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**Comprehensive Permit  
Issued to Acton New England Village, LLC  
DECISION  
#16-14**

**31, 39 & 45 Martin Street**  
March 27, 2017

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 applicant, Acton New England Village LLC (c/o Seal Harbor, LLC), 1 Nagog Park, Acton, MA 01720 (hereinafter the "Applicant") for the properties located at 31, 39 & 45 Martin Street in Acton, Massachusetts. The property is identified on the Acton Town Atlas map as parcel H2-11, 20, & 25 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit for a 28 unit development. The project consists of 22 new single family detached residences, two duplex buildings, and the rehabilitation of two single family historic houses. Seven of the units will be sold to income-qualified families. The Comprehensive Permit application was submitted to the Board of Appeals on December 21, 2016. The Board opened a duly noticed public hearing on January, 19, 2017. The Board conducted a site walk of the subject property on January 25, 2017 and held continued hearings on February 6, 2017, February 28, 2017 (no deliberations), and March 6, 2017. The Board closed the public hearing on March 27, 2017. Throughout the duration of the hearings, the Board heard testimony from the Applicant, Town Staff and abutters to the proposed project. Board members Kenneth Kozik (Acting Chair), Adam Hoffman

(Member), and Suzanne Buckmelter (Member) were present throughout the hearings. Adam Hoffman was not present at the January 19<sup>th</sup> public hearing but he received the recordings of the meeting and he used the Mullin Rule to confirm that he listened to the recording. 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 "Anthem Villages" was filed with the Town Clerk on December 21, 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 December 21, 2016;
- Comprehensive Permit Application Form;
- Comprehensive Permit Fee;
- Letter from the Commonwealth of Massachusetts – Secretary of the Commonwealth regarding Acton's New England Village, LLC.'s certification as a Limited Liability Company dated, July 14, 2016;
- Operating Agreement;
- Regulatory and Use Agreement (Rental); with Appendix A - Rent Schedule (Initial) and Appendix B - Fees Payable to Subsidizing Agency;
- Project Eligibility/ Site Approval letter;
- Attachment 1, Project Eligibility;
- Quitclaim Deed of 31 Martin Street and recorded in the Middlesex South District Registry of Deeds in Book 88022, Page 104;
- Extension to Purchase and Sale Agreement for 31 Martin Street;
- Amendment to Purchase and Sale Agreement for 31 Martin Street;
- Quitclaim Deed of 39 Martin Street and recorded in the Middlesex South District Registry of Deeds in Book 10942, Page 386;
- First Amendment to Purchase and Sale Agreement for 39 Martin Street;
- Quitclaim Deed of 45 Martin Street and recorded in the Middlesex South District Registry of Deeds in Book 31273, Page 207;
- Purchase and Sales Agreement for 45 Martin Street;
- Old Republican National Title Insurance Company Owner's Policy of Title Insurance;
- Development Impact Report;
- Certificated Abutter's List;
- Use Description;
- Abbreviated Notice of Resource Area Delineation;
- ANR Plan, recorded in the Middlesex South District Registry of Deeds as Plan 1138;
- Anthem Village Condominium Trust documents;
- Mater Deed of Anthem Village Condominiums;
- Architectural renderings and floor plans by Artform Home;
- List of Waivers;
- Preliminary Affirmative Fair Housing Marketing Plan Homeownership Units;
- 3 Bedroom Affordable Units Purchase Price Limits;
- Affordable Housing Restriction;
- Development Schedule;

- Preliminary Unit Composition Schedule;
- Development Proforma;
- Opinion of Value;
- Team Experience – Developer/Contractor Qualifications;
- Letter dated June 10, 2016, from Maureen M. O'Hagan, MCO Housing Services;
- Acton Community Housing Corporation Subsidized Housing Inventory Report January 28, 2016;
- Plan entitled, Anthem Villages 40B Comprehensive Permit Application, Prepared for Seal Harbor, LLC, 31, 39 & 45 Martin Street Acton, Massachusetts, prepared by Places Associates, 256 Great Road Littleton, MA 01460, dated December 21, 2016 and consisting of the following:
  - CP-1, Notes & Legend;
  - CP-2, Master Plan;
  - CP-3 & 4, Survey Plan;
  - CP-5, Natural Features and Existing Conditions Plan;
  - CP-6, Site Development Plan;
  - CP-7, Utilities Plan;
  - CP-8, Plan and Profiles;
  - CP-9-11, Construction Details;
  - CP-12, Erosion and Sedimentation Control Plan;
  - L-1, Landscape Plan;
  - L-2, Landscape Details.

1.2 Additional, supplemental, revised, and corrected plans and documentation submitted as part of the application included the following:

- Traffic Impact and Access Study dated November 28, 2016;
- Stormwater Analysis Report for "Anthem Villages, dated December 21, 2016;
- Revised Plan set entitled, Anthem Villages 40B Comprehensive Permit Application, Prepared for Seal Harbor, LLC, 31, 39 & 45 Martin Street Acton, Massachusetts, prepared by Places Associates, 256 Great Road Littleton, MA 01460, dated, December 27, 2016, and consisting of 14 sheets;
- Regulatory Agreement (Ownership);
- Revised Plan set entitled, Anthem Villages 40B Comprehensive Permit Application, Prepared for Seal Harbor, LLC, 31, 39 & 45 Martin Street Acton, Massachusetts, prepared by Places Associates, 256 Great Road Littleton, MA 01460, dated, January 24, 2017, and consisting of 14 sheets;
- Anthem Carriage House rendering, dated January 24, 2017;
- Sue Carter Responses to Comments, dated January 26, 2017;
- Bus Shelter rendering, dated January 30, 2017;
- Revised Plan set entitled, Anthem Villages 40B Comprehensive Permit Application, Prepared for Seal Harbor, LLC, 31, 39 & 45 Martin Street Acton, Massachusetts, prepared by Places Associates, 256 Great Road Littleton, MA 01460, dated, February 1, 2017, and consisting of 14 sheets;
- Email regarding Building Specifications, dated February 2, 2017;
- Mark Gallagher email response to Regional Housing Services Office (RHSO) comments, dated February 2, 2017;
- Mark Gallagher email response, dated February 24, 2017;

- Mark Gallagher email response, dated March 2, 2017;
- Mark Gallagher email response regarding driveway, dated March 3, 2017.

1.3 Consolidated set of plans for house styles with architectural drawings, dated/received March 1, 2017.

1.4 Interdepartmental communications were received from:

- Design Review Board, dated January 4, 2017 and revised February 1, 2017;
- Sidewalk Committee, dated January 14, 2017;
- Acton Community Housing Corporation (ACHC), dated January 17, 2017;
- Acton Water District, dated January 17, 2017 and revised February 1, 2017;
- Board of Selectmen, January 17, 2017;
- Planning Department, dated January 17, 2017 and revised February 2, 2017;
- Engineering Department, dated January 17, 2017, revised February 2, 2017, and email dated February 3, 2017;
- Police Department, dated January 31, 2017;
- Fire Department, dated February 1, 2017 and email dated, February 6, 2017;
- Regional Housing Service Office, dated January 30, 2017, and emails dated February 6 and 7 and March 6, 2017.

1.5 Other Correspondence included:

- Email from Ann Corcoran, dated January 11, 2017;
- Email from Anne Forbes, dated January 19, 2017;
- Email from Amy Wilson, dated February 6, 2017;
- Email from David Honn, dated February 28, 2017.

1.6 Extension Agreements:

- Consent and Agreement to Extension of Hearing to January 30 2017;
- Consent and Agreement to Extension of Hearing to February 6, 2017;
- Consent and Agreement to Extension of Hearing to February 28, 2017;
- Consent and Agreement to Extension of Hearing to March 6, 2017;
- Consent and Agreement to Extension of Hearing to March 27, 2017.

Exhibit 1.1 and 1.3 are 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 November 2016, Acton's SHI percentage is 6.61%. 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 Site is located within an R-2 (Residence 2) Residential Zoning District. The overall development is located within the Groundwater Protection District Zones 3 and 4.
- 2.4 The subject property totals approximately 12.26 acres in area.
- 2.5 The proposed Project contains 28 dwelling units in total. There would be 22 single family dwellings units, two duplexes buildings, and the rehabilitation and relocation of two of the three existing houses that are currently on the site.
- 2.6 The project will have seven dwelling units which are made available to households whose incomes and assets qualify them as low or moderate-income. Houses #2, #3, #7, #9, #11, #20, and #21 are designated as affordable units according to February 6, 2017 revised CP-2 sheet.
- 2.7 The existing dwellings at 31, 39 & 45 Martin Street are listed on the Cultural Resource List in the Town of Acton and therefore are subject to Chapter N of the Town of Acton Bylaws.
- 2.8 Most dwellings will have two garage spaces. All homes are designed with driveways that can accommodate additional vehicles.
- 2.9 There are four spaces designated for guest/visitor parking for the houses that do not have a two-car garage.
- 2.10 There is a proposed carriage house on Hadley Lane that is proposed to offer seven parking spaces.
- 2.11 Section 9.6 of the Acton Subdivision Rules and Regulations would require that as part of this project sidewalks be installed along the property's frontage on Martin Street and on each interior street. In the alternative, the Planning Board has in the past accepted contributions toward the Town's sidewalk fund using the established formula, which is \$50 per foot of existing street frontage and \$20.00 per foot of subdivision street length. The Plan shows a 4-foot wide sidewalk along Hadley Lane between Martin Street and proposed Connor Drive. Without additional sidewalks provided, the contribution for this development would amount to (+/-418 feet of Martin Street frontage X \$50) + (+/- 1970 feet for internal street) X \$20) = \$60,300. The applicant offered during the hearing that he will make a contribution towards public walking and recreation facility improvements in the amount of \$60,300.
- 2.12 The Applicant has presented a variety of designs for single family dwellings, all of which are acceptable to the Board. In addition there are two duplexes of one style. These approved types are contained in Exhibit 1.3. Dwellings are designed in compatible architectural styles and implemented based on individual buyers' preferences. The Applicant may request to add or adapt a type by requesting the Board for an insubstantial change pursuant to 760 CMR 56.05(11).
- 2.13 The affordable units, not subject to individual buyer's preference have the following designated styles: Foxglove Cottage – houses #2, Foxglove Farmhouse – houses #3, #11 #20, and #21, Mandrake duplex houses #7 and #9. #2 is a 2-bedroom unit and #7 is a 4-bedroom unit while the rest of the affordable units are 3-bedroom units.
- 2.14 The proposed roads have a pavement width of 20'.
- 2.15 The Project is located less than a half-mile from the South Acton Train Station. An existing sidewalk is located across the street on Martin Street.
- 2.16 The Site is located within the Middle Fort Pond Brook Sewer District. The project as proposed requires sewer tie-in privileges for 25 additional dwelling units.
- 2.17 The Applicant has requested waivers from the following Town of Acton Bylaws and Rules and Regulations:

2.18 Zoning Bylaw provisions:

- Section 3.1, Table of Principal Uses to allow Two-family dwellings. Proposal will create two duplex buildings (total of 4 dwelling units).
- Section 3.3, Residential Uses to allow more than a single building for dwelling purposes on a lot.
- Section 3.8.1.5. Residential Uses (if applicable) to allow a common driveway to serve more than 12 lots (in this case residential dwellings). All 28 units will be served from private driveways that will be 24' and 20' in width.
- Section 4.1.4 and 4.1.8.1 which requires a special permit for all new construction within the floodplain. The existing gravel driveway access to the site is located in the 100 year Flood Plain at the intersection with Martin St. This driveway will be upgraded to a 24' width which will necessitate filling of the flood plain to provide adequate access to the proposed project.

On the northerly shoulder of Hadley Lane, a carriage house, containing 7 parking spaces including 1 handicap space is proposed to create seven covered spaces. This carriage house will be located above the flood plain elevation (198 feet). Opposite the carriage house, on the southerly side of Hadley Lane, the existing barn from 45 Martin Street will be relocated. This barn will be situated so that the floor elevation will be above the floodplain and will use piers to minimize the impact to the flood plain.

- 4.3.5.2 to allow grading which will result in a vertical distance from the finished grade to the water table less than 90% of the pre-development distance. The site has been designed in accordance with the DEP Stormwater Standards. Determining the water table across the site would require extensive on-site testing and disturb soils otherwise not disturbed with the proposed development.
- 4.3.6.3, which has treatment and retention requirements for stormwater runoff in excess of those required under the DEP Stormwater Quality Standards.

BMPs that are proposed for this site include sump catch basins with oil and grease trap hoods, hydrodynamic separators, vegetative grass strips where appropriate. Roof runoff is considered “clean” and for those units adjacent to the riverfront areas, is directly recharged into infiltration chambers.

- Section 5, Table of Standard Dimensional Regulations to allow the bus shelter within the 30' front setback. If situated 30' back from the Martin Street layout, the shelter would be approximately 35' from Martin Street and would be less likely to be used.
- 7.5.2, which allows a construction sign with a maximum of 8 s.f. This site is subject to a Notice of Intent and will need to post the DEP file number sign, NPDES permit information and typically site signs including identifying hours of operation, requirements for hard hats, signing in as well as marketing/promotional signage.
- 7.5.10 which allows a multifamily development to have a single sign with a display area of not more than 6 s.f.

General By-laws provisions:

- Chapter F- Environmental Protection - Wetlands By-law

- Section F.8.3 and Section 2.3 of the Wetlands Rules and Regulations which requires a 50' buffer of undisturbed vegetation from a wetlands and a 75' setback from driveways, roadways or structures. This project has maintained these setbacks, with the exception of the drainage outlet, from the high quality BVW adjacent to Fort Pond Brook. There are two smaller wetlands, separated by the driveway currently serving 31 Martin Street where work is proposed within the 50' setback.
- Utilities to the site will be routed in the 31 Martin St. gravel driveway to minimize excavations within the root zones of the mature trees which line the southerly side of Hadley Lane. The installation of these utilities will be within 5' of the BVW and will be temporary in nature. Three units are proposed within 20' of these wetlands, all of which are proposed to be slab on grade and limited Exclusive Use areas. The placement of Unit 27, the relocated house from 39 Martin Street, is adjacent to Martin Street as requested in neighborhood meetings to have the existing houses more prominent on Martin Street. A total of 6 units, including the two re-located houses, and the carriage house will be within the 75' building setback to the wetlands. The elimination of these 6 units would make this project economically unfeasible.
- Chapter N- Procedure for the Demolition of Historically or Architecturally Significant Buildings to allow the partial re-location of the existing house at 39 and the house and barn at 45 Martin St. The existing house at 31 and parts of the barn and accessory structures will be demolished as moving them is not feasible.
- Chapter X- Stormwater Management and Erosion and Sedimentation Control. As of the date of this filing, no regulations have been promulgated or enacted. The submittal includes a draft Stormwater Pollution Prevention Plan (SWPPP), Erosion and Sedimentation Control Plan and the Operations and Maintenance Plan for the Stormwater System. It is our belief that these documents address the issues identified in the bylaw; however a waiver is requested in the event that there are other items included in the Rules and Regulations related to the Land Disturbance Permit.

Provisions of the Comprehensive Permit Bylaw Rules and Regulations:

- 3.10 Requires Earth removal calculations. It is respectfully requested that these calculations be submitted prior to construction as revisions commonly occur during the permitting processes.
- 3.14 Site Plan to waive the requirement for the topography be based on the 1929 National Vertical Datum (NGVD). The plans are based on the (North American Vertical Datum) NAVD 88 datum, the same datum as the most recent FEMA Flood Plain delineation.
- 3.14.2.7 and 3.14.2.8 to allow the requisite tabular data be located on the Cover Sheet, not the Site Plan.
- 3.14.3 Allow the Recordable Plan to be a draft indicating the Open Space and the Exclusive Use Areas associated with each unit. The metes and bounds and any other notes will be added prior to construction and recording at the Registry of Deeds.
- 3.14.3.6 to have house numbers added prior to construction.

- 3.14.3.7 and 3.14.5.9 to not identify the location of the affordable units at this time. These units will be determined during the permitting process.
- 3.14.4.4 to not show contours of the Maximum Groundwater elevations as extensive soil testing would be required to derive the appropriate information. Groundwater testing was performed in the area of the Stormwater infiltration basins, as required under the DEP Stormwater Guidelines.
- 3.14.4.23 to not show the location of all underground utilities - gas, cable, telephone and electric as these utility companies typically provide their own layout once the plans are approved. The location of the utilities is shown schematically on the cross section.
- 3.14.6.1 Profiles were prepared for the main access driveway, Hadley Lane. A waiver is requested for the other smaller driveways as these are not intended as a public way.
- 3.14.6.6.5 No sidewalks are proposed within the site. The access driveway, Hadley Lane will require filling of floodplain to achieve the 24' width and is skewed from the existing gravel driveway in order to save the mature trees on the southerly side. The addition of sidewalks will require more work within the floodplain and have the potential for greater impact on the trees.
- 3.14.6.6.6 Fire call box system. Many of the local towns are eliminating the municipal fire call box system due to the changes in technology and telemetrics.
- 3.14.6.7 to show grades on all utilities. Water lines, cable, telephone, electric and gas are shown in the typical cross section. Cable, telephone, electric and gas utility companies typically provide their own layout of utilities once the plans have been approved. These utilities are shown schematically only on the plans.
- 3.14.7.4 Outdoor lighting details. Lighting is proposed on each unit, outside each exterior door as required by building code and above the garages. Lighting will be provided at the carriage house and barn attached to the buildings.
- 3.14.8.8 to show the boundaries of each development phase. It is the intent of the developer to construct this site in one phase.
- Such other waivers of every type and kind necessary to construct the Project.

2.19 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 all of the waivers required by the Plans from Section 5 (Dimensional Regulations), the General Bylaws, and Comprehensive Permit Bylaw Rules and Regulations subject to the Conditions of this Decision except for the waiver requests under 7.5.2 in the Zoning Bylaw, and 3.14.6.1 under the Comprehensive Permit Rules.

2.20 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 Acton's New England Village 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 November 8, 2016, from MassHousing indicating that the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program

Jurisdictional Requirement: The Applicant has the site under a purchase and sale agreement:

The Applicant has satisfied this requirement by providing the purchase and sale agreement of 31 Martin Street from J. Walter Freiberg III Trustee to Acton's New England Village, LLC, dated October 26, 2015. The Applicant has satisfied this requirement by providing the purchase and sale agreement of 39 Martin Street from Alfred Murray to Mark Gallagher, dated November 30, 2015. The Applicant has satisfied this requirement by providing the purchase and sale agreement of 45 Martin Street from Nicholas C. Zavolas and Susan V. Day to Mark Gallagher, dated December 3 2015.

- 2.21 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.
- 2.22 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.
- 2.23 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.
- 2.24 The Board has received comments from various Town departments, which are listed in Exhibit 1.3 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.25 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 March 27, 2017 to GRANT the requested Comprehensive Permit for the project as described herein and as presented in the application, subject to and with the benefit of the following Plan modifications, conditions, and limitations.

##### **4.1 PLAN MODIFICATIONS**

The Building Commissioner shall not issue a building permit, until and unless the Zoning Enforcement Officer confirms that any proposed building permit plans are 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 Revise the preliminary unit composition scheduled labeled A-12 in the original submitted application so that it reflects the updated information.
- 4.1.2 Revise the unit composition schedule to reflect the updated unit sizes.
- 4.1.3 Establish each unit's percentage of condominium ownership by square feet in the unit.
- 4.1.4 The condominium fees for market rate and affordable units having the same square footage shall be equal.
- 4.1.5 Update the condominium budget to include the cost for a property manager and add 10% of the total budget estimated for future repairs.
- 4.1.6 Provide contractor estimates for each major cost item of the condominium budget (property management, landscaping, snow plowing, etc.).
- 4.1.7 Establish a separate condominium entity, as a sub-entity of the overall condominium, for the duplexes to clarify shared responsibilities for the buildings' exteriors.
- 4.1.8 Reduce the size of the development Freestanding Sign to meet dimensional standards of Zoning Bylaw section 7.5.11.
- 4.1.9 Change any necessary street names per direction of the Fire Department or demonstrate Fire Department sign-off.
- 4.1.10 Show landscape buffering between units #4 and #5 and 25 Martin Street on the Plan with a note stating that it shall be installed prior to the occupancy permits for units #4 and #5.
- 4.1.11 Show deciduous landscape buffering to the rear of units #24 and #25, and #26 labeled on the Plan with a note stating that it shall be installed prior to the occupancy permits for units #24, #25, and #26.
- 4.1.12 All upgrades shall remain within the building footprints and envelopes as shown on the final approved plan, not including decks and patios. Any upgrades to an affordable unit shall not factor into the units' affordable sale and resale prices and shall not be included in any mortgage of the buyer. All funds paid for upgrades to the affordable units shall count towards the buyer's asset allowance.

- 4.1.13 Units #7 & #9 on the Plan shall be constructed as barrier free units in compliance with the regulations of the MAAB.
- 4.1.14 In the Affirmative Fair Housing Marketing Plan, specify further outreach to the following organizations in Lowell: Community Teamworks Inc, Merrimack Valley Housing Partnership, Coalition for a Better Acre, Cambodian Mutual Assistance Association of Lowell, and Regional Housing Services Office (RHSO).
- 4.1.15 The sales prices of the affordable units shall be finalized before the issuance of a building permit.
- 4.1.16 In the condominium documents, affordable unit owners shall be given explicitly one vote per unit.
- 4.1.17 In the development schedule specify that the completion of the affordable units shall be signified by the Certificate of Occupancy.
- 4.1.18 Show all road plans and profiles.
- 4.1.19 Show street address numberings as outlined in the Engineering Department memorandum, dated 2/2/17.
- 4.1.20 Show sewer infrastructure as approved by the Acton Engineering Department.
- 4.1.21 Except as otherwise directed herein, the Applicant shall modify the plan to address all comments received on or before the close of the public hearing.

## 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. All plans and documents required in this decision shall be submitted to the Acton Planning Department electronically in PDF format. In addition, engineering plans shall be submitted on one full-size plan sheet or sheet set.

- 4.2.1 Not more than two dwellings of the same design shall be adjacent to one another or directly across the street each other. The Applicant may request to add an additional adjacent dwelling of the same design by requesting the Board for an insubstantial change pursuant to 760 CMR 56.05(11). The Board may approve or deny any such a request at a regular meeting, without the need for a public hearing. The decision of the Board shall be at its sole discretion, and shall not be appealable.
- 4.2.2 Prior to the issuance of the first building permit, the Applicant shall demonstrate to the Building Commissioner compliance with applicable requirements of the Massachusetts Cultural Resource Information System.
- 4.2.3 Subject to approval by MassHousing and following the execution of the Affordability Monitoring Services Agreement, the Town of Acton shall be the monitoring agent. The applicant shall pay the Town for the monitoring agent services in addition to any fees that are due to MassHousing to provide the project cost certification. The monitoring services fee shall be determined by the monitoring agent, but shall not exceed \$20,000 and shall be deposited in a Town of Acton municipal account established pursuant to G.L. c. 44, § 53G. The Town may use an approved designee or contractor to provide the monitoring services on its behalf.
- 4.2.4 The Affirmative Fair Housing Marketing Plan shall be approved by the Board or its designee and the monitoring agent before the issuance of a building permit.

- 4.2.5 Prior to the issuance of a certificate of occupancy for each of the 21 market rate units, the Applicant shall contribute to the Town Treasurer, pursuant to G.L. c. 44, s. 53A, the sum of \$2,871.42 towards the sidewalk fund and/or recreation facility improvements and/or infrastructure improvements in the vicinity of the Project. The total amount of such contributions shall not exceed \$60,300.00.
- 4.2.6 The Applicant shall not be required or obligated to make any off-site improvements except for those shown on the plan.
- 4.2.7 Prior to and in connection with the initial sale, no affordable unit shall receive upgrades from the approved base unit layout and plan without the approval of the monitoring agent.
- 4.2.8 All affordable units shall be tested for Radon prior to the issuance of an Occupancy Permit; if Radon is detected an active Radon mitigation system shall be installed prior to the sale of the unit.
- 4.2.9 There shall be no removal of trees beyond the limits of clearing except with the Tree Warden's approval.
- 4.2.10 Prior to the issuance of any building permit for any dwelling unit, the Applicant shall demonstrate the grant of the Sewer Privilege for the subject unit.
- 4.2.11 Final architectural plans submitted for building permit shall be substantially in accordance to the Plan and renderings presented at the public hearing and approved hereunder.
- 4.2.12 Prior to the issuance of any certificate of occupancy, and prior to the execution of any purchase and sales agreement for a market rate unit, the Applicant shall submit, to the satisfaction of the Zoning Enforcement Officer, a copy of Anthem Village Condominium Trust and the Condominium Master Deed which shall include an adequate plan for the operation and maintenance of the storm water management system.
- 4.2.13 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Acton Board of Health, the Acton Water District, and the Acton Fire Department, except as waived.
- 4.2.14 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 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 Martin Street public right-of-way.
- 4.2.16 Connor Drive, Edgar Drive, Hadley Lane, and Kayla Lane shall remain private ways. The Applicant and owners shall not petition the Town to provide snow and ice removal services or provide any other maintenance and upkeep of these streets.
- 4.2.17 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 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 Condominium Association has been legally established and has assumed said responsibilities.
- 4.2.19 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.

- 4.2.20 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.
- 4.2.21 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.
- 4.2.22 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, landscape plans, and architectural plans for the project which shall be substantially in conformance with those cited in Section 1 – Exhibits (above) of this Decision except that they shall be updated in accordance with the requirements of this Decision. Each plan sheet shall be signed by and show the appropriate registered professional seal of the individual(s) drawing the plan sheet as appropriate to the data on the sheet. The submission shall in addition include a list of the specific changes made to conform to the requirements of this Decision; this list and the final set of Engineering Drawings and Landscape Plans shall be signed and stamped by the Design Engineer. Upon the Zoning Enforcement Officer's finding that the Engineering Drawings and Landscape Plans conform to this Decision, he shall mark electronically "Approved" on the final set of Engineering Drawings and Landscape Plans which shall thereupon constitute the final "Approved 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 2.17 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 drainage structures and sewer facilities as they exist on the site, including appropriate grades and elevation. The Applicant shall also submit proof that an As-Built Plan has been prepared for all utilities including water, gas, electric, and cable, acceptable to the utility company. Each plan sheet shall be signed and show the seal of a Registered Professional Engineer, or Registered Land Surveyor certifying that 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, subject to conformance with applicable safety standards, to observe and inspect the Site and construction progress until such time as the Project has been completed.
- 4.2.34 All construction vehicles shall be parked on the Site and off of Martin Street at all times.
- 4.2.35 The Project shall be limited to a total of 24 single family dwelling units, 2 duplex buildings, and associated structures and improvements shown and labeled on the Plan.
- 4.2.36 The landscaping shall be maintained in perpetuity by the Condominium Association, which obligation shall be incorporated in the Condominium Association 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:

- 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 26th 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.
- Notwithstanding the foregoing, if in the judgment of the Zoning Enforcement Officer the work set forth in subsection (a) above or the landscaping cannot reasonably be completed because the time of year is inhospitable thereto, such work or landscaping may be treated separately from Infrastructure such that the Applicant may be permitted to post a performance guarantee consistent with G.L. c. 41, s. 81U in lieu of completing the work or 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 construction and growing season or the performance guarantee 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 Condominium 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 a Condominium Association that will be governed and controlled by the provisions of M.G.L. Ch. 183A, including Condominium Deed, By-Laws; Rules and Regulations, and Protective Covenants (collectively the “Condominium Documents”). The

Applicant shall provide in the Condominium Documents that a separate reserve of 10% of the total budget 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 Condominium Association, as applicable. The Condominium Documents shall provide that no changes shall be made without the affirmative vote of 25 of the 28 unit owners. There shall be a separate condominium entity for the four duplex units, established as a member entity of the Anthem Village Condominium, to clarify shared responsibilities for the buildings' exteriors.

- 4.3.2 The percentage ownership of the affordable units shall at all times be based on building square footage.
- 4.3.3 The per-square-foot condominium fee shall remain equal for all market rate and affordable units. The condominium of duplexes may have different fees than the other units in the Anthem Village Condominium, but the per-square-foot fee for each market rate and affordable duplex unit shall be the same.
- 4.3.4 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.
- 4.3.5 The Applicant shall provide notice of any transfer as set forth in 760 CMT 56.05(12(b)).
- 4.3.6 Transfer of Permits. Prior to substantial completion of a Project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1) (a) and (b), and upon written notice to the Board and the Committee (in the case of a Project granted a Comprehensive Permit under 760 CMR 56.07). Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a Comprehensive Permit shall be deemed to run with the land.
- 4.3.7 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. All Condominium Association 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.
- 4.3.8 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**

Prior to the issuance of any building permit, not including permits for demolition or relocation of structures, the Applicant shall obtain Final Approval from the Massachusetts Housing Finance Agency/New England Fund (“MassHousing”). To the extent permitted by the MassHousing, the

following conditions shall apply. The Applicant shall support the Town in obtaining the Mass Housing's approval of the following conditions:

4.4.1 Construction of the proposed project shall be phased in accordance with the schedule shown in the application and copied below.

Comprehensive Permit Development Schedule

	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Total
Number of affordable units	3	1	1	1	1	7
Number of market units	6	6	3	5	1	21
Subtotal by phase	9	7	4	6	2	28

4.4.2 Five of the affordable units shall receive their Occupancy Permits before the 16<sup>th</sup> market rate unit receives its Occupancy Permit.

4.4.3 Certificates of Occupancy for all seven (7) of the Affordable Units shall be issued prior to the last Certificate of Occupancy being issued for the newly constructed market rate Dwelling Units.

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

4.4.5 Sale Price: The maximum sale prices for the Affordable Units shall be reviewed and approved by the MassHousing at the time of the lottery for selection of buyers of the Affordable Units. Subject to the approval of MassHousing, 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 HUD for the Boston Metropolitan Primary Statistical Area, adjusted for household size. The applicable household size is four (4) persons for the 3-bedroom units; and (3) person for the 2-bedroom unit. Any modification or deviation from the designation of the affordable units as originally proposed and reviewed by the MassHousing shall be subject to approval by MassHousing.

4.4.6 Selection of Buyers for Affordable Units: The Applicant shall obtain MassHousing and Acton Community Housing Corporation (ACHC) 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").

4.4.6.1 To the maximum extent permitted by law and by MassHousing, 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.

- 4.4.6.2 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.
- 4.4.6.3 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.
- 4.4.6.4 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 MassHousing. The ACHC, if permitted by the MassHousing, shall oversee the Lottery. The Applicant shall fund the expenses of the Lottery.
- 4.4.6.5 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 MassHousing and ACHC shall make available a list of such courses for purchasers to attend.
- 4.4.6.6 Income eligibility shall be governed by the rules and regulations of MassHousing, or in default, the rules and standards employed by HUD in the selection of income-eligible households for publicly subsidized housing. The prime objective is that the units must count on the Acton Subsidized Housing Inventory.
- 4.4.6.7 The provisions of this section are intended to complement and not to override or supersede any rules, regulations, or requirements of MassHousing, the Massachusetts Commission Against Discrimination, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.
- 4.4.6.8 In the event that the aforesaid paragraphs for the selection of buyers for the affordable units are inconsistent with MassHousing requirements, including any requirements set forth by the Acton Community Housing Corporation (ACHC) in its approval of the buyer selection plan, MassHousing requirements shall prevail.

- 4.4.7 **Perpetual Affordability Restriction:** Prior to the issuance of any occupancy permits, a Regulatory Agreement, in a form acceptable to MassHousing shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) the seven (7) affordable Units in the Project shall be sold and resold subject to a Deed Rider, in a form acceptable to MassHousing, 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 MassHousing'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 MassHousing 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 MassHousing for such approval, and (b) grant to the Town of Acton or its designee, subject to the approval of MassHousing, 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.

4.4.8 Substitute for Regulatory Agreement with Subsidizing Agency: If and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency, the Applicant or his/her legal successor(s) shall enter into a Permanent Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Board and Town Counsel (the "Town Regulatory Agreement"), which shall be signed by all necessary parties, including all mortgagees and lien holders of record, and recorded with the Middlesex South District Registry of Deeds or the Land Court. The Town Regulatory Agreement, at a minimum: (i) shall require that the Project shall remain 25% affordable so long as the Project does not conform to local zoning; (ii) shall require that at least twenty five percent of the dwellings in the Project shall be affordable to low and moderate income households as that term is defined in MGL Chapter 40B, Sections 20-23; and (iii) shall restrict the number of allowed dwelling units to not more than 28 units. The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property. It shall be enforceable by the Town and shall require that the Affordable Units shall remain affordable units in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws.

- 4.4.9 **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 MassHousing (the “Profit Cap”). The Regulatory Agreement shall provide mechanisms to enforce this requirement. If the Applicant has exceeded the Profit Cap, the Applicant shall, subject to MassHousing 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 supporting, promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation of affordable housing in the Town of Acton.
- 4.4.10 **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 MassHousing, 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 MassHousing, to enforce the terms and conditions of the Regulatory Agreement.
- 4.4.11 **Affordable Units to be Substantially Indistinguishable:** 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.
- 4.4.12 **MassHousing and Financial Information:** In addition to the Applicant’s obligations to MassHousing, (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 a Certified Public Accountant (CPA) to deliver to the Town 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 Town for all Project costs and income sources.

## **4.5 LIMITATIONS**

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

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

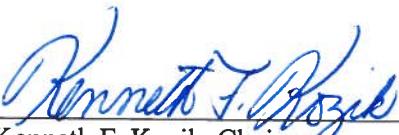
- 4.5.4 Except as set forth herein, other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.5.5 This Decision permits the construction, use, and occupancy of 28 Dwelling Units on the Site. 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



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Kenneth F. Kozik, Chairman



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Adam Hoffman, Member



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Suzanne Buckmelter, Member

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

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Eva K. Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Acton Water District  
Conservation Commission  
RHSO

Building Department  
Engineering Department  
Planning Department  
Police Chief  
Municipal Properties  
ACHC  
Historical Commission

Board of Health  
Assistant Assessor  
Town Manager  
Owner  
Board of Selectmen  
Design Review Board