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Decision – #10-07
Comprehensive Permit – 99 Parker Street
August 16, 2010



Board of Appeals

TOWN OF ACTON
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Acton, Massachusetts 01720
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**Comprehensive Permit
Issued to 99 Parker Street, LLC
DECISION**

#10-07

99 Parker Street
August 16, 2010

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") and under Town of Acton Zoning By-Laws (the "Zoning Bylaw"), made by 99 Parker Street, LLC, c/o Mark Starr, 22 Elm Street, Acton, MA 01720 (hereinafter the "Applicant") for the property located at 99 Parker Street in Acton, Massachusetts, owned by Jeanne Potter, 99 Parker Street, Acton, MA 01720. The property is identified on the 2007 Acton Town Atlas map I-3 as parcel 8 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit for a 5 (five) unit condominium community. The project consists of a total of 5 (five) 3 (three) bedroom single family residences. There is 1 (one) existing farmhouse located on the site which will be renovated and remodeled. The applicant is proposing to construct four (4) new 3-bedroom

single-family detached dwellings. Two (2) of the five (5) dwelling units are designated for low or moderate income housing. The Comprehensive Permit application was submitted to the Board of Appeals on May 10, 2010. Due to scheduling conflicts, the Applicant agreed to begin the hearing beyond 30 days from the application date. The Board opened a duly noticed public hearing on July 12, 2010. The Board conducted a site walk of the subject property on July 23, 2010 and held continued hearings on August 2, 2010 and August 16, 2010. The Board closed the public hearing on August 16, 2010 and began its deliberations at that time. 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 (Chair), Jonathan Wagner (Member), and Adam Hoffman (Alternate 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 "Parker Street" was filed with the Town Clerk on May 10, 2010. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:

- Comprehensive Permit Application Form;
- Draft "Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project";
- Letter from Commonwealth of Massachusetts - Department of Housing & Community Development regarding Determination of Site Eligibility under the Local Initiative Program (LIP) dated March 31, 2010;
- Copy of Purchase and Sale Agreement for the subject property between Jeanne Potter and Red Acre Development Corporation executed on December 3, 2008;
- Copy of Extension of Closing Date agreement extending closing date from July 30, 2009 to January 31, 2010;
- Letter from Acton Community Housing Corporation dated August 25, 2009 to Department of Housing & Community Development stating approval of the subject project;
- Letter from Board of Selectmen dated October 1, 2009 to Department of Housing & Community Development stating approval of the subject project;
- Copy of Minutes from Board of Selectmen meeting dated August 24, 2009 regarding discussion of subject project;
- WPA Form 5 – Order of Conditions issued by the Acton Conservation Commission on September 2, 2009;
- Development Impact Report;
- Letter from Meridian Associates dated March 4, 2010 regarding the Development Impact Report – E. Measures to Mitigate Impacts;
- Certified Abutters List;
- Draft "Master Deed of the 99 Parker Street Condominium";
- Draft "Declaration of Trust of 99 Parker Street Condominium Trust";
- Stormwater Management Report dated August 6, 2009;
- Comprehensive Permit Unit Composition Schedule;
- Draft "Homebuyer's Affirmative Marketing and Buyer's Selection Plan";

- Comprehensive Permit Development Schedule;
- Project Feasibility - Ownership Pro Forma;
- Letter from Enterprise Bank dated September 3, 2009 stating bank's interest in potentially providing financing to Red Acre Development Corporation c/o Mark Starr for the proposed project;
- Town of Acton Subsidized Housing Inventory Report;
- Package of drawings entitled "Site Plan Set – Affordable Housing Development" prepared by Meridian Associates, 69 Milk Street, Suite 302, Westborough, MA 01580 and consisting of the following:
 - Cover Sheet dated August 6, 2009, revised March 4, 2010, May 7, 2010 and August 12, 2010;
 - Master Plan dated March 4, 2010, revised August 12, 2010;
 - Condominium Site Plan dated March 4, 2010, revised May 7, 2010 and August 12, 2010;
 - Recordable Plan dated March 4, 2010;
 - Natural Features and Existing Conditions Plan dated March 24, 2009, revised March 4, 2010 and August 12, 2010;
 - Site Development Plan 1 – Layout & Materials Plan dated August 6, 2009, revised March 4, 2010 and August 12, 2010;
 - Site Development Plan 2 – Grading, Drainage & Utilities Plan dated August 6, 2009 revised March 4, 2010 and August 12, 2010;
 - Plan & Profile dated March 4, 2010, revised August 12, 2010;
 - Landscape Plan dated August 6, 2009, revised March 4, 2010 and August 12, 2010;
 - Erosion and Sediment Control Plan dated March 4, 2010, revised August 12, 2010;
 - Construction Details 1 dated August 6, 2009, revised March 4, 2010 and August 12, 2010;
 - Construction Details 2 dated August 6, 2009, revised March 4, 2010 and August 12, 2010;

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

- Architectural drawings entitled "Proposed Residences – Starr Development" consisting of pages "A-1: Exterior Elevations – Garage Under & Accessible Unit and A-2: First and Second Floor Plans – Garage Under & Accessible Unit" prepared by Space Craft Architecture, 5 Raymond Street, Lexington, MA 02421 and dated September 14, 2009;
- Architectural drawings entitled "Proposed Residences – Starr Development" consisting of pages "A-2: Exterior Elevations and A-2: First and Second Floor Plans" prepared, signed and sealed by Space Craft Architecture, 5 Raymond Street, Lexington, MA 02421 and dated April 9, 2010;
- Architectural drawings of existing farmhouse residence to be preserved and renovated entitled "Proposed Residence – Starr Residence" consisting of pages "A-1: Floor Plans – Basement, First Floor, Second Floor and Attic", prepared, signed and sealed by Space Craft Architecture, 5 Raymond Street, Lexington, MA 02421 and dated May 5, 2010;

- Site Plan drawing entitled “Vehicle Maneuvering Exhibit – Affordable Housing Development” prepared by Meridian Associates, 69 Milk Street, Suite 302, Westborough, MA 01580 and dated August 2010;
- 1.2 Interdepartmental communications were received from:
- Acton Community Housing Corporation, dated May 20, 2010;
 - Board of Selectmen, dated May 24, 2010;
 - Planning Department, dated July 8, 2010 and revised July 30, 2010 and August 13, 2010;
 - Engineering Department, dated July 6, 2010, and revised August 13, 2010;
 - Municipal Properties Director, memo dated May 21, 2010;
 - Fire Chief, email dated August 16, 2010.
- 1.3 Other Correspondence included:
- Letter from abutter of the proposed project;
 - Response letters from Meridian Associates dated July 22, 2010, August 10, 2010, and August 12, 2010.
- 1.4 Extension Agreements:
- Letter received by the Board of Appeals on May 25, 2010 from Applicant agreeing to extend the opening of the public hearing until July 12, 2010 (beyond the 30 days from the application date);
 - Consent and Agreement to Extension of Hearing to August 2, 2010;
 - Consent and Agreement to Extension of Hearing to August 16, 2010.
 - Email from Applicant dated August 30, 2010 agreeing to extension of Decision filing deadline.

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 April 1, 2010, Acton’s SHI percentage is 6.8%. As a result Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B’s minimum 10% criterion. Acton does, however, presently benefit from DHCD certification of its Affordable Housing Plan under the Planned Production Regulations, 760 CMR 56.03(4).
- 2.3 The site is located within an R-4 (Residence 4) Residential Zoning District and Groundwater Protection District Zone 3.
- 2.4 The subject property is approximately 1.4 acres (61,923 ft²) in area.

- 2.5 The entire proposed Project is a 5-unit condominium community under the Local Initiative Program which has already been approved by the Department of Housing & Community Development.
- 2.6 The Project proposes to construct 4 new 3-Bedroom single family residential dwellings. The existing 3-Bedroom farmhouse located on the property will be extensively renovated and remodeled accordingly. The existing home will be one of the three (3) market rate homes.
- 2.7 The Applicant has requested waivers from the following Town of Acton's Zoning Bylaw provisions:
- Section 3.3 Residential Uses – Not more than one building for dwelling purposes shall be located upon a lot.
 - Section 4.3.6.2 – Watershed Recharge
 - Section 4.3.6.3 – Treatment and renovation of Runoff
 - Section 5 - Table of Standard Dimensional Regulations – Min. Front Yard Setback of 45'-0". Current proposal is 20'-8".
 - Section 5 - Table of Standard Dimensional Regulations – Min. Side Yard Setback of 20'-0". Current proposal is 15'-4".
 - Section 5 - Table of Standard Dimensional Regulations – Min. Rear Yard Setback of 20'-0". Current proposal is 10'-2".
 - Section 6.5 – Standard Parking Dimensional Regulations – Min. parking stall length of 18'-6".
 - Section 6.5 – Standard Parking Dimensional Regulations – Min. width of maneuvering aisle of 24'-0".

Additional waivers requested:

- Town of Acton's Subdivision Rules & Regulations – Section 8.1.13 Table II "Vertical Design Standards" pertaining to K-value

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 3 (Principal Uses), Section 4 (Groundwater Protection District), Section 5 (Dimensional Requirements) and Section 6 (Parking Standards) of the Zoning Bylaw, and Section 8.1.13 of the Subdivision Rules & Regulations subject to the Conditions of this Decision.

- 2.8 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:
- a) The applicant must be a public agency, a non-profit organization or a limited dividend organization;
 - b) The project must be fundable by an authorized subsidizing agency under a low and moderate income housing subsidy program; and

- c) The applicant must “control the site”.

It is unknown as to whether or not the applicant satisfies these criteria and is eligible to move forward under the Comprehensive Permit requirements. The applicant shall submit to the satisfaction of Town Counsel the necessary documentation in order to address the above noted requirements prior to any building permit being approved or issued.

- 2.9 The proposed Project, when conforming to the conditions set forth in this Decision, will adequately provide for storm water drainage, 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.
- 2.10 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.
- 2.11 The proposed Project is 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.
- 2.12 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.
- 2.13 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.

4 BOARD ACTION

Therefore, the Board voted unanimously on August 16, 2010 to GRANT the requested Comprehensive Permit consisting of a total of 5 Dwelling Units (inclusive of 2 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, nor shall any construction activity begin on the Site, 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 Prior to the issuance of a building permit, the Applicant shall revise the Site Plan to achieve a driveway configuration that allows a fire truck (SU-30 design vehicle) to enter/exit the Site without obstructing oncoming traffic. Said plan shall also be revised to provide adequate internal maneuvering space for fire apparatus. Such revisions must be to the satisfaction of the Fire Chief and Engineering Department.
- 4.1.2 Prior to the issuance of a building permit, the applicant shall certify (with the appropriate drawings and specification sheets) that the guard rail design/installation at the wetlands crossing is sufficient to prevent a vehicle from accidentally driving into the wetlands.

4.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this Comprehensive Permit null and void, without force and effect, and shall constitute grounds for the revocation of this Comprehensive Permit, and of any building or occupancy permit issued hereunder. 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 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:
 - a) The applicant must be a public agency, a non-profit organization or a limited dividend organization;
 - b) The project must be fundable by an authorized subsidizing agency under a low and moderate income housing subsidy program; and
 - c) The applicant must “control the site”.

The applicant shall submit, to the satisfaction of Town Counsel, the necessary documentation in order to address the above noted requirements prior to any building permit being approved or issued.

- 4.2.2 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Acton Board of Health, including but not limited to the following:
 - a) All Units shall be connected to the Town of Acton’s municipal sewer system. The Applicant shall pay to the Town of Acton all required sewer privilege fees established by the Board of Selectmen acting as the Town’s Sewer Commissioners.

- b) The sewer privilege fee for each Unit shall be paid prior to the issuance of any building permit thereof.
 - c) The Applicant shall obtain all necessary permits for connection of the Project to the Acton municipal sewer system, including those necessary to excavate any abutting streets to install the connection.
 - d) The Applicant shall obtain any and all necessary permits pertaining to Stormwater Management.
- 4.2.3 In lieu of constructing a sidewalk on the Site, the Applicant shall submit a monetary contribution to the Town of Acton's Sidewalk fund in the amount of \$9,150.00 prior to any building permit being approved or issued.
- 4.2.4 Prior to the issuance of any building permit, the engineer of record for the subject Project shall certify the groundwater elevation. If the estimated high groundwater elevation is higher than assumed in the drainage calculations submitted, the engineer shall revise said drainage calculations accordingly so as not to impact the groundwater table and/or the drainage storage capacity.
- 4.2.5 The Applicant shall submit a construction and permitting schedule prior to the start of construction and semi-annually thereafter to the ZBA to assist in Project status update and review.
- 4.2.6 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.2.7 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.
- 4.2.8 No work on the Site shall begin prior to the issuance of a building permit.
- 4.2.9 The Applicant shall be diligent to ensure that absolutely no construction debris or material from the site enter any of the abutting properties or the Parker Street public right-of-way. 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 or Homeowner's Association has been legally established and has assumed said responsibilities.
- 4.2.10 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.
- 4.2.11 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.
- 4.2.12 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.

- 4.2.13 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 4.2.14 Prior to commencement of any construction concerning any portion of the Project (whether pursuant to a building permit or otherwise) the Applicant shall submit to the Zoning Enforcement Officer for review and approval a final set of Engineering Drawings and Architectural Plans for the project which shall be identical to those cited in Section I – 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, Registered Land Surveyor, Registered Landscape Architect and Registered Professional Architect 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 Architectural Plans shall be signed and stamped by the Design Engineer and Project Architect. Upon the Zoning Enforcement Officer finding that the Engineering Drawings and Architectural Plans conform with this Decision, he shall mark “Approved” on the final set of Engineering Drawings and Architectural Plans which shall thereupon constitute the final “Approved Plans” under this Decision and shall be filed with the records of the Board.
- 4.2.15 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.
- 4.2.16 By granting waivers from the local bylaws and regulations identified in Findings 2.7 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; and any future modification of any building, structure or Dwelling Unit constructed within the Project thereafter shall conform to the Acton Zoning Bylaw and other local by-laws, rules and regulations.

- 4.2.17 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.
- 4.2.18 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.
- 4.2.19 This Decision shall promptly be recorded at the Middlesex South District Registry of Deeds or the Middlesex Registry District of the Land Court along with Sheet 3 (the Recordable Plan) 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.
- 4.2.20 The Applicant shall comply with the State Building Code.
- 4.2.21 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 4.2.22 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.
- 4.2.23 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. The Applicant shall have fully completed the improvements and plantings shown on the Landscaping Plan, dated August 12, 2010 which shall also be included on the submitted "As-Built Plan". Each plan sheet shall be signed and show the seal of a Registered Professional Engineer, Registered Land Surveyor or Professional Landscape Architect, certifying that field inspections have been conducted through-out the duration of construction and the Project as-built, conforms and complies with all conditions of this Comprehensive Permit and the Approved Plans.
- 4.2.24 The Applicant shall ensure safe and convenient vehicular access into and around the Site during the entire duration of the Project. 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.
- 4.2.25 All construction vehicles shall be parked on the Site and off of Parker Street at all times.
- 4.2.26 The Project shall be limited to five (5) Dwelling Units that shall contain three (3) bedrooms each.
- 4.2.27 Prior to the issuance of any building permit, the Applicant shall obtain approvals from the Engineering Department, Police Chief, and Fire Chief on the permanent street address of each Dwelling Unit within the Project.
- 4.2.28 The common area landscaping shall be maintained in perpetuity by the Condominium Association or the Homeowner's Association, which obligation shall be incorporated in

the Condominium Documents or 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.

- 4.2.29 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, sidewalks, parking areas, common areas, drainage facilities, utilities, landscaping, recreational area, 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 driveway and parking areas shown on the Plan has been installed; (2) all Infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said project, provided however, that the final coat of pavement for the driveway and parking areas need not be installed in order to obtain occupancy permits for the first 3 newly constructed Dwelling Units; 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 roadway, common parking areas, individual driveways and all remaining infrastructure must be fully completed and installed prior to the issuance of a certificate of occupancy for the 4th 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.
- 4.2.30 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 or the Homeowner's Association. The Condominium Association or Homeowner's Association Bylaws shall include an adequate plan for maintenance of the stormwater management system. The Applicant shall submit said plan to the satisfaction of the Zoning Enforcement Officer prior to the issuance of the first building permit.
- 4.2.31 Prior to any building permit being issued for the subject property, the Applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 4.2.32 Prior to any Certificate of Occupancy being approved or issued for the subject use, the Applicant shall demonstrate compliance with all conditions and comments imposed by the Board through this Comprehensive Permit.

- 4.2.33 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines, which expressly preclude any post-development increase in runoff from the Site.
- 4.2.34 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.
- 4.2.35 At least seven days prior to the start of construction, the Applicant shall provide written notice to the Board and to the residential abutters of the Project of the anticipated construction start date and the anticipated construction schedule.
- 4.2.36 Prior to the final Certificate of Occupancy being issued for the 4th newly constructed dwelling unit, the Applicant shall meet and consult with abutting neighbors and revise the Landscape Plan accordingly if additional plant material is required for screening purposes.

4.3 CONDITIONS - LEGAL REQUIREMENTS

- 4.3.1 As applicable under Section 4.2.2, the Applicant shall establish either (a) a Homeowners Association that will be governed and controlled by the provisions of a Homeowners Association Agreement, By-Laws establishing the Homeowners Association, and Rules and Regulations (collectively the "Homeownership Documents") or (b) a condominium unit owners' association that will be governed and controlled by the provisions of a condominium Master Deed, Condominium Trust, By-Laws establishing the Unit Owner's Association, and Rules and Regulations (collectively the "Condominium Documents"). The Applicant shall provide in the Condominium Documents or 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 Condominium Association or Homeowners Association, as applicable. The Condominium Documents or Homeownership Documents, as applicable, shall be subject to approval by Town Counsel to ensure consistency with this Decision. The Applicant shall deposit \$3,000.00 in the Board's consultant fee account prior to the issuance of any occupancy permit to cover the Board's legal expenses in reviewing the Condominium Documents or Homeownership Documents, as applicable.
- 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. 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.

- 4.3.3 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. All Condominium Documents or 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 and filed with the Middlesex South District Land Court Registration office as applicable. Proof of recording and filing, as applicable, shall be forwarded to the Zoning Enforcement Officer prior to issuance of any occupancy permit.
- 4.3.4 In setting the percentages of beneficial interest in the common areas in the Condominium Documents or Homeownership Documents, as applicable, the Applicant shall ensure that the percentages assigned to the Affordable Units reflect the fair market value of the Affordable Units, taking into account the affordable housing restrictions that encumber said Units, and all common expenses shall be assessed against all units including the Affordable Units in accordance with their respective percentages of undivided interest in the common areas and facilities.
- 4.3.5 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, any legal responsibility for the operation or maintenance of this Infrastructure, including but not limited to snow removal and trash collection.

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 The Certificate of Occupancies for both of the Affordable Units shall be issued prior to the last Certificate of Occupancy being issued for the fourth (4th) newly constructed Dwelling Unit.
- 4.4.2 Affordable Unit: 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 Affordable Units, as designated on the Approved Plan or within this decision, shall contain three bedrooms.
- 4.4.3 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.

4.4.4 Selection of Buyer 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. Buyer 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 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 building permits, a Regulatory Agreement, in a form acceptable to Town Counsel and the DHCD shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) The two affordable Units in the Project shall be sold and resold subject to a Deed Rider, in a form acceptable to Town Counsel and 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 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 a building permit for the Project, the Applicant shall submit to the Board a copy of a fully executed Regulatory Agreement between the Applicant, the Town and DHCD, which will be recorded with the Master Deed, prior to the conveyance of the first Unit, governing the protection and administration of the Units covered by this Decision. The Town shall have the right, concurrent with DHCD, to enforce the terms and conditions of the Regulatory Agreement. The Applicant shall support the Town's efforts to obtain DHCD approval of the Regulatory Agreement.
- 4.4.9 DHCD and Financial Information: The Applicant shall forward to the Board copies of all correspondence, documents, and information by and between the Applicant and the DHCD. The Market Rate Units and the Affordable Units shall be indistinguishable from the exterior with the exception of the existing unit. The Affordable Units shall be the units designated as Units #2 & 4 on the Approved 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, and other amenities all as more fully shown on the final Approved Plans. Further, without limiting the foregoing, 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 Board 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 Board 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 five (5) 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, or upon its own motion.

