved by the ZBA or its agent. The Applicant shall provide a separate as-built plan depicting the water mains, appurtenant equipment and services to the Water Department (water) demonstrating compliance with the Town's rules and regulations and installation specifications, except as waived by this decision.

Condominium Development, Driveways and Systems

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

- All driveways, sidewalks and parking areas
- Storm water management facilities, including detention basins
- Snow plowing

- Landscaping
- Trash removal
- Street lighting
- Building repair and maintenance
- On-site water mains and water services
- On-site sewer systems and service lines
- Drainage structures and facilities

37. The driveways within the Development shall not be dedicated to or accepted by the Town.

38. The Applicant shall be responsible for the installation of all aspects of the common or private facilities set forth above. The responsibility for the subsequent operations and maintenance the common or private facilities set forth above shall be through the condominium unit owners association ("Unit Owners Association") established pursuant to M.G. L. Chapter 183A and such operation and maintenance shall be the responsibility of the Unit Owners Association. Prior to the turnover of responsibility to the Unit Owners Association, the Applicant shall provide written evidence to the ZBA that a reserve of two months of condominium fees were collected at the first sale of each unit to fund maintenance and operation. In the event that a management company is engaged, the Applicant or the Unit Owners Association shall provide the ZBA with a copy of the contract with such management company.

39. Prior to the issuance of the first certificate of occupancy, the Applicant shall establish the Unit Owners Association. There shall be a single condominium unit owners association to serve the entire Development. Membership in said Unit Owners Association shall be required by the condominium documents pursuant to the requirement of M.G. L. Chapter 183A as prepared by the Applicant and approved as to form by Town Counsel prior to execution thereof. Such Unit Owners Association shall maintain the facilities set forth above in Condition 36.

40. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the sanitary sewage disposal system and stormwater management system subject to the approval of the ZBA or its agent. Such guidelines shall be incorporated by reference in the organizational documents of the Unit Owners Association. In the event a management company is engaged, the guidelines shall be incorporated by reference in the management contract with such management company.

41. In the event that the Applicant, and then its successors in title, fails to maintain the on-site sanitary sewage disposal system and/or the onsite stormwater management system, the Town may conduct such emergency maintenance or repairs, and the Applicant and its successors in title shall permit entry onto the Subject Property with reasonable notice to implement all necessary measures. In the event the Town conducts such maintenance or repairs, the Applicant, during its ownership of the property, shall promptly reimburse the Town for all reasonable costs and expenses associated therewith within thirty (30) days after receipt of a demand therefore from the Town. In the event

the Town conducts such maintenance or repairs after the Applicant has divested itself of ownership of the property, the then owners shall promptly reimburse the Town for all reasonable costs and expenses associated therewith within thirty (30) days after receipt of a demand therefore from the Town. If the Applicant, or its successors in ownership, as the case may be, fails to so reimburse the Town, the Town may place a municipal charges lien on the Development or any unit therein to secure such payment.

42. The landscaping shall be established substantially as is shown on the landscaping plan that has been submitted. Once established, the Unit Owners Association shall maintain such landscaping.

Miscellaneous Conditions

43. When this decision becomes final, the Applicant shall deposit \$10,000 with the Town to establish a fund to pay the ZBA designated consultants. The Applicant shall receive a credit to be applied to said deposit for any remaining funds peer consultant review fees deposited by the Applicant pursuant to M.G.L. c. 44, §53G in connection with the ZBA's review of the application.

44. The Conservation Commission's Order of Conditions DEP File # 322-665 issued on August 21,, 2007 pursuant to the Massachusetts Wetlands Protection Act, M.G.L c. 131, § 40, regarding the Subject Property, is hereby made a part of this comprehensive permit. If there is any inconsistency between the Project Plans and the plans as may be approved by the Conservation Commission or the DEP, the Applicant shall submit an amended plan to the ZBA and a notice of change in accordance with 760 CMR 31.03. Such submittal shall be made by certified mail or in hand at a regular meeting. Said amended plan submitted to the ZBA and its agents shall be accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable.

45. The Development shall be constructed in the sequence as described in paragraph 18. No certificate of occupancy shall be issued for a unit until the driveway to that unit, its parking area and utilities for that unit have been constructed and installed to a level of completion so as to adequately serve the unit for which the certificate of occupancy is being sought, or, alternatively, adequate security has been provided for its completion.

Transfer of Comprehensive Permit

46. This comprehensive permit shall not be transferred to any person or entity without the express written approval of the ZBA, which approval shall not be unreasonably withheld. Prior to making a decision relative to any such transfer, the ZBA may hold a public hearing.

Lapse of Comprehensive Permit

47. This comprehensive permit shall become final in accordance with the provisions of 760 CMR 31.08(4). If construction authorized by this comprehensive permit has not begun within three (3) years of the date that it becomes final, it shall lapse. Upon written application by the Applicant, the ZBA shall, for good cause shown, extend said expiration date.

Compliance with State and Federal Requirements.

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

49. The Development shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing (a) the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §§ 40-40A and 310 CMR 10.00; (b) rules, regulations, filing and permit requirements and certifications required by the Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, and best management practices; (c) Massachusetts Title V regulations (310 CMR 15) relative to septic system design and installation; and (d) the regulations adopted by the Executive Office of Environmental Affairs pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H, if applicable.

50. Where approvals by the Town are required by this decision, such approvals shall not be unreasonably denied, delayed or conditioned.

Waivers

The Applicant has requested, and the ZBA hereby grants, (1) a waiver of all building permit fees (for building permits, electrical permits, gas and plumbing permits issued by the Town's Building Department) associated with the Affordable Units within the Development; and (2) those waivers that are listed in the attachment hereto identified as Exhibit "A" entitled "Waivers Granted".

To the extent the Project Plans are silent on a particular requirement, the appropriate Town by-law, rule, regulation or code provision shall apply. In the event the Applicant or the ZBA's consulting engineer determines, in the final design of the Development, that additional waivers, not shown on the Project Plans are required, the Applicant shall be required to obtain such additional waivers through written request to the ZBA. The ZBA may grant such additional waivers in accordance with law. Certain provisions of the By-Laws, Town's Board of Health Rules and Regulations, the Town Planning Board's Rules and Regulations relative to Subdivisions and the Town's Wetlands and Water Resources

Protection By-Law, which are expressly waived below, as applied to the Applicant's proposed Development, are not consistent with local housing needs for purposes of granting a comprehensive permit under M.G.L. c. 40B, §§20-23.

RECORD OF VOTE

The following members of the ZBA voted unanimously (5-0-0; Chairman E. Michael Thomas, Jerry L. Boos, Aida A. Gennis¹, Eric B. Goldberg and James E. Grumbach in favor) to grant the foregoing comprehensive permit subject to the above-stated terms, conditions and limitations, and to authorize Member Eric B. Goldberg to sign the foregoing decision on behalf of the ZBA and file it with the Town Clerk's Office.

Eric Goldberg sc
Eric B. Goldberg

Filed with the Town Clerk on October 1, 2007

¹ Associate member sitting in lieu of Member Steven Fugarazzo by designation of the Chairman.

EXHIBIT A**WAIVERS GRANTED****ZONING BY-LAWS PROVISIONS**

BY-LAW REFERENCE	REQUIREMENT	WAIVER REQUESTED TO ALLOW:	WAIVER GRANTED TO ALLOW:
Article 5 General	No earth in excess of 1,500 cubic yards shall be moved on any parcel of land in any district 40,000 square feet or more in area.	To allow such earth movement than is necessary to achieve the grades shown on the Project Plans.	No more of such excess earth movement than is necessary to achieve the grades shown on the Project Plans.
Article 5 General	Signage Limitations	To allow a monument sign identifying the Development.	Allowed to the extent shown in the initial application.
Article 5 General	Parking Facilities	To allow tandem parking to the extent shown on the plans.	Allowed to the extent shown in the Project Plans.

Article 6 Site Plan	Site Plan Approval	Exemption — No Site Plan submittal is required under Article 6.	Exemption — Site Plan Approval submittal requirements, content, etc. to require only submittals made to the ZBA.
Article 7 Area, Yard and Bulk Regulations			
§ 198-701 Building Height	Building height shall be the lesser of 35 feet or 2 ½ stories	The building heights shown on the Project Plans, which do not exceed 3½ stories.	The building and structure height as shown on the Project Plans is allowed.
§ 198-702 Setbacks	All buildings or structures in any residence district shall comply with the setbacks in § 198-801 Table of Dimensional Requirements. [30 ft. from Front lot line; 55 ft from ROW center line; 25 feet from side lot line]	The building and structure setbacks shown on the Project Plans.	The building and structure setbacks shown on the Project Plans are allowed.
§ 198-703 Yards. 703.1	Behind every dwelling house there shall be provided a backyard between the rear line of the house and the rear lot line meeting the setbacks in § 198-801, Table of Dimensional Requirements. [30 ft. from Rear lot line.]	The building and structure setbacks shown on the Project Plans	The building and structure backyard setbacks shown on the Project Plans are allowed.

§ 198-705 Lot Frontage 705.1.2 Lot	The lots on which dwellings are erected in the Single Residence District shall meet the minimum lot area and frontage requirements of § 198-801, Table of Dimensional Requirements. [40,000 sf-180 ft Frontage]	The lot frontage of 116 feet, more or less, as is existing now, and as is shown on the Project Plans.	The lot frontage shown on the Project Plans is allowed.
§ 198-802 and Table of Uses.	No building, structure or land shall be used or occupied, except for the purposes permitted in the district. [Single-family use.]	To allow multifamily uses as proposed and as shown on the Project Plans.	The multifamily uses as proposed is allowed.
Article 22. Affordable Housing. § 198-2201 <i>et seq</i>	The construction of six (6) or more dwelling units shall require a special permit from the Planning Board. Other standards are included.	To allow the project as proposed without applying Article 22.	Sixteen dwelling units are allowed as proposed on the Project Plans. .

WAYLAND WETLANDS AND WATER RESOURCE PROTECTION BY LAW

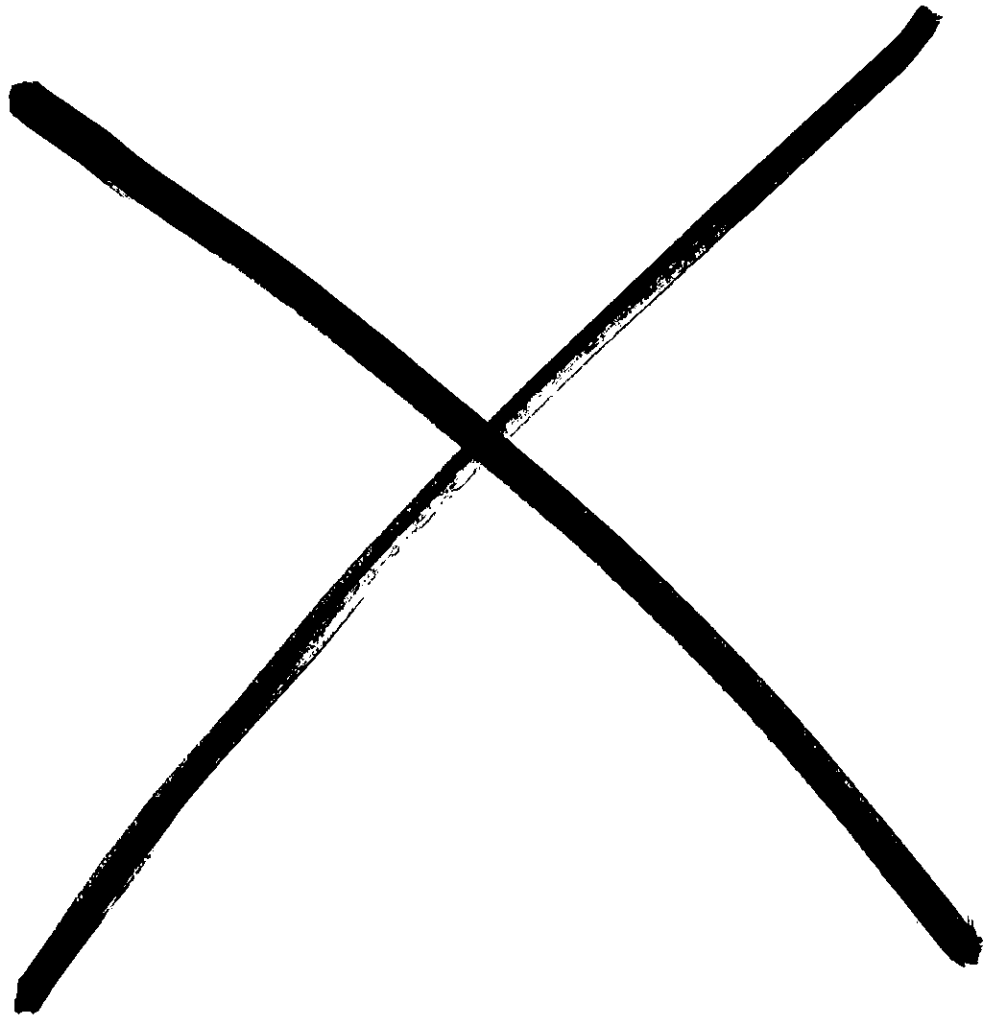
REGULATION PROVISION	REQUIREMENT	WAIVER REQUESTED TO ALLOW:	WAIVER GRANTED TO ALLOW:
Town General By-Law, Chapter 194 (Wetland and Water Resource Protection) and regulations promulgated thereunder	Requires a separate filing and local standards that may be at variance from the State Wetland Protection Act. [Development will comply with the State standards.] A separate filing fee is required under the Town By-Law.	To allow the Development as proposed without any filing being required under General By-Law Chapter 194. Only State Wetland Protection Act standards should apply. Waiver of local fees requested.	No filing is required under General By-Law Chapter 194.

WAYLAND BOARD OF HEALTH RULES AND REGULATIONS

REGULATION PROVISION	REQUIREMENT	WAIVER REQUESTED TO ALLOW:	WAIVER GRANTED TO ALLOW:
Section I D 3	Restrictions for season for groundwater testing.	Allow testing per Title V.	Waiver is granted to allow testing only as required by per Title V.
Section II B 1	Septic tank size.	Allow tanks per Title V.	Waiver is granted to allow the tanks to meet only Title V requirements.
Section II C 1	165gpd/bedroom	Allow per Title V 110gpd/bedroom.	Waiver is granted to allow the calculation to be based only on Title V standards.
Section II C 2	Minimum leaching area.	Allow leaching area per Title V.	Waiver is granted to allow the leaching area to meet Title V standards.
Section II C 4	Groundwater mounding.	Allow mounding per Title V requirements.	Waiver is granted to allow mounding that meets only Title V standards.
Section II C 5	Distance between trenches	Allow spacing per Title V.	Waiver is granted to allow spacing that meets Title V standards.

Section II D 1	Distances from system.	Allow distances per Title V.	Waiver is granted to allow distances that meet Title V standards.
----------------	------------------------	------------------------------	---

END OF DECISION



Eugene C. Burns
Attest Middlesex S. Register