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Board of Appeals

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**Comprehensive Permit
Issued to 248 High Street, LLC
DECISION
#16-05**

**248 High Street
August 10, 2016**

GRANTED with Conditions

This is a Decision of the Acton Zoning Board of Appeals (hereinafter the "Board") on the request for a Comprehensive Permit under Massachusetts General Laws ("M.G.L.") Chapter 40B, §20-23 (the "Act"), made by the owner, 248 High Street, LLC, 159-1 Prospect Street, Acton, MA 01720 (hereinafter the "Applicant") for the property located at 248 High Street in Acton, Massachusetts. The property is identified on the Acton Town Atlas map as parcel J3-7 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit for an 8 (eight) single-family unit development. The project consists of 8 three-bedroom single family detached residences. Two will be sold to income-qualified families. The Comprehensive Permit application was submitted to the Board of Appeals on June 16, 2016. The Board opened a duly noticed public hearing on July 19, 2016. The Board conducted a site walk of the subject property on August 1, 2016 and held continued hearings on August 1, 2016, and August 10, 2016. The Board closed the public hearing on August 10, 2016. Throughout the duration of the hearings, the Board heard testimony from the Applicant, Town Staff and abutters to the proposed project. Board members Jonathan Wagner (Chair), Kenneth Kozik (Member), and Adam Hoffman (Member) were present throughout the hearings. The minutes of the hearings and

submissions on which this decision is based may be referred to in the Town Clerk's office or the office of the Board at Acton Town Hall.

1 EXHIBITS

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

1.1 The application for a Comprehensive Permit entitled "Adeline Way" was filed with the Town Clerk on June 16, 2016. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:

- Cover letter, dated June 16, 2016;
- Email from Applicant requesting an extension to public hearing date;
- Comprehensive Permit Fee;
- Comprehensive Permit Application Form;
- Development Impact Report;
- Designer's Certificate;
- Development Schedule;
- Unit Composition Schedule;
- Development Proforma;
- Letter from the Commonwealth of Massachusetts – Secretary of the Commonwealth regarding 248 High Street, LLC.'s certification as a Limited Liability Company dated, June 10, 2016;
- Certificate of Organization as a Limited Liability Company received by the Secretary of Commonwealth Corporation Division February 3, 2016;
- Quitclaim Deed transferring the property to 248 High Street, LLC, and recorded in the Middlesex South District Registry of Deeds in Book 66792, Page 231;
- Letter from Commonwealth of Massachusetts - Department of Housing & Community Development regarding Determination of Project Eligibility under the Local Initiative Program (LIP) dated, May 24, 2016;
- Proposed Regulatory Agreement;
- Letter dated March 30, 2016, from the Acton Board of Selectmen;
- Letter dated March 28, 2016, from the Acton Community Housing Corporation;
- Fidelity National Title Insurance Company Owner's Policy of Title Insurance;
- Certified Abutters List;
- Plan of Land recorded in the Middlesex South Registry of Deeds as Plan 105 of 2016;
- Architectural renderings and floor plans by Artform Home;
- Letter dated June 10, 2016, from Maureen M. O'Hagan, MCO Housing Services;
- Price calculator, and Local Needs Assessment, and Marketing and Outreach Plan and Lottery Plan, prepared by MCO Housing Services and dated, June 10, 2016;
- Department of Housing and Community Development CH40B Subsidized Housing Inventory;
- Acton Community Housing Corporation Subsidized Housing Inventory Report June 2016;
- Draft Adeline Way Homeowners Trust;
- Draft Master Declaration of Protective Covenants;
- Plan entitled, Comprehensive Permit Plan Set 248 High Street, Acton Massachusetts, "Adeline Way" prepared by David E. Ross Associates, Inc., 111 Fitchburg Road, Acton, MA 01720 and consisting of the following:

- Title Sheet, dated June 2016 (Sheet 1 of 9);
- Master Plan, dated June 2016 (Sheet 2 of 9);
- Plan of Land (Sheet 3 of 9);
- Natural Features & Existing Conditions Plan, dated June 2016 (Sheet 4 of 9);
- Site Development Plan, dated June 2016 (Sheet 5 of 9);
- Plan & Profile, dated June 2016 (Sheet 6 of 9);
- Construction Details Plan, dated June 2016 (Sheet 7 of 9);
- Landscape Plan, dated June 2016 (Sheet 8 of 9);
- Erosion & Sedimentation Control Plan, dated June 2016 (Sheet 9 of 9);
- Stormwater Management Report, Earthwork and Water Balance Calculations for 248 High Street, LLC, June 2016;
- Waiver request from the Town of Acton Local Regulations; and
- DHCD Team Experience – Developer/Contractor Qualifications;

Additional plans and documentation submitted as part of the application included the following:

- Revised Stormwater and Water Balance Calculations, received July 19, 2016.
- Revised Plan set dated, July 20, 21016 entitled, Comprehensive Permit Plan Set 248 High Street, Acton Massachusetts, “Adeline Way” prepared by David E. Ross Associates, Inc., 111 Fitchburg Road, Acton, MA 01720 and consisting of 9 sheets,
- Hypothetical 4-Unit pro forma, received July 19, 2016.

1.2 Interdepartmental communications were received from:

- Planning Department, dated July 14, 2016;
- Engineering Department, dated July 12, 2016 and email, dated July 19, 2016 and revised July 21, 2016;
- Health Department, dated 7/06/16;
- Fire Chief, email dated July 13, 2016;
- Acton Community House Corporation dated July 10, 2016;
- Board of Selectmen dated May 7, 2012;
- Design Review Board dated July 15, 2015;
- Email from Natural Resources Director, dated July 20, 2016;
- Acton Water District, dated July 12, 2016 and email dated, July 26, 2016;
- Acton Historical Commission, dated July 15, 2016;
- Email from Acton Tree Warden, dated July 27, 2016.

1.3 Other Correspondence included:

- Email from Anne Forbes, dated July 19, 2016;
- Email forwarded from the Historical Commission originating from Terra Fredrick's, dated 7/5/16;
- Email from Christopher Skelly of Massachusetts Historic Commission, dated July 11, 2016;
- Email from Rob Olivia of David E. Ross Associates, dated July 12, 2016;
- Letter from Rob Olivia of David E. Ross Associates to Acton Engineering Department, dated July 14, 2016;

- Email from Alana Murphy of the Department of Housing and Community Development, dated July 12, 2016;
- Scenarios to Preserve/Renovate Historic Building @ 248 High Street, submitted by Terra Friedrichs on August 10, 2016.

1.4 Extension Agreements:

- Consent and Agreement to Extension of Hearing to July 19, 2016;
- Consent and Agreement to Extension of Hearing to August 1, 2016.

Exhibit 1.1 is hereinafter collectively referred to as the Plan.

2 FINDINGS AND CONCLUSIONS

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

- 2.1 The submitted application substantially complies with the Board's comprehensive permit application requirements as stated in the Town of Acton's "Rules and Regulations for Comprehensive Permits" adopted May 17, 2004, and the subsequent regulations of the Department of Housing and Community Development's ("DHCD") Housing Appeals Committee entitled "Comprehensive Permit; Low or Moderate Income Housing," 760 CMR 56.00 (the "Regulations").
- 2.2 According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI) as of June 2016, Acton's SHI percentage is 6.5%. As a result Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum 10% criterion.
- 2.3 The 248 High Street property is located within an R-4 (Residence 4) Residential Zoning District. The overall development is located within the Groundwater Protection District Zone 4.
- 2.4 The Applicant did not request a waiver from Acton Bylaw Chapter X. The project as proposed and approved herein complies with the requirements of Chapter X.
- 2.5 The subject property totals approximately 1.5 acres (65,340ft²) in area.
- 2.6 The entire proposed Project is an 8-unit single family home development under the Local Initiative Program which has already been pre-approved by the Department of Housing & Community Development.
- 2.7 The project will have 2 (two) dwelling units which are made available to households whose incomes and assets qualify them as low or moderate-income. House # 11 and #13 are designated as affordable units.
- 2.8 The existing dwelling at 248 High Street is not listed on the Cultural Resource List for the Town of Acton but is listed on the Massachusetts Cultural Resource Information System and therefore was subject to Chapter N of the Town of Acton Bylaws.
- 2.9 The previous owner applied for a demolition permit under Chapter N of the Town Bylaws. The Acton Historical Commission issued a Demolition Delay in which demolition of the structure is allowed after September 9, 2016. The Applicant has not asked for a waiver to demolish the structure prior to September 9, 2016.
- 2.10 All dwellings will have a minimum of 2 (two) parking spaces. All other homes are designed with 2 (two) car garages and driveways which can accommodate additional vehicles.

- 2.11 There is no designated area identified for guest/visitor parking.
- 2.12 The Applicant has acknowledged that, in lieu of constructing sidewalks in accordance with Section 9.6 of the Rules within the subdivision street, a contribution to the Town's sidewalk fund could be made using the established formula, which is \$20.00 per foot of subdivision street length. For this subdivision the contribution would amount to (220 feet Adeline Way) X \$20) = \$4,400.
- 2.13 Dwellings are designed in Colonial styles of architecture and implemented in a random mixture of elevations to provide sufficient architectural variety.
- 2.14 The new proposed road has a pavement width of 20'-0" within a 40' right of way. The proposed inside turning radii are 25 feet and the driveway on Lot 5 has a flared radius to accommodate a three point turnaround of the Acton ladder truck.
- 2.15 The Project is located less than a half-mile from a significant shopping destination. Existing sidewalks connect the site to the Powdermill Plaza and surrounding neighborhoods.
- 2.16 The Applicant has requested waivers from the following Town of Acton's Bylaws and Rules and Regulations:

2.16.1 Town of Acton's Zoning Bylaw, provisions:

- Section 5 – Table of Standard Dimensional Regulations – Min. Lot Area of 40,000 sf. Current proposal is 6,546 sf.
- Section 5 - Table of Standard Dimensional Regulations – Min. Lot Frontage of 175'-0". Current proposal is 14.88'.
- Section 5 - Table of Standard Dimensional Regulations – Min. Lot Width of 50'-0". Current proposal is 14.85'.
- Section 5 - Table of Standard Dimensional Regulations – Min. Front Yard Setback of 45'-0". Current proposal is 8'-0".
- Section 5 - Table of Standard Dimensional Regulations – Min. Side & Rear Yard Setbacks of 20'-0". Current proposal is 10'-0" rear and 5' side.

2.16.2 Town of Acton's Subdivision Rules & Regulations from the following provisions:

- Section 8.1.7 – 1,000' separation between adjacent intersecting streets along collector streets. Current proposal is 890' from Parker Street and 274' from Dunham Lane and 203' from Cindy Lane
- Section 8.1.10 – 25' sideline radius. Current proposal is 20' sideline radius.
- Section 8.1.12 – 80' centerline radius. Current proposal is 50' centerline radius.
- Section 8.1.14 – 2% grade within 50' of intersecting street. Current proposal is 2.57% within 50' of intersecting street.
- Section 8.1.16 – Dead end Street not permitted. Current proposal is a 230 foot dead end with a ladder truck turning accommodation.
- Section 8.1.18 – Cul-de-sac turnaround. Current proposal shows no cul-de-sac turnaround.
- Section 8.7.1 & 8.7.2 – 20' wide easement on lot lines for drainage. Current proposal is 10'wide drain easement along the lot line.

- Section 8.7.5 – 10' utility and slope easement on each side of road. Current proposal shows no slope easement provided, utility easements are shown where necessary.
- Section 9.1.1 – Sidewalk required per standard roadway cross section. Current proposals excludes sidewalk within development.
- Section 9.2.6 – 8" water main required. Currently plan provides 6" per discussion with Acton Water District.
- Section 9.2.8 – Fire call boxes. No fire call boxes are proposed.
- Section 9.5.2 – Sloped granite curb at street intersection. Current plan shows concrete accessible cape cod curb cut at the intersection for the existing sidewalk.
- Section 9.8.1 – Street trees. Current plan provides no street trees but proposes a landscape plan alternative.

2.16.3 Town of Acton's Wetland Protection Bylaw Rules and Regulations provisions:

- Section 3.2 (6) – 100' setback of undisturbed natural vegetation to the mean high waterline for vernal pools.

2.17 Given the regional need for affordable housing, the Board finds that the increased density of this Project is reasonable for affordable housing on this Site and that the access as proposed is adequate. Therefore, the Board grants the waivers required by the Plans from Section 5 (Dimensional Regulations), the Subdivision Rules & Regulations and Town of Acton Wetland Protection Bylaw subject to the Conditions of this Decision.

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

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

The Applicant has satisfied this requirement by providing a letter from the Secretary of the Commonwealth certifying 248 High Street LLC as a Limited Liability Company and agrees to legally bind itself to limit the profit it derives from a comprehensive permit development.

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

The Applicant has satisfied this requirement through the submission of a Project Eligibility Letter dated May 24, 2016, from the Commonwealth's Department of Housing and Community Development indicating that the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program

Jurisdictional Requirement : The Applicant shall control the site:

The Applicant has satisfied this requirement by providing a Deed showing the transfer of ownership from Elizabeth H. Rader to 248 High Street LLC, recorded on 2/11/2016 as Bk 66792/Pg 231

- 2.19 The proposed Project, when conforming to the conditions set forth in this Decision, will adequately provide for storm water drainage and sewerage, will not be detrimental or injurious to the surrounding neighborhood, will provide for convenient and safe vehicular and pedestrian movement within and through the site, all without an undue burden on the occupants of the Project or on the surrounding neighborhood or the Town.
- 2.20 The proposed Project will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the Project, the neighborhood, or the Town.
- 2.21 The proposed Project as supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this decision, and (ii) would represent a reasonable accommodation of the need for low and moderate income housing.
- 2.22 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.23 This Decision has been issued and filed with the Town Clerk within the time frame specified in M.G.L. Ch. 40B, §20-23 and as agreed to by the Applicant.

3 GOVERNING LAW & JURISDICTIONAL ELEMENTS

- 3.1 The law governing this project is the Act and regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development Housing Appeals Committee at 760 CMR 56.04, and the Board's Rules & Regulations for Comprehensive Permits.
- 3.2 The Act prevents the possible use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. The purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town's total area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year. Acton does not currently meet these criteria.

4 BOARD ACTION

Therefore, the Board voted unanimously on August 10, 2016 to GRANT the requested Comprehensive Permit consisting of a total of 8 (eight) Dwelling Units (inclusive of 2 (two) affordable units) on the Site under the Act, subject to and with the benefit of the following Plan modifications, conditions, and limitations.

4.1 PLAN MODIFICATIONS

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

- 4.1.1 The Applicant shall modify the plan to address all comments received by the Tree Warden in the email dated July 27, 2016.
- 4.1.2 Show concrete bounds along the street and permanent property line markers.

- 4.1.3 Show signs along the stonewall near the vernal pool, indicating the sensitive environmental area.
- 4.1.4 The Applicant shall modify the Plan to address all comments identified by the Acton Water District dated July 12, 2016.

4.2 CONDITIONS

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

- 4.2.1 There shall be no removal of trees beyond the limits of clearing except with the Tree Warden's approval.
- 4.2.2 The sewer main from SMH-1 to SMH-4, but not including SMH-4, shall remain a private sewer as long as Adeline Way remains a private way.
- 4.2.3 Prior to the issuance of any building permit, the Applicant shall pay a Sewer Privilege Fee for the unit which the building permit is applied for in an amount to be determined by the Sewer Commissioners.
- 4.2.4 Architectural plans submitted for building permit shall be substantially in accordance to the plan approved hereunder.
- 4.2.5 Prior to the issuance of an occupancy permit, the Applicant shall acquire residential sewer connection permits for each unit.
- 4.2.6 Prior to the issuance of an occupancy permit for house #8 or #12, the Applicant shall install a sprinkler system in lieu of widening the driveway pavement to 20'.
- 4.2.7 Prior to the issuance of the last occupancy permit, the Applicant shall record and file at the Registry of Deeds a sidewalk easement to accommodate the existing sidewalk along the frontage of the property.
- 4.2.8 Prior to the issuance of the first occupancy permit, the Applicant shall pay to the Sidewalk Fund a donation in the amount of \$4,400.
- 4.2.9 Prior to the issuance of any occupancy permit, the Applicant shall submit, to the satisfaction of the Zoning Enforcement Officer, a copy of The Homeowner's Association Bylaws which shall include an adequate plan for maintenance of the stormwater management system.
- 4.2.10 Construction shall not interfere with vernal pool and mitigation measures shall be provided.
- 4.2.11 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Acton Board of Health.
- 4.2.12 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Acton Engineering Department's memorandum dated July 21, 2016.
- 4.2.13 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.2.14 This Project shall be established and conducted at all times in accordance with the terms of this Comprehensive Permit and shall conform with and be limited to the improvements indicated in the Plan as modified herein.

- 4.2.15 The Applicant shall be diligent to ensure that no construction debris or material from the site enter any of the abutting properties or the High Street public right-of-way.
- 4.2.16 Adeline Way shall remain a private way. The Applicant and owners shall not petition the Town to provide snow and ice removal services or provide any other maintenance and upkeep of Adeline Way.
- 4.2.17 The Applicant shall be responsible for sweeping, removal of snow, and sanding of the internal roadways permitting access to residents and emergency vehicles during construction and until the Homeowner's Association has been legally established and has assumed said responsibilities. Assurances through deed restrictions or otherwise shall be given that the Town will not be requested to accept or maintain the private Street, drainage system, or any other improvements within the proposed development for which this Comprehensive Permit grants approval to construct.
- 4.2.18 The Applicant shall make every attempt to minimize any adverse or nuisance construction conditions (such as, but not limited to dust, noise, vibrations, etc.) from existing in and around the Site and affect neighboring and abutting properties during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- 4.2.19 All construction activity on the property relating to this Comprehensive Permit shall be limited to the hours of: Monday – Friday: 7:00am – 6:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays as recognized by the Commonwealth of Massachusetts: no work permitted.
- 4.2.20 All work on the Site shall be conducted in accordance with the terms of this Comprehensive Permit and shall conform with and be limited to the improvements shown on the Plan and as modified herein.
- 4.2.21 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 4.2.22 Prior to commencement of any construction, not including demolition or land clearing, the Applicant shall submit to the Zoning Enforcement Officer for review and approval a final electronic set of Engineering Drawings and Landscape Plans for the project which shall be substantially in conformance with those cited in Section 1 – Exhibits (above) of this Decision except that they shall be updated in accordance with the requirements of this Decision. Each plan sheet shall be signed by and show the seal of a Registered Professional Engineer or Registered Land Surveyor or some combination of these as appropriate to the data on the sheet. The submission shall in addition include a list of the specific changes made to conform to the requirements of this Decision; this list and the final set of Engineering Drawings and Landscape Plans shall be signed and stamped by the Design Engineer. Upon the Zoning Enforcement Officer's finding that the Engineering Drawings and Landscape Plans conform to this Decision, he shall mark electronically "Approved" on the final set of Engineering Drawings and Landscape Plans which shall thereupon constitute the final "Approved Plans" under this Decision and shall be filed with the records of the Board.
- 4.2.23 In the event the Zoning Enforcement Officer determines that the Applicant's construction drawings submitted with its building permit application(s) materially deviate from the final Approved Plans in such a manner that, in his professional opinion, they do not conform to the requirements and conditions imposed by this Comprehensive Permit Decision, the Zoning Enforcement Officer shall notify the Applicant of the specific deviations, and the Applicant shall

either bring the construction drawings into conformity with this Decision or seek modification of this decision in accordance with 760 CMR 56.05(11). In the event of a disagreement between the Zoning Enforcement Officer and the Applicant with respect thereto, they shall notify the Board which shall thereupon determine whether the building permit construction drawings (with any necessary revisions) do conform to this Decision. The Board shall endorse those construction drawings if so requested by the Applicant. Any change or modification to the plans, which in the opinion of the Zoning Enforcement Officer are deemed to be de minimis in nature, shall be deemed to be within the scope of this Comprehensive Permit.

- 4.2.24 By granting waivers from the local bylaws and regulations identified in Findings 2.15 above, it is the intention of this Comprehensive Permit to permit construction of the Project as shown on the final Approved Plans. If, in reviewing the Applicant's building permit application(s), the Zoning Enforcement Officer determines that any additional waiver from local zoning, wetlands, health, or subdivision regulations is necessary to permit construction to proceed as shown on the final Approved Plans, the Zoning Enforcement Officer shall proceed as follows: (a) any matter of de minimis nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature, including those having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver therefrom. Once the Project has been constructed in accordance with the Approved Plans, neither this Comprehensive Permit nor the Waivers set forth herein shall authorize any further waiver of the Acton Zoning Bylaw or other local by-laws, rules and regulations.
- 4.2.25 Unless waived by the Board of Selectmen, the Applicant shall pay all fees of the Town of Acton generally imposed with respect to construction projects and for the purposes of monitoring compliance of the project's building construction and occupancy in accordance with this Comprehensive Permit.
- 4.2.26 The Applicant shall copy the Zoning Enforcement Officer on all correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all testing results, official filings and other permits issued for the Project.
- 4.2.27 Prior to any building permit being issued, this Decision shall be recorded at the Middlesex South District Registry of Deeds or the Middlesex Registry District of the Land Court along with a Record Plan sheet of the Approved Plans. Proof of recording shall be forwarded to the Board and the Zoning Enforcement Officer prior to the issuance of any building permit.
- 4.2.28 The Applicant shall comply with the State Building Code.
- 4.2.29 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 4.2.30 The Applicant shall obtain temporary easements or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting purposes.
- 4.2.31 Prior to the final certificate of occupancy being issued for the Project, the Applicant shall submit to the Board an "As-Built Plan" showing all pavement, buildings, drainage structures, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The "As-Built Plan" shall include an accurate utilities plan and profile, showing actual in-ground installation of all utilities after completion of construction. Each plan sheet shall

be signed and show the seal of a Registered Professional Engineer, or Registered Land Surveyor certifying that field inspections have been conducted throughout the duration of construction and the Project, as built, conforms and complies with all conditions of this Comprehensive Permit and the Approved Plans.

- 4.2.32 Prior to the final certificate of occupancy being issued for the Project, the Applicant shall have fully completed the improvements and plantings shown on the approved Landscaping Plan.
- 4.2.33 The Applicant shall ensure safe and convenient vehicular access into and around the Site during the entire duration of the project construction. Any traffic problems that occur as a result of onsite operations and construction shall be mitigated immediately, at the expense of the Applicant. Additional traffic mitigation measures may be required as necessary, or as directed by the Zoning Enforcement Officer or Building Commissioner. The Board's representatives shall be permitted access to the Site to observe and inspect the Site and construction progress until such time as the Project has been completed.
- 4.2.34 All construction vehicles shall be parked on the Site and off of High Street at all times.
- 4.2.35 The Project shall be limited to a total of eight 3-bedroom dwelling units.
- 4.2.36 The landscaping shall be maintained in perpetuity by the Homeowner's Association, which obligation shall be incorporated in the Homeownership Documents, as applicable, and the declaration of restrictive covenants to be executed by the Applicant. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.
- 4.2.37 As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the roadway, drainage facilities, utilities, landscaping, and any other specific infrastructure shown on the final Approved Plans (the "Infrastructure"), the release of occupancy permits for all Dwelling Units and the sale of all Dwelling Units in the development shall be subject to the following restrictions:
 - (a) No occupancy permit for any Dwelling Unit shall be issued, and no sale of any Dwelling Unit shall be permitted, until: (1) the base and binder course for the private roadway and for the driveway for the unit to be occupied has been installed, (2) all infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said unit, and (3) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Zoning Enforcement Officer. The private roadway, individual driveways and all remaining infrastructure must be fully completed and installed prior to the issuance of a certificate of occupancy for the 8th newly constructed Dwelling Unit. All water connections shall be approved by the Acton Water District and completed and paid for by the Applicant in accordance with Acton Water District rules and regulations.
 - (b) Notwithstanding the foregoing, if in the judgment of the Zoning Enforcement Officer landscaping cannot reasonably be completed because the time of year is inhospitable thereto, landscaping may be treated separately from Infrastructure such that the Applicant may be permitted to post a bond in lieu of completing the landscaping prior to release of the occupancy permits for the Dwelling Units and the sale of the Dwelling Units; provided that the Applicant shall complete the landscaping no later than the next growing season or the bond shall be forfeited.

- 4.2.38 The Applicant shall maintain and repair the drainage structures and stormwater management system on the Site as shown on the Approved Plans until such time as the Applicant either (1) sells the Site to a new Applicant subject to these responsibilities, or (2) assigns or otherwise transfers these responsibilities to the Homeowner's Association.
- 4.2.39 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines.
- 4.2.40 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Project and the use of the Site does not strictly and fully conform to the requirements of the Acton Zoning Bylaw; and reference to these conditions shall be incorporated in the Ownership Documents for the Project and for any Dwelling Unit in the Project.
- 4.2.41 At least seven days prior to the start of construction, the Applicant shall provide written notice to the Zoning Enforcement Officer of the anticipated construction start date.

4.3 CONDITIONS - LEGAL REQUIREMENTS

- 4.3.1 The Applicant shall establish either a Homeowners Association that will be governed and controlled by the provisions of a Homeowners Trust, including By-Laws, Rules and Regulations, and Protective Covenants (collectively the "Homeownership Documents"). The Applicant shall provide in the Homeownership Documents, as applicable, that a separate reserve shall be maintained specifically for repairs to, replacement of, and maintenance of, the common drainage systems for the Project that shall be the responsibility of the Homeowners Association, as applicable. The Homeownership Documents shall provide that no changes shall be made without the affirmative vote of 7 of the 8 unit owners.
- 4.3.2 Any sale or transfer of rights or interests in all or any part of the Site shall include a condition that successors are bound by the terms and conditions of this Comprehensive Permit.
- 4.3.3 This Comprehensive Permit may not be transferred to an entity in which the Applicant owns and controls less than 50% of the equity interests in such entity, or to a person other than the Applicant without the prior written approval of the Board and the execution of any instruments or documents that may be required to assure the perpetual enforcement of this Comprehensive Permit pursuant to Town Counsel's direction. The scope of the Board's review of a proposed transfer shall be limited to the review of the transferee's qualifications, experience, capacity and eligibility under 40B with regards to satisfying the three jurisdictional requirements. This condition shall not apply to the transfer of ownership of the development from the developer to the Homeowners Association.
- 4.3.4 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. All Homeownership Documents, as applicable, and all deeds or unit deeds to Dwelling Units in the Project shall reference and be subject to this Comprehensive Permit Decision. The Ownership Documents shall be recorded at the Middlesex South District Registry of Deeds or filed with the Middlesex South District Land Court Registration office as applicable.
- 4.3.5 The percentages of beneficial interest in the common area shall be calculated by the square foot methodology.

4.3.6 The roadways, utilities, drainage systems, and all other infrastructure shown in the Approved Plan shall remain privately owned. The Town of Acton shall not have, now or ever, responsibility for the operation or maintenance of this Infrastructure, including but not limited to snow removal and trash collection. Assurances through deed restrictions or otherwise shall be given that the Town will not be requested to accept or maintain the private Street, drainage system, open space, or any other improvements within the proposed development for which this Comprehensive Permit grants approval to construct.

4.4 CONDITIONS - AFFORDABILITY REQUIREMENTS

To the extent permitted by the Department of Housing and Community Development (“DHCD”), the following conditions shall apply. The Applicant shall support the Town in obtaining the DHCD’s approval of the following conditions:

4.4.1 Construction of the proposed project shall be phased to ensure that a minimum of one affordable dwelling unit shall be built for every three market rate units constructed.

4.4.2 Certificates of Occupancy for all two (2) of the Affordable Units shall be issued prior to the last Certificate of Occupancy being issued for the newly constructed market rate Dwelling Units.

4.4.3 Affordable Units: The two (2) Affordable Units shall be made available for purchase by households whose aggregate income is no greater than 80% of the Area Median Income for a four-person household as published by the Department of Housing and Urban Development (HUD) for the Boston Metropolitan Primary Statistical Area (BMPSA). The two (2) Affordable Units, as designated on the Approved Plan, shall contain three bedrooms.

4.4.4 Sale Price: The maximum sale prices for the Affordable Units shall be reviewed and approved by the DHCD at the time of the lottery for selection of buyers of the Affordable Units. Subject to the approval of DHCD, the sale price for the Affordable Units shall be set to be affordable to a household earning 70% of the Area Median Income published by the Department of Housing and Urban Development for the Boston Metropolitan Primary Statistical Area, adjusted for household size. The applicable household size is four (4) persons for the 3-bedroom units. Any modification or deviation from the designation of the affordable units as originally proposed and reviewed by the DHCD shall be subject to approval by the DHCD.

4.4.5 Selection of Buyers for Affordable Units: The Applicant shall obtain the DHCD and Acton Community Housing Corporation approval of a buyer selection plan for the sale of the Affordable Units prior to putting the Affordable Units on the market. Buyers shall be selected through a fair lottery process (the “Lottery”).

4.4.5.1 To the maximum extent permitted by law and by the DHCD, first preference for the purchase of one of the Affordable Units shall be given to households that meet one or more of the following “Acton Connection” preference criteria:

(i) Currently a resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to M.G.L. Ch. 51, §4 and would be considered a resident under the United States Census Bureau’s residency guidelines. “Usual residence” has been defined as the place where the person

lives and sleeps most of the time. Also, non-citizens who are living in the United States are included, regardless of their immigration status.

(ii) An employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, or a person who is currently privately or publicly employed within the Town of Acton.

4.4.5.2 Purchasers whose selection is based on any of the above "Acton Connection" preference criteria shall continually meet at least one of these criteria from the time of selection to the time of closing on the purchase of an affordable unit. Such a purchaser's failure to meet at least one of these criteria during this time period shall be a cause for that purchaser's disqualification and selection of a new purchaser in accordance with the procedures of the Lottery.

4.4.5.3 Within a pool of potential buyers, preference shall be given to households requiring the total number of bedrooms in the Unit with at least one occupant per bedroom and no more than two occupants per bedroom.

4.4.5.4 The selection of purchasers for the Affordable Units, including the administration of the Lottery, shall be administered by a consultant retained and funded by the Applicant. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the DHCD. The Acton Community Housing Corporation, if permitted by the DHCD, shall oversee the Lottery and review the financial eligibility of the selected purchasers. The Applicant shall fund the expenses of the Lottery.

4.4.5.5 Selected purchasers shall complete a first-time homebuyer course before the closing of the purchase of an Affordable Unit if required by the purchaser's lender. The applicant shall request that the DHCD and ACHC shall make available a list of such courses for purchasers to attend.

4.4.5.6 Income eligibility shall be governed by the rules and regulations of the DHCD Local Initiative Program, or in default, the rules and standards employed by the Department of Housing and Urban Development in the selection of income-eligible households for publicly subsidized housing.

4.4.5.7 Disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Town through the Board of Selectmen or its designee, the Acton Community Housing Corporation, and in the second instance by DHCD. A party aggrieved by a qualification-related decision of the Acton Community Housing Corporation may appeal the decision to the Board for a final determination.

4.4.5.8 The provisions of this section are intended to complement and not to override or supersede any rules, regulations, or requirements of the DHCD, the Massachusetts Commission Against Discrimination, the Local Initiative Program, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

4.4.6 **Perpetual Affordability Restriction:** Prior to the issuance of any occupancy permits, a Regulatory Agreement, in a form acceptable to DHCD shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) the two (2) affordable Units in the Project shall be sold and resold subject to a Deed Rider, in a form acceptable to DHCD, and (b) the

Project Owner's profit shall be limited to 20% of the total development cost of the Project as defined by the Regulatory Agreement and applicable regulations.

The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Unit in the Project at the time of each sale and resale, and the Deed Rider shall restrict each such affordable unit pursuant to this Decision in perpetuity in accordance with the requirements of M.G.L. Ch. 184, §§31-33.

After obtaining the DHCD's final approval of the Regulatory Agreement and Deed Rider, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of the DHCD if required pursuant to MGL Ch. 184, §32 or other law. The Applicant shall submit to the Board written evidence of the Applicant's efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction.

In any event, as this Decision grants permission to build the Project under the Act, and as the Applicant has obtained the benefits of a comprehensive permit, the Project shall remain subject to the restrictions imposed by the Act so long as the Project is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Project but for the comprehensive permit's override of local bylaws to promote affordable housing.

Accordingly, this Decision and the Deed Rider shall restrict such Affordable Units so long as the Project is not in compliance with the Town of Acton's zoning bylaw, so that the units continue to serve the public interest for which the Project was authorized. It is the express intention of this Decision that the period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

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

- 4.4.7 **Profit Cap:** To conform to the intent of the Act that profits from the Project be reasonable and limited, the Applicant shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Project, as accepted by the DHCD (the "Profit Cap"). The Regulatory Agreement shall provide mechanisms to enforce this requirement (the "Profit Cap"). If the Applicant has exceeded the Profit Cap, the Applicant shall, subject to DHCD approval, donate the excess profit above the Profit Cap to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation of affordable housing in the Town of Acton.
- 4.4.8 **Regulatory Agreement:** Prior to applying for an occupancy permit for any dwelling unit, the Applicant shall submit to the Board a copy of a fully executed Regulatory Agreement between the Applicant, the Town and DHCD, governing the protection and administration of the Units covered by this Decision. The Regulatory Agreement shall be recorded prior to the conveyance of

the first dwelling unit. The Town shall have the right, concurrent with DHCD, to enforce the terms and conditions of the Regulatory Agreement.

4.4.9 **DHCD and Financial Information:** The Market Rate Units and the Affordable Units shall be visually comparable from the exterior as shown on the architectural plans. In addition, the Affordable Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, operational HVAC, refrigerator, and other amenities all as more fully shown on the final Approved Plans. Further, without limiting the forgoing, and in addition to the Applicant's obligations to the DHCD, (a) upon issuance of a final certificate of occupancy for all of the Units and every ninety (90) days thereafter until the last Unit is sold, the Applicant shall cause the CPA to deliver to the Regional Housing Services Office an itemized statement of the Project's total development costs and gross income certified by the CPA, and (b) the Applicant shall provide any back-up and supporting documentation, including, but not limited to, cancelled checks, invoices, receipts, and financial statements, reasonably requested by the Regional Housing Services Office for all Project costs and income sources.

4.5 LIMITATIONS

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

4.5.1 The foregoing required conditions, legal requirements and affordability requirements have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.

4.5.2 If, between the date this Decision is filed in the office of the Acton Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 56.05(11). In no case shall the Applicant be allowed to implement a Project change that increases the number of units, changes the mix of affordable and market rate units, or increases the height of the buildings on the Site, without submitting a new application and undergoing a new public hearing and decision process. Without limitation, in the event any subsequent permitting process results in a change to the Approved Plans that triggers the need for further waivers from local bylaws, rules, or regulations, any such matter shall be treated as a project change and the procedures in 760 CMR 56.05(11) shall be followed.

4.5.3 This Comprehensive Permit applies only to the Site identified in this decision and to the proposed development as shown on the Plan.

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

4.5.5 This Decision permits the construction, use, and occupancy of eight (8) Dwelling Units on the Site. The construction and use of the Site shall be in conformity with the Approved Plan, and there shall be no further subdivision of the Site, or the creation of additional Dwelling Units or any other structures or Infrastructure except that which is shown on the Approved Plan, without further approval by the Board in the form of an amendment to this Decision.

4.5.6 If construction authorized by this Comprehensive Permit Decision has not commenced within three (3) years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise

disposed of. The Board may grant an extension of the three year lapse date for good cause shown, which shall include without limitation delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party appeal of a governmental permit or approval required for the Project. Any request for extensions shall be made at least thirty (30) days prior to expiration. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension.

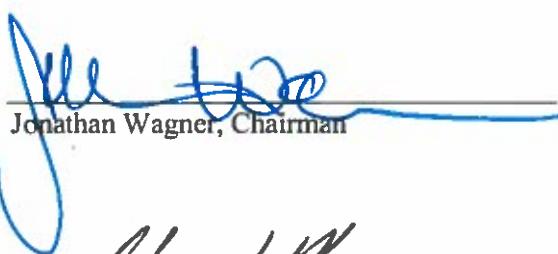
- 4.5.7 In the event a typographical error renders this Decision and the final Approved Plans inconsistent as to the number of units, number of bedrooms, or similar objective characteristic of the Project, the provisions of the final Approved Plans shall control on the point of inconsistency. Otherwise this decision shall be given full force and effect on its terms, unless amended by the Board in writing.
- 4.5.8 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Comprehensive Permit with or without a public hearing upon the request of the Applicant, his designees or assigns, pursuant to 760 CMR 56.05 (11).

5 **APPEALS**

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

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

The Town of Acton Zoning Board of Appeals



Jonathan Wagner, Chairman



Kenneth F. Kozik



Adam Hoffman

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

Eva K. Szkaradek, Town Clerk

Date

Copies furnished:

| | | |
|---------------------------------|------------------------|--------------------|
| Applicant - certified mail # | Building Department | Board of Health |
| Town Clerk | Engineering Department | Assistant Assessor |
| Fire Chief | Planning Department | Town Manager |
| Water Supply District of Acton | Police Chief | Owner |
| Conservation Commission | Municipal Properties | Board of Selectmen |
| | ACHC | Town Counsel |