



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

2019 DEC 30 PM 1:44

TOWN BUILDING  
41 Cochituate Road  
TELEPHONE: (508) 358-3600  
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**NOTICE OF DECISION CASE# 19-13**

APPLICANT/PETITIONER WP East Acquisitions, LLC

PROPERTY IS LOCATED AT 490 Boston Post Road

I, the member Board that administered this decision 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 October 24, 2019 and on October 31, 2019, 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 October 16, 2019. Notice of the Decision was mailed to each of the parties in interest. Any person aggrieved by this decision may appeal to a court of competent jurisdiction pursuant to G.L. Chapter 40A, Section 17.

The record with conditions of approval, record of vote and decision was received and recorded as a public record on 12-30-19

TOWN CLERK, WAYLAND, MASSACHUSETTS

  
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TOWN CLERK/ASSISTANT

**Town of Wayland  
Zoning Board of Appeals**

**Notice of Decision –  
Grant of Variance and Site Plan Approval**

**Petition of WP East Acquisitions, LLC  
RE: 490 Boston Post Road, Wayland, MA  
Case No. 19-13**

This is a petition filed by WP East Acquisitions, LLC, a Georgia limited liability company having its business address c/o Wood Partners, 91 Hartwell Avenue, Lexington, MA 02421 (the “Applicant”) seeking Site Plan Approval under the Town’s Zoning By-laws, Chapter 198, Article 6, and requesting relief from the Town’s Zoning By-laws, Chapter 198: Article 25, the River’s Edge Housing Overlay District (“REHOD”), and Article 8, Dimension and Use Tables. Specifically, the Applicant has petitioned for site plan review and approval under §198-603.2 as well as variances from the following provisions:

- (1) Maximum Lot Coverage of 20% for the Single Residence (R-40) District per §198-801, Attachment 1;
- (2) Minimum Front Yard Setback from Lot Line of 30 feet for the Refuse Disposal District;
- (3) Minimum Side Yard Setback from Lot Line of 75 feet for the Refuse Disposal District;
- (4) Minimum Building Setback of 50 feet from the REHOD perimeter boundary;
- (5) Maximum Building Height within the REHOD of 35 feet within 100 feet of Boston Post Road/Route 20 and 45 feet for the remainder of the site, excluding the northwest quadrant as defined in §198-2505.2 of the REHOD By-law;
- (6) Maximum Building Height of north facing façades, no more than 6 feet of a parking level may be exposed per §198-2505.2 of the REHOD By-law; and
- (7) Maximum Number of Dwelling Units of no more than 190 units per §198-2505.4 of the REHOD By-law.

The property consists of 8.25 acres +/- and is located at 484-490 Boston Post Road (now known as 490 Boston Post Road), Wayland, MA 01778 and is within the (a) Single Residence (R-40) Zoning District, (b) the REHOD, (c) the Municipal Service District, (d) the Refuse Disposal District, (e) the Wireless Communications District, and (f) the Floodplain District. The property is shown on Assessors’ Map 22, Lot 006 and portions of Lot 003 and 007.

**NOTICE**

Pursuant to notice duly published and posted on the Town of Wayland website and at the Wayland Town Building, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a hearing by the Zoning Board of Appeals (the “ZBA” or the “Board”) was held on November 12, 2019, December 3, 2019 and December 17, 2019 at the Town Building, 41 Cochituate Road, Wayland, MA. Prior to the Board’s vote on this Decision, Member Aida

Gennis submitted written certification of compliance with G.L. c. 39, §23D, which was filed with the Town Clerk on December 10, 2019 and read into the record of the Board. Sitting on this case for the Zoning Board of Appeals were: James Grumbach, Chairman; Thomas White and David Katz, Members; Evans Huber and Robert Farrington, Associates.

### **PROJECT SUMMARY**

WP East Acquisitions, LLC (the "Applicant"), has submitted an application and supporting information regarding its Variance and Site Plan Review and Approval Application (the "Application") to the Zoning Board of Appeals. The Applicant proposes to construct a 218-unit multi-family rental residential community, with 55 of the 218 units being designated as affordable (the "Project"). The Project will consist of 64 age-restricted units, 16 of which will be affordable. The Project is comprised of three (3) buildings, an on-site wastewater treatment facility, emergency generator(s), 180 garage and 164 surface parking spaces, driveways, drainage improvements, and other site amenities including elevators, a pool, gym, bus stop enclosure, tenant-available gardens, electric vehicle charging stations, roof-top solar arrays, and bicycle storage areas. Proposed access to the site from Boston Post Road (Route 20) would be via an existing driveway owned by the Town of Wayland. The Project will be serviced by municipal water and an on-site wastewater treatment plant with associated leach field. The Zoning Board of Appeals has jurisdiction over the site plan review application pursuant to §198-603.2 of the Town's Zoning By-laws. The Planning Board submitted a favorable report and advisory comments on the Site Plan Application to the Zoning Board of Appeals.

### **SITE LOCATION AND ACCESS**

The subject parcel is located at 484-490 Boston Post Road (the "Property" and is now known as 490 Boston Post Road) and directly abuts land in the Town of Sudbury. The Property consists of 8.25+/- acres and is identified on the Town of Wayland Assessor's database as Map 22, Lots 003 (portion) 006 and 007 (portion). The Property is currently owned by the Town of Wayland. The Property is located in the River's Edge Housing Overlay District (the "REHOD") and the underlying zoning districts are (a) Single Residence (R-40) Zoning District, (b) the Municipal Service District, (c) the Refuse Disposal District, (d) the Wireless Communications District, and (e) the Floodplain District.

The Property has frontage on Boston Post Road to the south. To the north and east is land owned by the Town of Wayland. To the west is the Town of Sudbury landfill and transfer station. The Property abuts bordering vegetated wetlands to the North, which serve as a tributary to the Sudbury River. Access to the site is off of Boston Post Road via an access road to the Town's transfer station, which will be improved pursuant to the plans approved by the Board and listed herein.

### **EXISTING SITE CONDITIONS**

The Property currently contains a 7,000+/- square-foot (SF) one-story brick and concrete

building, a loading dock, a paved parking lot, several circular storage tanks, and multiple outbuildings including sheds from the former Wayland-Sudbury Septic Treatment Facility. A portion of the Property was used for stockpiling gravel and construction debris and was used as a police firing range. The existing structures will be razed to accommodate the Project.

The site topography varies significantly, due to its use as a materials stockyard. Some existing slopes are relatively steep, with multiple localized high points throughout the site. Elevations range from a high point of 160+/- at the southwest corner of the site along Boston Post Road to a low point of approximately 117+/- abutting the wetlands near the northerly property line.

### **PROCEDURAL SUMMARY**

1. The Planning Board held public meetings on November 5, 2019, November 19, 2019, November 25, 2019 and December 2, 2019 at which time the Planning Board voted to recommend site plan approval, subject to conditions, to the Zoning Board of Appeals. On November 12, 2019, December 3, 2019 and December 17, 2019, the Zoning Board of Appeals held a public hearing on the variances and site plan approval application.
2. The Applicant's plans and other submission materials were reviewed by the Zoning Board of Appeals, Planning Board, the Design Review Board, other Town boards and departments, and the Planning Board's peer review consultant, BSC Group. The Board also received verbal comments from all of the above-mentioned parties and the general public.

### **PLANS**

The Applicant submitted a set of plans entitled "Site Development Plans for ALTA at RIVER'S EDGE, #490 Boston Post Road, Wayland, MA," prepared by Allen & Major Associates, Inc. of Woburn, MA dated June 18 and 20, 2019 with revisions through November 12 and 14, 2019, as noted below, and consisting of the following which shall be the Approved Plans for purposes of this Decision:

1. Abbreviations and Notes, Sheet Nos. C-001 – C-002, revised 11/12/19;
2. Existing Conditions, Sheet No. V-101, dated 6/18/19;
3. Demolition and Erosion Control Plan, Sheet No. C-101, revised 11/12/19;
4. Layout and Materials Plan, Sheet No. C-102, revised 11/12/19;
5. Grading and Drainage Plan, Sheet No. C-103, revised 11/12/19;
6. Utilities Plan, Sheet No. C-104, revised 11/12/19;
7. Truck Turning Plan, Sheet Nos. C-105A and C-105B, revised 11/12/19;
8. Lighting Plan, Sheet No. C-106, revised 11/12/19;
9. Proposed Easement Plans, Sheet No. C-107, revised 11/12/19;
10. Civil Details, Sheet Nos. C-501 - C-508, revised 11/12/19;

11. Landscape Materials Plan, Sheet No. A1.07, prepared by Copley Wolff Design Group, revised 11/14/19; and
12. Architectural Plans, revised 10/18/19.

In addition, the Board received the following related materials:

1. Drainage Report by Allen & Major Associates, Inc. prepared June 20, 2019 and revised through November 12, 2019;
2. Hydrogeological Evaluation Alta at River's Edge 490 Boston Post Road prepared by GeoHydroCycle, Inc. dated September 19, 2019;
3. Traffic Impact Assessment prepared by TEC, dated September 18, 2019;
4. "Phase I Environmental Assessment & Phase II Limited Site Investigation" prepared by The Vertex Companies, Inc. (Vertex) of Boston, Massachusetts dated August 7, 2019;
5. SPA Form C, Application for Site Plan Review and Approval, ALTA at River's Edge 484-490 Boston Post Road, Wayland, MA, dated Oct. 10, 2019, filed with the Town Clerk on October 10, 2019;
6. Memoranda and E-mail correspondence regarding 490 Boston Post Road from Building Commissioner Geoffrey Larsen dated June 24, 2019, October 22, 2019, November 4, 2019, December 6, 2019 and December 10, 2019;
7. Allen & Major Associates, Inc. response letter to peer review comments dated November 12, 2019;
8. Memo from David Formato of Onsite Engineering, Inc. regarding Alta at River's Edge Effluent Disposal System Layout dated November 4, 2019;
9. Email regarding Peer Review and Town Planner comments, from Jim Lambert, Wood Partners dated November 4, 2019;
10. Memo to Department Heads regarding the Application, from Sarkis Sarkisian (Town Planner), dated October 22, 2019;
11. Staff Report from Sarkis Sarkisian (Town Planner) dated October 28, 2019 to Planning Board and Zoning Board of Appeals;
12. Fire Chief Neil McPherson memo dated November 4, 2019 to Sarkis Sarkisian, Town Planner regarding River's Edge Development;
13. Peer review of drainage/reports from BSC Group, dated October 31, 2019;
14. Peer review of Environmental reports by CMG Environmental Services Report dated November 4, 2019;
15. Memo with comments on River's Edge revised submission, from Paul Brinkman, (Town Engineer) dated November 5, 2019;
16. Email from Julia Junghanns (Health Director) dated November 5, 2019 regarding environmental consultant services;
17. ALTA at River's Edge presentation dated November 12, 2019 (29 slides);
18. Memorandum from Board of Health dated December 10, 2019; and
19. Various comments, verbal and written, from Town departments, boards and the general public.

## EVIDENCE AND FINDINGS ON VARIANCE

The Applicant explained that they wish to construct a 218-unit multi-family residential community, with 55 of the 218 units being designated as affordable, comprised of three buildings, one of which will be age-restricted, an on-site wastewater treatment facility, underground garage, surface parking and driveways, and drainage improvements (collectively, the "Project") at 484-490 Boston Post Road now known as 490 Boston Post Road (the "Property"), which is presently owned by the Town of Wayland. The Project is being constructed pursuant to a Town-issued request for proposals and Land Development Agreement awarded to Wood Partners, a business affiliate of WP East Acquisitions, LLC. Currently, the site is used for school bus storage, a gravel pit and police firing range.

The Property is a conforming lot with 359,286 sq. ft. of area. The Project requires Site Plan Approval pursuant to §198-2503, which falls under the purview of the Zoning Board of Appeals pursuant to §198-603.2. In addition, the Applicant seeks the variances listed above, which are addressed separately below. As established by G.L. Chapter 40A, §10, a variance may be granted where the Board finds:

that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

In support of these variance requests, the Applicant explained that current soil and topographical conditions unique to this site warrant the variances. The site is bounded to the north by a FEMA floodplain zone and wetlands, requiring a 30 foot offset or no disturb zone into the site from the wetlands boundary. In addition, the westerly side of the site has steep grade changes, ranging from 145 feet at the point closest to the edge of the proposed Building 3 and rising 10 feet to a grade of 155 feet, thus creating an earthen mound along the entire property line shared with the Town of Sudbury. Along the eastern side of the site, the grade drops from 139 feet to 132 feet. The northwest corner of the site has even steeper grades from 135 feet dropping to 120 feet at the Floodplain line. The southerly portion of the site is bounded by Boston Post Road/Route 20, and according to §198-2505.1, buildings are required to be set back 50 feet from the REHOD perimeter boundary. The topographical restrictions on three sides of the site, combined with the setback requirements under the REHOD zoning by-law constrict the placement of buildings on the site.

The Applicant also advised that significant grade changes across the Property required extensive excavating to lower Building 1 by approximately 4 feet. These activities have contributed to higher construction costs for the overall Project, compelling the Applicant to seek

additional units and a corresponding variance from the height limit and lot coverage restriction, in order to render the Project economically feasible. The Applicant also noted the added benefit to the Town of promoting one of the purposes of the REHOD Zoning By-law by obtaining seven (7) additional affordable housing units as a result of the overall increase in units.

The Planning Board submitted a favorable recommendation. The Chair of the Board of Selectmen expressed the Selectmen's support for the pending requests but did not want to interfere with the Board's deliberative process. The Board also received comments from the public in favor of and in opposition to the requested relief.

Applying the variance standard set forth in G.L. Chapter 40A, §10 to the evidence presented by the Applicant in support of the above variances, the Board credits the evidence presented and made the following findings as to the specific variances.

**Variance 1: Maximum Lot Coverage of 20% for the Single Residence (R-40) District per §198-801, Attachment 1**

Approximately two-thirds of the site, from the easterly lot line to the Sudbury Town line, is located in the underlying Single Residence (R-40) District, which establishes maximum lot coverage at 20%. The Applicant is proposing maximum lot coverage of 24.6% due to the additional units requested to offset the Applicant's increased construction costs necessitated by the extensive grading of this topographically challenging site. The Applicant has located 180 parking spaces under the three buildings, thus avoiding increased lot coverage that would be required to accommodate more surface parking. As grounds for the lot coverage variance, the Applicant noted that conformance with the maximum lot coverage requirement would be financially infeasible given the significant grade changes and relatively steep slopes of the Property that would substantially increase the costs of design and construction. The Applicant further noted that the Property is unique as it is the only property situated in the REHOD.

The Board found that the topography of the site, with its uneven grades, required more extensive excavation and grading to prepare the site for construction, thus increasing the costs of the Project. The Board found that literal enforcement of the Zoning By-law presented a financial hardship to the Applicant and that relief could be granted without detriment to the public or derogating from the intent of the REHOD By-law, which was adopted for the sole purpose of developing this site for multi-family dwelling units, including age-restricted and affordable units. The grant of this variance will serve the public good by adding seven (7) affordable units, restricted in perpetuity, beyond what would be provided if the Project was limited to 190 units.

**Variance 2: Minimum Front Yard Setback from Lot Line of 30 feet for the Refuse Disposal District**

Section 2505.1 of the REHOD Zoning By-law establishes a minimum building setback from the REHOD perimeter boundary of 50 feet. However, the Applicant noted that the By-law does not address non-building structures such as a retaining wall. Pursuant to §198-801 Attachment 1 – Table of Dimensional Requirements, the front yard setback for buildings and structures in the Refuse Disposal District is 30 feet. To the extent that this requirement of the

underlying Zoning District applies to a non-building structure such as a retaining wall, the Applicant requests a variance for a retaining wall which will encroach into this setback as follows: A retaining wall in the southwest corner of the site, in the Refuse Disposal District, in front of Building 3, is proposed to be located 19.7 feet from the front lot line, measured to face of the wall.

As grounds for this variance, the Applicant explained that the retaining walls are required due to the significant grade changes and need to stabilize the slopes of the Property. To serve their intended purpose, the retaining walls must be located where needed along the edge of the development, and therefore, the retaining wall encroaches into the front lot line setback.

The Board agreed that the topography of the site, with its uneven grades, required retaining walls for site stability. The Board found that relief from the literal enforcement of the Zoning By-law could be granted without detriment to the public or derogating from the intent of the REHOD By-law. The grant of this variance will serve the public good by providing site stability to this multi-family project which is the purpose of the REHOD Zoning By-law.

**Variance 3: Minimum Side Yard Setback from Lot Line of 75 feet for the Refuse Disposal District**

Section 2505.1 of the REHOD Zoning By-law establishes a minimum building setback from the REHOD perimeter boundary of 50 feet. However, the Applicant noted that the By-law does not address non-building structures such as a retaining wall; instead, the provisions of the underlying zoning districts apply. Pursuant to §198-801, Attachment 1 – Table of Dimensional Requirements, the side yard setback for non-building structures is 75 feet in the Refuse Disposal District. The Applicant requests a variance for the following retaining walls which will encroach into this setback as follows:

1. A retaining wall in the southwest corner of the site, in the Refuse Disposal District, in front of Building 3, is proposed to be located 20.6 feet from the side lot line, measured to face of the wall.
2. A retaining wall in the northwest corner of the site, in the Refuse Disposal District, behind Building 3, is proposed to be located 45 feet from the side lot line, measured to face of the wall.

As grounds for these variances, the Applicant explained that the retaining walls are required due to the significant grade changes and need to stabilize the slopes of the Property. To serve their intended purpose, the retaining walls must be located where needed along the edge of the development, and therefore, the retaining wall encroaches into the front lot line setback.

The Board agreed that the topography of the site, with its uneven grades, required retaining walls for site stability. The Board found that relief from the literal enforcement of the Zoning By-law could be granted without detriment to the public or derogating from the intent of the REHOD By-law. The grant of this variance will serve the public good by providing site stability to this multi-family project which is the purpose of the REHOD Zoning By-law.



**Variance 4: Minimum Building Setback of 50 feet from REHOD Perimeter Boundary**

Section 2505.1 of the REHOD Zoning By-law establishes a minimum building setback from the REHOD perimeter boundary of 50 feet. At the request of the Town, the Applicant proposes to locate a transportation hut for the shelter and convenience of residents using regional bus transportation as well as school bus transportation. To serve this purpose, the transportation hut must be conveniently located close to the internal roadways of the Property, as well as Boston Post Road/Route 20. The Applicant proposes to locate the transportation hut in the northeast corner of the Property, adjacent to the Project's northeast driveway entrance.

As grounds for the variance from the minimum building setback, the Applicant explained that the transportation hut needs to be located within reasonable proximity to the road and along an internal roadway. Due to the proposed location of the buildings, parking and drive aisles on the Property, the only practical location for the hut is to be located along the Project's internal roadway within the surface parking area, as close to Boston Post Road as possible, bringing it within the 50-foot minimum building setback.

The Board agreed that the topography of the site and presence of wetlands constrained the buildable portion of the Property, thereby dictating the location of buildings and parking areas. The Board further agreed that a transportation hut, designed to be located in proximity to Boston Post Road and the internal roadways of the site, required placement of the transportation hut within the 50 foot building setback of the REHOD By-law. Accordingly, the Board found that relief from the literal enforcement of the Zoning By-law could be granted without detriment to the public or derogating from the intent of the REHOD By-law. The grant of this variance will serve the public good by providing public transportation access to the residents of this multi-family project which supports the purpose of the REHOD Zoning By-law.

**Variance 5: Maximum Building Height within the REHOD of 35 feet within 100 feet of Boston Post Road/Route 20 and 45 feet for the remainder of the site, excluding the northwest quadrant as defined in §198-2505.2 of the REHOD By-law**

Pursuant to § 198-2505.2 of the REHOD Zoning By-law: "Maximum building height of any building or portion thereof located less than 100 feet from a public way Boston Post Road/Route 20 shall not exceed 35 feet in height. Maximum building height shall not exceed 45 feet for the remainder of the site, with the exception that the maximum height for the northwest quadrant of the site shall be 58 feet in height for this quadrant only..." The Applicant requests a variance from this provision as follows:

- a. Building 1: The Applicant requests a maximum building height of 53 feet, 1 inch, beginning 69 feet, 3 inches back from the façade of this building, so as to be located 134 feet from the lot line along Boston Post Road/Route 20 and to expand reach of the northwest quadrant 86 feet from the easterly lot line.

- b. Building 2: The Applicant requests a maximum building height of 52 feet, 9 ½ inches, beginning 58 feet back from the façade of this building, so as to be located 134 to 160 feet from the lot line along Boston Post Road/Route 20.
- c. Building 3: The Applicant requests a maximum building height of 53 feet 4 ½ inches, beginning 58 feet back from the façade of this building, so as to be located 160 feet from the lot line along Boston Post Road/Route 20.

The Applicant stated that a variance from this by-law is necessary due to the constraints imposed by the significant grade changes and slopes of the Property, as well as the presence of wetlands and the 30 foot no disturb zone, restricting the buildable portion of the site and requiring the Applicant to expand the proposed buildings vertically. The Applicant has already extensively excavated the soil where Building 1 is proposed to be located to reduce that building's height by four (4) feet; further extensive excavation and soil removal would be required to reduce the overall elevation of all three buildings to comply with the Zoning By-law, which would present a significant financial hardship to the Applicant. Accordingly, the Applicant asserts that a variance from the height limit is needed to accommodate the additional units that render this Project economically viable.

The Board found that the topography of the site, with its uneven grades and proximity to wetlands, required more extensive excavation and grading to prepare the site for construction, thus increasing the costs of the Project. The Board found that literal enforcement of the Zoning By-law presented a financial hardship to the Applicant and that relief could be granted without detriment to the public or derogating from the intent of the REHOD By-law, which was adopted for the sole purpose of developing this site for multi-family dwelling units, including age-restricted and affordable units. The grant of this variance will serve the public good by adding seven (7) affordable units, restricted in perpetuity, beyond what would be provided if the Project was limited to 190 units.

**Variance 6: Maximum Building Height of north facing façades, no more than 6 feet of a parking level may be exposed per §198-2505.2 of the REHOD By-law**

Pursuant to § 198-2505.2 of the REHOD Zoning By-law, the maximum building height is 45 feet and on certain north-facing facades of buildings, not more than 6 feet of a parking level may be exposed. The Applicant stated that a variance from this by-law is necessary due to the constraints imposed by the significant grade changes and slopes of the Property, as well as the presence of wetlands and the 30 foot no disturb zone along the northern lot line. Within the underground parking garage, the Applicant is required to dedicate a certain number of parking spaces that comply with the American with Disabilities Act ("ADA"), which requires that some of the spaces accommodate a van. The Applicant asserts that the garage door must be at least 10 feet high in order for vehicles to enter the garage. The Applicant has already excavated under Building 1 to lower its elevation four (4) feet, and one of the garage entrances is via Building 1. The other garage entrance is on the northern side of Building 2. The Applicant explained that in order to comply with the Zoning By-law, four (4) feet of soil would have to be excavated, which in turn, would require the Applicant to construct at least a 40 foot long ramp, at appropriate grade, into the garage. The ramp must connect to a 24 foot drive aisle, which, when added to the length of the 40 foot ramp, would encroach into the 30 foot wetlands offset buffer and grade

changes on the northern lot line. Compliance with this zoning requirement would also cause a loss of parking spaces in the garage and on the surface, requiring either a parking variance or further lot coverage to locate parking spaces elsewhere on the site. Given these topographical conditions, the Applicant asserts that a variance is warranted, as zoning compliance with this provision is impractical.

The Board found that the topography of the site and the location of wetlands precluded the Applicant from complying with this provision of this Zoning By-law. The Board found that literal enforcement of the Zoning By-law would compel the Applicant to undertake more extensive excavation and encroach into the wetlands offset area, thereby presenting a financial hardship to the Applicant. The Board found that relief could be granted without detriment to the public or derogating from the intent of the REHOD By-law, which was adopted for the sole purpose of developing this site for multi-family dwelling units, including age-restricted and affordable units. The grant of this variance will serve the public good by adding seven (7) affordable units, restricted in perpetuity, beyond what would be provided if the Project was limited to 190 units. Further, the Board found that by adding a decorative finish to the parking structure façade, the Applicant adequately addressed the aesthetic impact the By-law was designed to serve.

**Variance 7: Maximum Number of Dwelling Units of no more than 190 units per §198-2505.4 of the REHOD By-law**

Section 198-2505.4 of the REHOD Zoning By-law limits the number of dwelling units allowed to 190. As grounds for the additional 28 units, the Applicant asserted that the Property contains significant grade changes which required excavation of significant amounts of soil to lower Building 1. The topography of the Property also requires extensive grading. The soil removal and grading, in turn, substantially increase the cost of construction and when combined with the significant increases in the Project's fixed costs, renders the Project financially infeasible and frustrating the overall purpose of the Project which was to provide additional affordable housing units for the Town of Wayland. Accordingly, the Applicant asserts that the additional units are needed for the Project to be economically viable.

The Board found that the topography of the site, with its uneven grades, required more extensive excavation and grading to prepare the site for construction, thus increasing the costs of the Project. The Board found that literal enforcement of the Zoning By-law presented a financial hardship to the Applicant and that relief could be granted without detriment to the public or derogating from the intent of the REHOD By-law, which was adopted for the sole purpose of developing this site for multi-family dwelling units, including age-restricted and affordable units. The grant of this variance will serve the public good by adding seven (7) affordable units, restricted in perpetuity, beyond what would be provided if the Project was limited to 190 units.

**Decision on Variances**

On a motion duly made and seconded, the Board voted, with 5 in favor and 0 opposed to grant the requested variances based upon the findings stated herein and in accordance with the

site plans submitted revised through the dates reflected herein, and subject to the conditions contained in this Decision.

Under G.L. c.40A, Section 11, the Zoning Board of Appeals' grant of the variance will not take effect until it has been recorded, along with the Town Clerk's certification of no appeal or that an appeal has been dismissed or denied, in the Middlesex South Registry of Deeds.

Any person aggrieved by the grant of these variances may appeal to a court of competent jurisdiction pursuant to G.L. Chapter 40A, Section 17.

## **DECISION ON SITE PLAN APPROVAL**

### ***FINDINGS ON SITE PLAN REVIEW***

A. Section 198-606 of the Zoning Bylaw concerning site plan review requires the following standards and criteria to be considered:

*198-606.2.1 Minimize the use of wetlands, steep slopes, floodplains and hilltops; preserve natural or historic features; maximize retention of open space; preserve scenic views from publicly accessible locations; minimize tree, vegetation and soil removal, blasting and grade changes; and screen objectionable feature from adjacent properties and roadways.*

The Board finds that the Property contains wetlands and wetlands buffer areas, and a portion of the Property is located in Flood Zone "AE". As shown on the Site Plans, the proposed structures and other improvements will be located in a manner that minimizes the disturbance of, and impacts on, these portions of the Property. The Project includes extensive landscaping, including, without limitation, retaining certain existing trees, as well as planting new trees for screening, as shown on "Landscape Materials Plan," dated September 27, 2019 and revised on November 14, 2019, included as part of the Site Plans (the "Plantings Plan").

*198-606.2.2 Include an adequate water supply system, sewage, and other waste disposal systems.*

The Board finds that the Project will be served by municipal water (the final loop connection of which will be completed by the Town on or about November 2019). An on-site wastewater treatment plant and associated leaching field is being proposed on site. The on-site wastewater treatment plant, which will meet the groundwater quality standards as required by the Massachusetts Department of Environmental Protection ("MassDEP") and the Town's Board of Health prior to discharge, will be reviewed and approved by MassDEP and the Board of Health.

*198-606.2.3 The proposal shall incorporate measures adequate to prevent pollution of surface water or groundwater; to minimize erosion and sedimentation; to prevent changes*

*in groundwater levels and increased rates of runoff; and to minimize potential for flooding. Drainage shall be designed to maximize groundwater recharge and to prevent any increase in the rate and volume of runoff at the site's perimeter*

The Board finds that the Site Plans detail the extensive erosion and sedimentation control measures that will be implemented and maintained for the Project, which, collectively, meet or exceed the criteria set forth in § 198-606.2.3. of the Zoning Bylaw.

Further, the Board finds that the Project as proposed will not introduce any new stormwater conveyances that discharge untreated stormwater directly to or cause erosion in wetlands. A Long-Term Operation and Maintenance Plan has been developed for the proposed stormwater management system (SMS). The SMS incorporates structural and non-structural Best Management Practices (BMPs) to provide stormwater peak flow mitigation, quality treatment, and conveyance. The SMS includes deep-sump, hooded catch basins, drain manholes, hydrodynamic separators, underground infiltration chambers, outlet protection, and concrete headwalls with rip-rap lined aprons.

*198-606.2.4. To the extent feasible, the proposal shall minimize demands placed on Town services and infrastructure.*

The Board finds that the Project will not contribute to the Town's stormwater system, will be served by an on-site wastewater treatment facility, and will not over-tax the Town's access road to the dump or the Town's water supply. The Town of Wayland was awarded a \$2.4 Million MassWorks Grant to provide water to the area, which included replacement of replacing an existing 100 year-old water main on Route 20 and installing a new water main to the site, which required crossing the Sudbury River. This connection is nearing completion and will provide the Town with a major Fire Loop and improved water quality.

*198-606.2.5. The proposal shall provide safe vehicular and pedestrian movement within the site and to adjacent ways, including sidewalks, crosswalks and the like.*

The Board found that the Project includes a proposed driveway that will provide access to the Property from an existing access drive immediately adjacent to Boston Post Road. In addition, crosswalks and appropriate signage will be installed throughout the Property. A Traffic Impact Assessment for the Project was completed as part of the Town's due diligence prior to offering the land for sale as part of the RFP process, which has been updated by The Engineering Corp. as Project No. T0923, dated September 18, 2019.

The Board noted that the Applicant and Board of Selectmen are negotiating financial mitigation for future off-site pedestrian and bike facilities to be included in the Land Development Agreement. The Town of Wayland is working with DCR to bring the westerly section of the Mass. Central Rail Trail to fruition, which Trail will run parallel to Route 20 past the Property. Sidewalks among the buildings and a bus shelter will be constructed on site for future transit (MWRTA) and, potentially, a shuttle bus to Town Center. The MWRTA is currently running a pilot Express Commuter Service ONLY

shuttle along Route 20 going to or from the MBTA Riverside T station during commuting hours.

*198-606.2.6. Design of buildings, structures and landscaping shall be in harmony with the prevailing character and scale of said buildings, structures and landscaping of the zoning district of the site and of adjacent properties. Such design shall include the use of appropriate building materials, screening and similar architectural techniques.*

The Property is in the REHOD, which allows multi-family residential uses by right. The Board finds that the aesthetic design of the Project is consistent with the prevailing character and scale required by the REHOD. The Applicant voluntarily submitted to design review by the Town's Design Review Board, and through that iterative process, the design of the Project was materially improved. The Board shares the findings of the Planning Board and the Design Review Board that the Project is consistent with the Design Guidelines established by the Board of Selectmen.

*198-606.2.7. To the extent practicable, electric, telephone, cable television and other utilities on the site shall be placed underground.*

The Board finds that all utilities will be located underground.

*198-606.2.8. Exposed storage areas, machinery, service areas, truck-loading areas, utility buildings and structures and similar unsightly buildings, structures, uses and activities shall be set back and/or screened to the extent feasible to protect adjacent properties from objectionable features.*

The Board finds that the wastewater treatment and maintenance facility will be enclosed in a structure located on the northern side of the Property away from Boston Post Road. Screening, including landscaping, will be used to minimize the exposure of other storage and service areas and equipment.

*198-606.2.9. To the extent feasible, proposals shall be designed to minimize shadows cast on adjacent properties in residential zoning districts.*

The Board notes there are no adjacent residential structures to be impacted by this Project.

*198-606.2.10. There shall be no unreasonable glare from lighting, whether direct or reflected, onto roads and other ways, into the night sky or onto adjacent properties in residential zoning districts.*

The Board finds that the lighting is designed to illuminate the Project only and to minimize impacts on adjacent roadways and properties. A photometrics design has been provided in the site plans and illustrates minimum light being cast off the site. In addition, all lighting will be dark-sky friendly, meaning it will minimize glare while reducing sky glow.

*198-606.2.11. The proposal shall comply with this Zoning Bylaw. However, proposals that do not so comply may be approved hereunder if such noncompliance is permitted by the ZBA pursuant to other articles of this Zoning Bylaw and the applicable provisions of this Article 6.*

The Board finds that the Project materially complies with the Zoning Bylaw, and for those limited areas of nonconformity, the Board has granted the variances noted herein.

B. Section 198-2506 of the Zoning Bylaw concerning the REHOD site plan review requires the following performance standards and criteria to be met:

§ 198-2506. Performance Standards

2506.1 Landscaping.

*2506.1.1. Landscaping within the REHOD shall be designed to promote the establishment, protection and enhancement of the natural landscape; ensure the appropriate use of plant materials; preserve natural tree cover; and promote inclusion of new tree plantings in order to reduce visual blight, noise and glare, prevent soil erosion, reduce stormwater runoff, increase groundwater discharge, create shade, and reduce solar overheating.*

The Board finds that the proposed landscaping and site layout for the Project includes extensive landscaping, including, without limitation, retaining certain existing trees, as well as planting new trees for screening, as shown on "Landscape Materials Plan," dated November 14, 2019, included as part of the Site Plans (the "Plantings Plan"). The Landscaping plan provides protection and screening from objectionable features, and buffers against light, sound, dust, noise, and vibration. Grass will be added in key areas adjacent to buildings and parking, including a large lawn at the courtyard between Buildings 1 and 2. Small areas for vegetable and herb gardens for resident use will also be designated with the courtyards. Trees, shrubs, and perennials will be planted in mulched beds around the foundations of buildings and behind retaining walls to prevent soil erosion and reduce stormwater runoff.

2506.2. Screening and buffer requirements.

*2506.2.1 Screening and buffering should create visual barriers between features of the housing development from public streets and abutting properties. Such features shall include dumpsters and trash handling areas, mechanical equipment at ground level or on rooftop, service entrances and utility facilities for building operation, loading docks and spaces, aboveground backflow preventers, and other components of the development as may be reasonably determined by the Planning Board to require screening and buffering.*

The Board finds that the Project plans are consistent with the general purpose and intent, set forth in Section 2506.2.1 above. The buffer strip along Route 20, will contain a

screen of tree plantings, shrubs and low grass berms. The arrangement of Plantings in the buffer strip is both linear and clustered as permitted. All of the utility facilities have been designed to be constructed behind the proposed buildings out of public view including loading docks. There will be no exterior dumpsters on site.

2506.3. Parking Standards.

*2506.3.1 Parking spaces shall be provided at a minimum of 1.25 parking spaces per dwelling unit and maximum of 15 parking spaces for any accessory café or diner in addition to said dwelling unit parking spaces. If over 50% of the total number of dwelling units are age restricted as set forth in §198-2506.6 below, parking may be provided at a minimum of 0.50 parking spaces per age-restricted dwelling unit.*

The Board finds that the Project requires 273 parking spaces at 1.25 spaces per 218 units. The Project is proposing 344 total parking spaces including 180 spaces within the podium parking areas and 164 surface parking stalls, for a proposed parking ratio of 1.58 spaces per dwelling unit. Therefore, the Board finds the Project exceeds the minimum required parking.

2506.4. Lighting Standards.

*2506.4.1. The exterior lighting design within the housing development should accommodate public safety and welfare, and protect the night sky from unnecessary ambient light. Any lighting plan submitted for the development shall, at a minimum, include the following:*

The Board finds that the Project's lighting has been designed to achieve no greater than the minimum luminance levels for the project as shown on the lighting plan dated November 12, 2019. All outdoor lighting fixtures proposed shall have full cutoff shields.

2506.5. Affordable units.

*2506.5.1. In lieu of the requirements set forth in Article 22 of the Town's Zoning Bylaw (the "Inclusion of Affordable Housing" bylaw), the following standards shall apply in the REHOD. A minimum of twenty-five (25%) of the dwelling units shall be affordable units. The term "affordable unit" shall mean a "low or moderate income housing" dwelling unit as that term is used in M.G.L. Chapter 40B, §20-23 and associated regulations, which shall be restricted in perpetuity for rental or ownership by a household earning less no greater than (sic) 80% of area median family income, and priced to conform with the standards of DHCD for rental or ownership units set forth in DHCD's guidelines and regulations, as amended from time to time, in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory for the Town under M.G.L. Chapter 40B, §20-23. Affordable units shall be subject to the following conditions:*



The Board finds that the Project is proposing 218 units, of which 55 units (25%) will be affordable to low or moderate income household earning no greater than 80% of area median family income and said units shall be affordable in perpetuity pursuant to an Affordable Housing Deed Restriction.

*2506.5.1.1. All affordable units shall be affordable in perpetuity. A deed rider or other suitable restriction shall assure be required to ensure compliance with this condition. The restriction shall be structured to survive any and all sales, transfers or foreclosures.*

The Applicant has agreed to a condition that within 30 days of the issuance of this Decision, the Applicant shall submit an application to the Town of Wayland for submittal to the state Department of Housing and Community Development (DHCD) for approval of the Project under the state Local Initiative Program (LIP) as Local Action Units (LAU) (with the consent and participation of the Wayland Board of Selectmen), in order to ensure that the Project's residential units will qualify for inclusion on the Town of Wayland's Subsidized Housing Inventory for purposes of G.L. c. 40B, §20-23. Prior to the issuance of a building permit for the construction of a building, the Applicant shall furnish evidence to the Building Commissioner that an Affordable Housing Regulatory Agreement, an Affirmative Fair Housing Marketing Plan, and an Affordable Housing Deed Restriction in a form acceptable to DHCD and Town Counsel has been executed and recorded with the Middlesex South Registry of Deeds. Therefore, the Board finds that this Project satisfied this requirement.

*2506.5.1.2. In the event that an affordable unit or the project in part or whole is proposed for sale, the continuing enforcement of the restriction through subsequent resales shall be the subject of a monitoring agreement and in accordance with the provisions of §198-2207 § 198-2207.3 and 198-2207.6 of Article 22 of this Zoning Bylaw.*

The Applicant has agreed to identify the Monitoring Agent for this Project and to furnish a copy of the executed Monitoring Service Agreement to the Town within 90 days of filing this Decision with the Town Clerk. Such Agreement shall be in a form acceptable to Town Counsel. Accordingly, the Board finds the Project satisfied this requirement.

*2506.5.1.3. The restriction and the monitoring agreement shall be drafted in compliance with DHCD's Local Initiative Program guidelines and regulation, as amended from time to time, and guidelines promulgated thereunder, unless another low or moderate income housing subsidy program is applicable, which conforms to M.G.L. Chapter 40B, §20-23. The restriction and the monitoring agreement shall be subject to review and approval by the Planning Board and approved as to form by Town Counsel to ensure compliance with this section, and shall be executed and recorded prior to the issuance of the first building permit for any dwelling unit in the development.*

The Board finds that the Applicant has agreed to satisfy this requirement.

*2506.5.1.4. The affordable units shall conform to the DHCD standards for inclusion in the DHCD Subsidized Housing Inventory for the Town. Any assisted living units as allowed under 2504.1.2 above shall conform to DHCD standards for inclusion as rental units (either as market or affordable) in the DHCD Subsidized Housing Inventory for the Town.*

The Board finds that the Applicant has agreed to satisfy this requirement.

*2506.5.1.5. A right of first refusal in accordance with § 198-2207.7 of this Zoning Bylaw shall be granted to the Town or its designee for a period not less than 120 days after receipt of notice thereof.*

The Board finds that this provision is not applicable as this is a rental project.

*2506.5.1.6. The affordable units must satisfy the design and construction standards of the Local Initiative Program, as set forth in DHCD's guidelines and regulations, as amended from time to time, with regard to indistinguishability from any market-rate units. The range of affordable units must be representative of the overall market-rate units in terms of unit mix, size and location, except for the unique three bedroom units described above. It is the intent of this Article 25 that the affordable units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory for the Town as Local Initiative Program units, unless another low or moderate income housing subsidy program is applicable, which conforms to M.G.L. Chapter 40B, §20-23.*

The Board finds that the Affordable Units shall be reserved in perpetuity to households earning no more than eighty percent (80%) of the area median income. Further, the Board finds that the Affordable Units as presented are of comparable quality to the other units in the Project and, to the greatest extent practicable, have been dispersed evenly throughout the Project as generally shown on the floor plans November 12, 2019 that denotes and represents unit locations which may be subject to change.

*2506.5.1.7. To the greatest extent practicable, the affordable units must be constructed and occupancy permits obtained at the rate of not less than one affordable unit for every three market-rate units.*

The Board finds that the Applicant has agreed to satisfy this requirement.

*2506.5.1.8. In computing the number of required affordable units, any fraction of a unit shall be rounded up, and the result shall be the number of affordable units to be built within the development.*

The Project is proposing to construct 218 units at 25% = 54.5 and the Applicant shall provide 55 Units of Affordable Housing.

*2506.6 Age restricted units.*

***2506.6.1 A minimum of twenty-five percent (25%) of all dwelling units shall be age restricted to a minimum of at least one occupant aged 55 or over.***

The Project will contain 64 age-restricted units or 29.4%, thereby exceeding the minimum requirement. Sixteen (16) of these age-restricted units will also be Affordable Units. Therefore, the Board finds that the Project satisfies this requirement.

***2506.7. Efficiency of design.***

***2506.7.1. Every effort shall be made to design buildings and use materials and construction techniques to optimize daylight in building interiors, natural ventilation, and energy efficiency; to minimize exposure to and consumption of toxics and nonrenewable resources; and to incorporate appropriate "green" design techniques.***

The Board finds that the Project will incorporate the following Green/Efficiency Design techniques:

#### **STRETCH CODE**

Currently, Massachusetts utilizes the 2015 IECC (International Energy Conservation Code) which is the most stringent in the nation. The Project will be designed to meet the edition of Massachusetts Stretch Code requirements for energy efficiency (adopted by Wayland in 2010) in effect at the time of application which is 10% more efficient than the 2015 IECC. Above and beyond Stretch Energy Code requirements the applicant has determined to provide acceptable verification of National Green Building Standard certification, or materially equivalent as-built energy efficiency rating, as part of final construction documents to be submitted by the design professional of record and as required by the State Building Code. The project will meet NGBS Silver (National Green Building Standard) which requires 3<sup>rd</sup> party verification. The Applicant has determined that all fees related to required 3rd party NGBS verification and certification services will be borne by the applicant separate from the escrow account described in Conditions 6) f.

#### **HEATING & COOLING**

The heating and cooling system(s) for the residential use portions of a building shall be designed to meet NGBS requirements, or materially equivalent energy efficiency rating, in the context of the design professional's overall code compliant design of the entire building.

The Applicant has determined that the design of residential units will include individual vertical fan-coil air handling units (Aquatherm) with energy efficient motors and seven day programmable thermostats, or materially equivalent equipment, in order to satisfy all energy conservation requirements in the context of the design professional's overall code compliant design of the entire building.

All residential units will utilize MERV 8 air filters or materially equivalent air filtering system.

Each residential unit will be provided with a gas-fired hot water heater, or materially equivalent system, to produce hot water for the plumbing fixtures and the fan-coil that satisfy energy conservation requirements in the context of the design professional's overall code compliant design of the entire building.

#### **WATER: HOT WATER**

Each residential unit will have a high efficiency (93%) tankless hot water heater, or be served by a materially equivalent system, that provides hot water in a manner that satisfies energy conservation requirements in the context of the design professional's overall code compliant design of the building.

#### **WATER: PLUMBING FIXTURES**

In the context of the design professional's overall code compliant design of the building, the Applicant will provide Low flow/flush Water Sense plumbing fixtures are specified as 1.28 GPM (gallons per minute) for toilets, 1.0 GPM for lavatory faucets, 1.5 kitchen faucets and 1.5 shower heads for a reduction in water usage of 30% compared to the baseline.

#### **LIGHTING**

In the context of the design professional's overall code compliant design of the building, the Applicant will provide high efficiency LED lighting in the apartments, common areas, garages and exterior site lighting. Occupancy sensors will be installed in all common areas and back of house spaces to reduce energy consumption when the spaces are not occupied. The Applicant strategically installs lighting fixtures in the apartments to limit the need for residents to provide additional lighting that may not be LED.

#### **APPLIANCES**

Residential appliances that qualify are specified as ENERGY STAR. There are no ENERGY STAR certified ovens, ranges, range hoods, or microwave ovens.

#### **RADON MITIGATION:**

A Radon mitigation system will be provided in each building in occupiable areas within the garage level, which shall comply with the State Building Code as applicable.

#### **EV STATIONS**

In the context of the design professional's overall code compliant design of the building, the Applicant will provide forty-eight (48) Electric Vehicle (EV) charging stations which

represents 14% of the 344 parking spaces on site. Of that total, (12) EV charging stations will be provided at occupancy with conduit to install (36) future spaces.

#### **BICYCLE STORAGE**

Each building will be provided with a bicycle storage room and a fix-it station for maintenance. There is capacity for 137 bicycles in the rooms and the ability to add wall mounted racks in front of the parking spaces if additional spaces are needed after occupancy.

#### **WINDOWS**

In the context of the design professional's overall code compliant design of the building, the Applicant will provide operable, Low-E (low emissivity) insulated glass windows in all residential units with a U-value = .29, SHGC = .31 and VT = .55. Standard glazing will have a U-value of .48.

#### **ROOF:**

The roof is a 'bathtub' style roof with a pitched roof at the perimeter and a recessed flat roof in the middle to hide the rooftop condensing equipment. A high albedo white roof will be specified at the flat portion of the roof to reflect sunlight and absorb less heat than a standard black roof surface.

#### **SOLAR PANELS & GREEN ENERGY**

In the context of the design professional's overall code compliant design of the building, the Applicant will provide one hundred (100) solar panels located on the west facing pitched roof areas which will produce approximately 40,000kw/hrs. per year. The Applicant will engage a design professional whose discipline includes the designing of roof mounted PV array systems will provide initial and final documents required by the State Building Code to maximize solar capacity on the site.

#### 2506.8. Utilities.

2506.8.1. *To the greatest extent practicable, electric, telephone, cable TV, and other utilities on the site shall be placed underground.*

All utilities will be placed underground on site.

### **DECISION GRANTING SITE PLAN APPROVAL**

Based on the foregoing, the Board finds that the Project meets the standards and criteria set forth in Sections 198-606 and 198-2506 of the Zoning Bylaw concerning Site Plan Approval and

REHOD. The Board voted to grant Site Plan Approval subject to the following conditions:

**A) Conditions**

- 1) The Project shall be constructed in conformity with the Plans and supporting documentation set forth above.
- 2) Prior to the issuance of a Building Permit for the construction of a building, the Applicant shall submit a final set of site and architectural plans for administrative review by the Planning Board, Building Commissioner and Zoning Board of Appeals to ensure compliance with the conditions of this Decision. The submission shall be accompanied by a narrative explaining any substantive changes to the site plans from this Decision. The review by the Planning Board and Zoning Board of Appeals shall run concurrently with the review of the building permit application by the Building Department in the timeframe allowed by MA state law. The Planning Board shall submit a report and/or recommendations regarding said plans to the Zoning Board of Appeals. Said plans must be approved by the Zoning Board of Appeals prior to the issuance of a building permit for the construction of a building. The approval of the Zoning Board of Appeals shall not be unreasonably withheld or delayed.
- 3) Prior to the issuance of any building permits for the construction of a building the Applicant shall submit the final, proposed Landscaping Plan and Signage Plan to the Zoning Board of Appeals, the Planning Board and the Design Review Board ("DRB"). The dimensioned landscaping plan shall include: (a) a planting schedule and (b) locations and materials of landscaping improvements. The Planning Board and Design Review Board shall submit a report and/or recommendations regarding said plans to the Zoning Board of Appeals. Said plans must be approved by the Zoning Board of Appeals prior to the issuance of a building permit for the construction of a building. The approval of the Zoning Board of Appeals shall not be unreasonably withheld or delayed.
- 4) Prior to the start of construction of residential structures, the Applicant shall construct a one-story wall section mock-up (model) of the southeast corner of Building #1 (excluding the porch), for review by the DRB. The mock-up shall include an integrated window with representative wall details, materials and colors. Such mock-up may be a stand-alone structure or done on the building.
- 5) The Plans shall be amended to incorporate a transportation hut in the northeast corner of the Property, adjacent to the Project's northeast driveway entrance, consistent with the variance granted herein for said structure. Prior to the issuance of a building permit for the construction of a building, the revised plans showing the location and design of the transportation hut shall be submitted to the Planning Board and Zoning Board of Appeals for review and compliance with this Decision. The specifications for the shelter shall be submitted to the Zoning Board of Appeals and Planning Board contemporaneous with the Landscaping Plan submittal. The Planning Board shall submit a report and/or

recommendations regarding said plans to the Zoning Board of Appeals. Said plans must be approved by the Zoning Board of Appeals prior to the issuance of a building permit for the construction of a building. The approval of the Zoning Board of Appeals shall not be unreasonably withheld or delayed.

6) Prior to the issuance of the first building permit to demolish or construct a structural building permit, the Applicant shall have:

- a. Obtained a water connection permit and any permits for the wastewater treatment plant (i.e., Groundwater Discharge permit) from the Town of Wayland and/or state Department of Environmental Protection (DEP);
- b. Obtained any approvals from the Wayland Conservation Commission or DEP that may be required under any statute, code or regulation under its jurisdiction, including a 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;
- c. Obtained a National Pollutant Discharge Elimination System ("NPDES") stormwater permit for the Project, if applicable;
- d. Where an Environmental Notification Form (ENF) or Environmental Impact Report (EIR) under the Massachusetts Environmental Policy Act (MEPA) is required, obtained either confirmation that an EIR is not required or, if one is, a Certificate of the Secretary of Environmental Affairs of compliance pursuant to 301 CMR 11.08(8)(a);
- e. Prior to the start of mechanized site work submitted the Construction Management Plan (CMP) to the ZBA with copies to the Building Commissioner, Planning Department, Board of Health, Conservation Commission, Director of Public Works, Fire Chief, and Police Chief. The CMP is assumed to be approved unless the ZBA takes action to enforce what is determined to be by the Board as a violation of the approved site plan. The CMP shall address the following topics and items:

**(1) Construction Administration**

Hours of construction  
Truck routes  
Trash and debris removal  
Construction Phasing and Schedule (critical path)  
Timing and Phasing of Construction  
Site Clearing; Construction of roadways and utilities;  
Communications (Emergency Contacts)  
Noise and Dust Control  
Tree removal (chipping, etc.)  
Public street cleaning and repair

**(2) Blasting, if applicable**

Blasting Plan  
Identification of petitioner's blasting consultant  
Selection of independent blasting consultant  
Selection of blasting contractor  
Pre- and post-blast survey (scope and content)  
Insurance coverage  
Blasting limits  
Notification to abutters of blasting schedule  
Road closures (if necessary)  
School bus conflicts (limits on hours)

**(3) Construction Staging**

Staging areas  
Site office trailers  
Storage trailers/containers  
Open storage areas  
Delivery truck holding areas  
Re-fueling areas.

**(4) Traffic and Parking (during construction)**

On-site locations  
Off-site locations  
Snow removal  
Police details  
Warning signs

The Zoning Board of Appeals defers the review of the CMP to the Building Commissioner, who shall review the CMP for completeness, consistency with generally-accepted construction practices and compliance with all the conditions of this Decision. Thereafter, the Building Commissioner shall submit a report to the Zoning Board of Appeals.

- f. Delivered to the Town Treasurer a deposit of \$10,000 into an escrow account established pursuant to G.L. c. 44, §53G (the "Escrow Account") for the costs of the Town's inspectors, engineering consultants and attorneys performing the tasks set forth in this Decision. The Applicant's obligation to fund and pay for on-site inspections of the Project's infrastructure (i.e. for site work other than all building and specialized code inspections required by the applicable codes and to be borne by the Applicant) shall be limited to \$10,000.
- g. Delivered to the Town Treasurer a deposit of \$5,000 into the Town's escrow account pursuant to G.L. c. 44, §53G for the cost of the Board of



Health hiring an independent professional engineer to review the Project's proposed wastewater treatment facility plans for groundwater, stormwater and hydrology impacts and to develop recommendations for its design and implementation to the Board of Health. The Applicant's obligation to und and pay for the Board of Health independent reviewer shall be limited to \$5,000.

- 7) 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. Reference to this Decision shall be incorporated in every instrument of title conveying a real property interest in all or a portion of the Property. This site plan approval shall expire in one year if construction of the Project has not commenced. For purposes of this Condition, commencement of construction shall be deemed to have occurred upon the issuance of a foundation or structure permit under the state Building Code.
- 8) Erosion controls shall be installed and maintained in accordance with Conservation Commission and other Town department requirements.
- 9) During construction, the Property shall be secured in a manner approved by the Building Commissioner so as to prevent injury or property damage.
- 10) The Project, and all construction, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Project, shall comply with all applicable local, state and federal regulations.
- 11) Prior to the commencement of any site activities such as site clearing and grubbing, the Applicant shall furnish evidence to the Building Commissioner that a copy of this decision and final endorsed plans have been recorded with the Middlesex South Registry of Deeds. The Applicant shall provide a Mylar set of plans to the Town Surveyor contemporaneously with their recording.
- 12) Within 30 days of the issuance of this Decision the Applicant shall submit an application to the Town of Wayland for submittal to the state Department of Housing and Community Development (DHCD) for approval of the Project under the state Local Initiative Program (LIP) (with the consent and participation of the Wayland Board of Selectmen), in order to ensure that the Project's residential units will be qualified in the Town of Wayland's Subsidized Housing Inventory for purposes of G.L. c. 40B, §20-23. Prior to the issuance of a building permit for the construction of a building, the Applicant shall furnish evidence to the Building Commissioner that an Affordable Housing Regulatory Agreement, Affirmative Fair Marketing Plan and Affordable Housing Deed Restriction all in a form acceptable to DHCD and Town Counsel, have been executed and recorded with the Middlesex South Registry of Deeds.
- 13) Twenty-five percent (25%) of the dwelling units in the Project (the "Affordable Units"), shall be reserved in perpetuity for rental to households earning no more than eighty percent (80%) of the area median income in the applicable Metropolitan Statistical Area, as may be

modified by the DHCD.

- 14) To the extent permitted by law and in accordance with the DHCD guidelines, preference for the rental of seventy percent (70%) of the affordable units in the initial lease-up of the Project and at all subsequent times shall be given to persons or families who are either: (a) Wayland residents, regardless of duration of residency; or (b) are employees of the Town of Wayland, regardless of duration of employment; or (c) have a child enrolled in the Wayland Public Schools at the time of application; or (d) are Wayland residents and veterans of United States military service.
- 15) The Affordable Units shall be of comparable quality to the other units in the Project and, to the greatest extent practicable, shall be dispensed evenly throughout the Development.
- 16) In the context of the design professional's overall code compliant design of the building, including but not limited to 521 CMR, five percent (5%) of the units shall comply with the building code requirements for accessibility. The Project shall consist of no less than 64 units that are age-restricted to households where at least one member is 55 years old or older. At least 25% of the age-restricted units shall be restricted as affordable.
- 17) For site work other than all building and specialized code inspections, a pre-construction conference with the Building Commissioner, Town Planner, the Director of Public Works, the Town Administrator and the Police Chief shall be held prior to the commencement of construction or demolition, whichever occurs first. For site work other than all building and specialized code inspections, the Applicant's contractor shall request such conference at least (2) two weeks prior to commencing construction by contacting the Building Commissioner in writing.
- 18) The Applicant shall ensure safe and convenient vehicular access to the Property during construction of the entire Project. Municipal representatives shall be permitted access to the Property to observe and inspect the site and construction progress until the Project has been completed. The Town or its appointed agents may conduct periodic inspections during the construction of the Project, to ensure compliance with the terms of this Decision and for consistency with generally-accepted construction and engineering practices for the installation of roadways, stormwater management facilities, utilities, and other common development infrastructure. Inspections shall occur during construction hours and will be escorted by a representative of the Applicant or its General Contractor. Inspections during the construction phase shall be conducted at the expense of the Applicant, from funds deposited in the Escrow Account.
- 19) The final design of all driveways and parking areas shall be submitted to the Fire Department and Zoning Board of Appeals no later than the first building permit application to construct a building. The submitted plan shall include confirmation that the paved width, shoulders and turning radii of all internal roadways are adequate to accommodate all public safety vehicles before the Zoning Board of Appeals confirms their approval of said plans.

- 20) The proposed fire access road on the northwest corner of the building shall be constructed and designed to support the department's ladder truck, as determined by the Fire Chief.
- 21) The Fire Department building connections for the sprinkler system and standpipes shall be placed in locations approved by the Fire Chief or his designee.
- 22) Full-size elevators capable of accommodating a medical stretcher shall be installed in each of the buildings.
- 23) The Applicant shall provide funding for a third-party fire protection engineer (chosen by Fire Department) to review all plans and participate in site inspections for fire protection systems installed in buildings and not related to on-site inspections or consultants of the Project's infrastructure. The funding for such review shall be paid through the escrow account established under Condition 6(f) of this Decision. Prior to the application for a Building Permit, the Applicant shall (A) certify in writing to the Fire Chief and the Building Commissioner that: (i) In the context of the design professional's overall code compliant design of the building the applicant has determined to provide an NFPA-13 designed sprinkler system, and (ii) the Project's building has direct alarm notification to the Fire Department designed in accordance with the applicable version of Building and Fire Codes; (B) submit a construction site safety plan in compliance with NFPA 241 by a third-party fire safety professional ("Construction Site Safety Plan") for the review and approval of the Building Commissioner and the Fire Chief with all costs thereunder borne by the Applicant; and (C) submit a fire safety and emergency procedures plan for the review and approval of the Fire Chief or his designee.
- 24) The Applicant shall comply with all fire suppression systems requirements of the Fire Chief as stated in his November 4, 2019 memo to the Town Planner, which requirements are incorporated into these Conditions.
- 25) The location of all fire hydrants on the Property shall be subject to the review and approval of the Wayland Fire Department.
- 26) The Applicant shall work with the Board of Selectmen to design and install DPW-approved signage and pavement markings to control vehicular and pedestrian traffic on the Transfer Station Access Road.
- 27) The Applicant shall comply with all environmental legal obligations pursuant to the Massachusetts Contingency Plan and General Laws Chapter 21E. Prior to issuance of building permit, Applicant shall obtain all required easements for site access, drainage, grading, demolition, construction work and any other eventuality. Prior to the issuance of any occupancy permits, the Applicant shall convey any easements that are contemplated on the Plans or that were negotiated by the Town of Wayland.
- 28) Following the completion of all construction related activities, there shall be no exterior dumpsters at the Property. Trash and recyclable collection shall be managed inside the buildings.

29) All aspects of the Project shall be and shall remain private, including but not limited to:

All driveways, sidewalks and parking area;  
Storm water management facilities  
Snow Plowing  
On-site landscaping and irrigation  
Trash removal  
Street and site lighting  
Building repair and maintenance  
On-site water main and water services  
On-site septic treatment plant or septic system/leach field  
Drainage structures  
Wastewater Treatment Plant

30) The Applicant shall be responsible for the installation and maintenance of all aspects of the common or private facilities in the Project. The Applicant shall provide the contact information of the management company to the Town Planner upon first occupancy of the Project. The Applicant shall inform the Board and Town Planner of any changes to the management company.

31) The Applicant shall pay all fees typically imposed by the Town of Wayland for new residential construction projects unless otherwise expressly waived in this Decision.

32) As security for the completion of the infrastructure related to the Project as shown on the Plans, including, but not limited to, the binder coat of the driveway, sidewalks, parking areas and common areas, drainage facilities, utilities, landscaping, and any other specific infrastructure shown on the plans (the "Infrastructure"), the release of occupancy permits for all housing units and the sale of all housing units in the Project shall be subject to the following restrictions:

- a. No occupancy permit for a unit in any building shall be issued, and no lease of any unit shall be permitted, until: (1) the base coat and all stormwater management infrastructure serving the entire Project has been installed; (2) the base and binder course for the Project's main driveway and parking areas shown on the Approved Plans associated with said building has been installed; and (3) all infrastructure for the specific building for which an occupancy permit is sought as described herein and as shown on the Plan shall be constructed or installed so as to adequately serve said building
- b. No more than half of the occupancy permits for the Project shall be issued before all the Infrastructure shown on the Approved Plan (except the final coat of pavement on the driveways) is fully installed.

- c. If, in Applicant's reasonable judgment, weather circumstances preclude the installation of plantings to complete landscaping before the issuance of occupancy permits, the Applicant shall post a bond or a deposit with the ZBA an amount equivalent to 1.5 times the reasonably expected cost of the plantings to ensure completion by the Applicant as soon as weather allows, and in no event later than the first growing season following the issuance of the Certificate of Occupancy.
- 33) Prior to the commencement of Construction Activities (i.e., demolition and site clearing), and prior to the Planning Board and Zoning Board of Appeals' review of the final plans, the Applicant shall post a bond or enter into a Tri-Party Agreement with its construction lender to provide surety to the Town in the event that the Property is disturbed, cleared, grubbed, etc. and abandoned in a state with insufficient erosion control, site stabilization or interim stormwater management. Said surety shall be in an amount determined by the Planning Board's Consultant Engineer to cover the cost of permanently stabilizing the site with vegetative (grass) cover and ancillary work.
- 34) The Applicant and its successors and assigns shall be responsible for the maintenance of all landscaped open space. Landscaping shall be maintained in good condition so as to present a healthy, neat and orderly appearance and shall be kept free from refuse and debris. Landscaped materials shall survive for a minimum of two complete growing seasons following installation. In the event any plant material dies within such two-year period it shall be replaced as soon as practical. An additional two-year period for survival shall apply to such replacement plant.
- 35) Before the occupancy or use of the final dwelling unit constituting a part of the Project, the Applicant shall submit to the Planning Board an "As-Built Plan" in paper and CAD format, showing all pavement, buildings, stormwater management 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 and civil engineer, certifying that the Project as built conforms and complies with the conditions of this Approval. Said "as built" plan shall be suitable for locating all infrastructure required by this decision, both above and below ground. Said plan shall include sufficient elevations, tied to the NGVD Datum, so that the Town can verify that all infrastructures will perform as designed and approved. Said plan shall clearly indicate all deviations from the approved Plan. No material deviations from the approved Plan shall be allowed or commenced without prior written approval from the Planning Board. All such material deviations shall be requested in writing, clearly citing justifications for said deviations.
- 36) If there is insufficient area on the Property to store snow in the event of a snowstorm, the Applicant shall truck any excess snow off site. The Applicant shall conduct winter weather management operations in a manner that will not place snow or other spoils onto the Transfer Station Access Road ("TSAR").
- 37) The Project will require the installation of utilities on the TSAR. The Applicant shall manage the utility installation in a manner that will minimize impacts to patrons of the

Transfer Station.

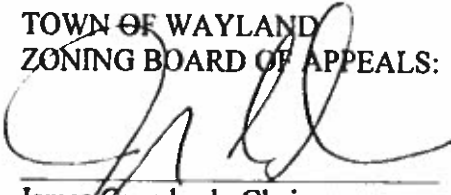
- 38) The Project proposes to use the TSAR for access to the Property during construction and after the Project is complete and in use as a residential housing development. The Applicant shall coordinate construction access with the DPW to minimize impacts to users of the TSAR.
- 39) The use of the TSAR by the Project will require the relocation of the Transfer Station access gate, to a spot approximately 300 feet north of its current location. The Applicant shall relocate and install the gate at a location to be determined by the Director of Public Works.
- 40) Post construction, the Applicant shall not restrict vehicular access through the Property by Transfer Station patrons who may need to reverse direction when the Transfer Station is closed.
- 41) In 2019 the DPW completed a roadway restoration to a major portion of the TSAR. The Applicant shall mill and pave the TSAR to DPW specifications from Boston Post Road to the location of the new gate at the Transfer Station.
- 42) Any proposed modifications to the Approved Site Plan shall be submitted to the Building Commissioner, who will review the modification to determine whether the modification is material or not. If the Building Commissioner determines that the modification is not material, the Building Commissioner may approve the modification and advise the Zoning Board of Appeals of same. If the Building Commissioner determines that the proposed modification is material, then the modification shall be forwarded to the Planning Board and Zoning Board of Appeals. The Planning Board shall submit a report and/or recommendations regarding said modification to the Zoning Board of Appeals. Said plans must be approved by the Zoning Board of Appeals following a public hearing on the proposed modification. Any change to the form of tenure from rental to ownership or any change in the number of dwelling units shall be deemed a material modification of this Decision. Any modifications altering the variances granted herein shall require a new variance from the Zoning Board of Appeals. Following the initial development authorized by this Decision, redevelopment of more than 25% of the existing buildout shall require a special permit from the Planning Board pursuant to §198-2504.2 of the REHOD By-law.

#### **DECISION GRANTING SITE PLAN APPROVAL**

On a motion duly made and seconded, the Board voted, with 5 in favor and 0 opposed to grant Site Plan Approval subject to the conditions stated herein and in accordance with the plans submitted revised through the dates reflected herein.

Any appeal of the Site Plan Approval shall be made pursuant to §198-604.9.1 of the Zoning By-laws.

TOWN OF WAYLAND  
ZONING BOARD OF APPEALS:



James Grumbach, Chairman

Date of Board's Vote: December 17, 2019

Date Decision Filed with Town Clerk: 12-30-19

2019 DEC 30 PM 1:44

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