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Board of Appeals

Comprehensive Permit
Issued to 263 Great Road, LLC
DECISION
#12-02

263-265 Great Road
July 9, 2012

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 the Town of Acton Zoning By-Laws (the "Zoning Bylaw"), made by 263 Great Road, LLC, P.O. Box 2350, 69 Great Road, Acton, MA 01720 (hereinafter the "Applicant") for the property located at 263-265 Great Road in Acton, Massachusetts, owned by A.J. Ruggiero, 263 Great Road, Acton, MA 01720. The property is identified on the 2007 Acton Town Atlas map E-5 as parcel 18 and 18-1 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit for a 26 (twenty-six) unit condominium community. The project consists of 24 three-bedroom single family detached residences and one duplex structure containing 2 additional two-bedroom family residences. There are two existing homes located on the site. One

will be sold to Habitat for Humanity and then renovated, remodeled and sold to an income-qualified family. The second existing dwelling unit will be remodeled and sold as a market rate unit. The duplex will be sold to the Acton Housing Authority which will in-turn rent the 2 units to income-qualified families. The Comprehensive Permit application was submitted to the Board of Appeals on April 18, 2012. The Board opened a duly noticed public hearing on May 14, 2012. The Board conducted a site walk of the subject property on May 23, 2012 and held continued hearings on June 11, 2012 and July 9, 2012. The Board closed the public hearing on July 9, 2012 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 Marilyn Peterson (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 "The Meadows of Acton" was filed with the Town Clerk on April 18, 2012. 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;
- Letter from the Commonwealth of Massachusetts – Secretary of the Commonwealth (along with supporting documentation) regarding 263 Great Road, LLC.'s certification as a Limited Liability Company dated February 7, 2012;
- 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 Project Eligibility under the Local Initiative Program (LIP) dated February 10, 2012;
- Copy of Purchase and Sale Agreement for the subject property between Anthony J. Ruggiero, Jr. and 263 Great Road, LLC executed on June 27, 2011;
- Letter from Wilson & Orcutt, P.C. regarding Attorney's Title Opinion dated February 8, 2012;
- Development Impact Report;
- Certified Abutters List;
- Use Description;
- Existing Site Conditions;
- Quitclaim Deeds for 263 & 265 Great Road;
- Draft "Acton Terrace Condominium – Declaration of Trust";
- Draft "Acton Meadows Condominium Master Deed";
- Drainage Calculations;
- Earth Removal Calculations;
- Water Balance Calculations;
- Engineering Documentation;
- Conceptual Subdivision Plan prepared by Stamski & McNary, Inc. dated March 28, 2012;

- Package of Engineering drawings entitled "Comprehensive Permit Plan for The Meadows at Acton" prepared by Stamski & McNary, Inc., 1000 Main Street, Acton, MA 01720 and consisting of the following:
    - Title Sheet, Master Plan, Natural Features and Existing Conditions Plan dated March 29, 2012 (Sheet 1 of 9);
    - Record Plan dated March 29, 2012 (Sheet 2 of 9);
    - Site Development & Utility Plan dated March 29, 2012 (Sheet 3 of 9);
    - Site Development & Utility Plan dated March 29, 2012 (Sheet 4 of 9);
    - Plan & Profile dated March 29, 2012 (Sheet 5 of 9);
    - Erosion and Sediment Control Plan dated March 29, 2012 (Sheet 6 of 9);
    - Detail Sheet dated March 29, 2012 (Sheet 7 of 9);
    - Detail Sheet dated March 29, 2012 (Sheet 8 of 9);
    - Landscape Plan prepared by Kim Ahern Landscape Architects dated March 2012 and revised May 25, 2012 (Sheet 9 of 9);
- Chart entitled "Tabulation of Home Features and Dimensions";
- List of Requested Waivers sought from Local Laws and Regulations;
- Affordable Dwelling Units;
- Marketing and Outreach Plan & Lottery Plan and Information;
- Draft "Affordable Housing Deed Rider";
- Comprehensive Permit Development Schedule;
- Comprehensive Permit Unit Composition Schedule;
- Comprehensive Permit Development Pro Forma;
- Market Study & Comparative Market Analysis;
- Development Team – Experience & Qualifications;
- Local Needs Assessment;
- Town of Acton Subsidized Housing Inventory Report.

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

- Architectural drawings entitled "The Meadows at Acton" prepared by Peter M. Conant, 44 Burroughs Street, Jamaica Plain, MA 02130, and consisting of the following 6 pages:
    - Colonial and Greek Revival Floor Plans;
    - Colonial and Greek Revival Front and Rear Elevations;
    - Colonial and Greek Revival Front and Rear Isometric Drawings;
    - Greek Revival Style Duplex Unit - Floor Plans, Front and Rear Elevations and Front and Rear Isometric Drawings;
    - Proposed Floor Plans and Photographs of Existing Front and Rear Elevations of existing dwelling at 263 Great Road;
    - Proposed Floor Plans and Photographs of Existing Front and Rear Elevations of existing dwelling at 265 Great Road.

1.2 Interdepartmental communications were received from:

- Planning Department, dated May 8, 2012 and revised May 11, 2012 and June 6, 2012;
- Engineering Department, dated May 10, 2012 and revised June 8, 2012;
- Health Department, email dated May 10, 2012 and revised June 7, 2012;
- Fire Chief, email dated May 11, 2012;
- Transportation Advisory Committee, email dated April 25, 2012;
- Acton Community House Corporation dated April 27, 2012;
- Board of Selectmen dated May 7, 2012;
- Design Review Board dated May 2, 2012 and revised May 16, 2012;

- Town Counsel dated May 10, 2012.

1.3 Other Correspondence included:

- Emails from abutters of the proposed project dated May 1, 2012 and June 12, 2012;
- Letter (12 pages total) from Stamski & McNary, Inc. regarding responses to Staff comments, dated May 25, 2012;
- Letter from Stamski & McNary, Inc. dated June 12, 2012 regarding response to Design Review Board Memo;
- Architect's notes from May 16, 2012 meeting with Design Review Board dated May 29, 2012.

1.4 Extension Agreements:

- Consent and Agreement to Extension of Hearing to June 11, 2012;
- Consent and Agreement to Extension of Hearing to July 9, 2012.

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 6.29%. 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 263 Great Road property is located within an R-8 (Residence 8) Residential Zoning District. The 265 Great Road property is located within a LB (Limited Business) Zoning District. The overall development site straddles Groundwater Protection District Zones 2 & 3. The majority of the development site is located within Groundwater Protection District Zone 3.

2.4 The subject properties total approximately 5.47 acres (238,272.25 ft^2) in area.

2.5 The entire proposed Project is a 26-unit condominium community under the Local Initiative Program which has already been pre-approved by the Department of Housing & Community Development.

2.6 The project will have 7 (seven) dwelling units which are made available to families whose incomes and assets qualify them as low or moderate-income.

2.7 The Project proposes to construct 22 new 3-bedroom single family detached dwellings and 1 new duplex structure containing 2 additional 2-bedroom residences. The 2 existing dwellings located on the property will be renovated and remodeled accordingly to also be 3-bedroom single family residential dwellings.

2.8 The existing dwelling at 265 Great Road is listed on the Cultural Resource List for the Town of Acton.

2.9 The existing home at 265 Great Road will be sold to Habitat for Humanity and then renovated, remodeled and sold to an income-qualified family.

2.10 The proposed duplex unit will be sold to the Acton Housing Authority which will in-turn rent the 2 (two) units to income-qualified families.

2.11 All dwellings will have a minimum of 2 (two) parking spaces. The duplex dwellings will each have 1 (one) parking space within an enclosed garage and a second outdoor, unenclosed parking space. All other homes are designed with 2 (two) car garages and driveways which can accommodate additional vehicles.

2.12 The length of driveways in front of a number of garages is approximately 18'-0". This does not permit a vehicle to park in the driveway without obstructing or partially blocking the sidewalk.

2.13 There is no designated area identified for guest/visitor parking.

2.14 Dwellings are designed in Greek Revival and Colonial styles of architecture and implemented in a random mixture of elevations to provide sufficient architectural variety.

2.15 The new proposed road has a pavement width of 18'-0". The proposed turning radii at the Great Road intersection and the cul-de-sac, both adequately support SU-30 fire apparatus.

2.16 The Project is located across the street from a large and significant shopping destination and within walking distance of numerous other commercial businesses. Great Road is a State Highway which is controlled by the Massachusetts Department of Transportation (MassDOT). Pedestrian safety has long been a concern within this general area.

2.17 The Applicant has requested waivers from the following Town of Acton's Zoning Bylaw provisions:

- Table of Principle Uses: 3.3.3 – Two Family dwellings are not allowed within the R-8 zoning district.
- Section 3.3 Residential Uses – Not more than one building for dwelling purposes shall be located upon a lot.
- Section 4.3.4.2 Zone 2-A – A minimum of 70% of every Lot shall remain Open Space, 40% of every Lot shall remain as Undisturbed Open Space. No more than 30% of a Lot shall be covered with Impervious Cover.
- Table 4.3.7.2 Use Regulations within the Groundwater Protection District.
- Section 5 - Table of Standard Dimensional Regulations – Min. Lot Frontage of 200'-0". Current proposal is 35'-0".
- Section 5 - Table of Standard Dimensional Regulations – Min. Lot Width of 50'-0". Current proposal is 35'-0".
- Section 5 - Table of Standard Dimensional Regulations – Min. Front Yard Setback of 75'-0". Current proposal is 15'-0".
- Section 5 - Table of Standard Dimensional Regulations – Min. Side & Rear Yard Setbacks of 20'-0". Current proposal is 5'-0".
- Section 5 - Table of Standard Dimensional Regulations – Maximum Floor Area Ratio of 0.2. Current proposal is 0.26.
- Section 5.4.6.2 – Maximum Number of Parking Spaces.

Additional waivers requested:

- Town of Acton's Subdivision Rules & Regulations – To the full extent that is required so as to allow for the construction of the infrastructure as shown on the plans.

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 Regulations) and Section 6 (Parking Standards) of the Zoning Bylaw, and the Subdivision Rules & Regulations subject to the Conditions of this Decision.

2.18 Pursuant to the Act and the regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development Housing Appeals Committee at 760 CMR 56.04, an applicant for a comprehensive permit must fulfill three jurisdictional requirements:

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

b) The Project shall be fundable by an authorized Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and

c) The Applicant shall control the site.

As discussed more fully below, the Board finds that the Applicant has provided sufficient information to meet these three jurisdictional requirements.

Jurisdictional Requirement 1 (a)

The Applicant has satisfied this requirement by forming a Limited Dividend Organization known as and referred to as 263 Great Road, LLC. and agrees to legally bind itself to limit the profit it derives from a comprehensive permit development.

Jurisdictional Requirement 1 (b)

The Applicant has satisfied this requirement through the submission of a Project Eligibility Letter dated February 10, 2012, from the Commonwealth's Department of Housing and Community Development indicating that the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

Jurisdictional Requirement 1 (c)

The Applicant has satisfied this requirement by entering into a Purchase and Sale Agreement, dated June 27, 2011 with the owner of the property, Mr. Anthony J. Ruggiero Jr. (seller) and 263 Great Road, LLC. (buyer).

2.19 The proposed Project, when conforming to the conditions set forth in this Decision, will adequately provide for storm water drainage and sewerage, will not be detrimental or injurious to the surrounding neighborhood, will provide for convenient and safe vehicular and pedestrian movement within and through the site, all without an undue burden on the occupants of the Project or on the surrounding neighborhood or the Town.

2.20 The proposed Project will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the Project, the neighborhood, or the Town.

2.21 The proposed Project as supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this decision, and (ii) would represent a reasonable accommodation of the need for low and moderate income housing.

2.22 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.

2.23 This Decision has been issued and filed with the Town Clerk within the time frame specified in M.G.L. Ch. 40B, §20-23 and as agreed to by the Applicant.

3 GOVERNING LAW & JURISDICTIONAL ELEMENTS

3.1 The law governing this project is the Act and regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development Housing Appeals Committee at 760 CMR 56.04, and the Board's Rules & Regulations for Comprehensive Permits.

3.2 The Act prevents the possible use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. The purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town's total area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year. Acton does not currently meet these criteria.

4 BOARD ACTION

Therefore, the Board voted unanimously on July 9, 2012 to GRANT the requested Comprehensive Permit consisting of a total of 26 (twenty-six) Dwelling Units (inclusive of 7 (seven) 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 any building permit, the Plan shall clearly designate and identify the seven (7) Affordable Units.

4.1.2 Prior to the issuance of any building permit, all garages within the development shall be sited so that there is a minimum 20'-0" of driveway between the garage and the back edge of sidewalk.

4.1.3 Prior to the issuance of any building permit, the Applicant shall modify the Site Plan and architectural plans to incorporate the following suggestions of the Design Review Board:

4.1.3.1 The first three (3) houses on the right side of the entry drive shall be staggered (instead of the front facades all being aligned) to relieve the wall-like appearance;

4.1.3.2 The design of the homes shall be simplified by using two basic style types: Greek Revival and Colonial. Each of these types shall have multiple iterations which would make them unique such as variations on the size and type of porches, exterior materials, dormers, roof configurations, trim, colors, etc.;

4.1.3.3 The orientation of the gables to the street shall be varied; sometimes perpendicular, sometimes parallel;

4.1.3.4 Front porches of a useful size and with sufficient architectural detail shall be provided.

4.1.4 Prior to the issuance of any building permit, the Plan shall identify and provide a designated area for an adequate and acceptable community playground or play area.

4.1.5 Prior to the issuance of any building permit, the Applicant shall verify that all exterior lighting complies with Section 10.6 of the Zoning Bylaw.

4.1.6 Prior to the issuance of any building permit, if the Applicant proposes to install any type of irrigation system, the landscape plan shall be revised to show such system.

4.1.7 Prior to the issuance of any building permit, the plan shall be revised to show a covered mail station, which could also potentially be utilized as a bus shelter.

4.1.8 Prior to the issuance of any building permit, the plan shall be revised to show sight distances along Great Road.

4.1.9 Prior to the issuance of any building permit, the plan shall be revised to show the location of any proposed "development identification" signage.

4.1.10 Prior to the issuance of any building permit, the plan shall be revised to show a crosswalk, stop sign and stop line to be installed at the Great Road entrance to the property in compliance with MUTCD. A short section of yellow centerline shall also be shown to clearly delineate travel lanes at Great Road.

4.1.11 Prior to the issuance of any building permit, the plan shall be modified to show and provide for a potential future common driveway/shared access to connect this property with the adjacent property (267 Great Road).

4.1.12 Prior to the issuance of any building permit, the Applicant shall provide a new street name for the private road, a Street name sign, and an approved street numbering system for the proposed development. The Street name sign shall be consistent with other Acton street name signs. There shall also be an additional plaque signifying the road as a private way.

4.1.13 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.

4.1.14 Prior to the issuance of any building permit, the Applicant shall submit, to the satisfaction of the Zoning Enforcement Officer, a copy of The Condominium Association or Homeowner's Association Bylaws which shall include an adequate plan for maintenance of the stormwater management system.

4.1.15 Prior to the issuance of any building permit, the Applicant shall address all comments identified by the Engineering Department in memos dated May 10, 2012 and revised June 8, 2012.

4.1.16 Prior to the issuance of any building permit, the Applicant shall address all comments identified by the Health Department in memos dated May 10, 2012 and revised June 7, 2012.

4.1.17 Prior to the issuance of any building permit, the Applicant shall address all comments identified by the Fire Chief in email dated May 11, 2012.

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 Within 1 (one) year of the date of this Comprehensive permit being issued, the applicant shall have submitted to the State of Massachusetts - Department of Transportation, an application seeking approval to construct a crosswalk across Great Road (Route 2A) linking the proposed project to the shopping plaza. The Applicant shall continue to work with the Town of Acton and the Planning Department in the preparation and submission of said application.

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.

4.2.3 The Applicant shall obtain any and all necessary permits pertaining to Stormwater Management.

4.2.4 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.

4.2.5 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.

4.2.6 No work on the Site shall begin prior to the issuance of a building permit.

4.2.7 The Applicant shall be diligent to ensure that no construction debris or material from the site enter any of the abutting properties or the Great Road public right-of-way.

4.2.8 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. 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.

4.2.9 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.

4.2.10 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.

4.2.11 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.

4.2.12 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.

4.2.13 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 substantially in conformance with those cited in Section 1 – Exhibits (above) of this Decision except that they shall be updated in accordance with the requirements of this Decision. Each plan sheet shall be signed by and show the seal of a Registered Professional Engineer, 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.

4.2.14 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.

4.2.15 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.

4.2.16 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.

4.2.17 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.

4.2.18 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 Sheet 2 (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.

4.2.19 The Applicant shall comply with the State Building Code.

4.2.20 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.

4.2.21 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.

4.2.22 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 May 25, 2012 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 throughout the duration of construction and the Project as-built, conforms and complies with all conditions of this Comprehensive Permit and the Approved Plans.

4.2.23 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.

4.2.24 All construction vehicles shall be parked on the Site and off of Great Road at all times.

4.2.25 The Project shall be limited to a total of 26 Dwelling Units. There shall be 24 three bedroom units and 2 two-bedroom units.

4.2.26 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.

4.2.27 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 private roadway and individual driveways 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 private roadway and individual driveways need not be installed in order to obtain occupancy permits for the first twenty (20) 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 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 24th 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.

4.2.28 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.

4.2.29 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.

4.2.30 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.

4.2.31 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines, which expressly preclude any post-development increase in runoff from the Site.

4.2.32 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.

4.2.33 At least seven days prior to the start of construction, the Applicant shall provide written notice to the Zoning Enforcement Officer of the anticipated construction start date.

4.3 CONDITIONS - LEGAL REQUIREMENTS

4.3.1 The Applicant shall establish either (a) 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.

4.3.3 This Comprehensive Permit may not be transferred to an entity in which the Applicant owns and controls less than 50% of the equity interests in such entity, or to a person other than the Applicant without the prior written approval of the Board and the execution of any instruments or documents that may be required to assure the perpetual enforcement of this Comprehensive Permit pursuant to Town Counsel's direction. The scope of the Board's review of a proposed transfer shall be limited to the review of the transferee's qualifications, experience, capacity and eligibility under 40B with regards to satisfying the three jurisdictional requirements. This condition shall not apply to the transfer of ownership of the development from the developer to the Condominium Unit Owners' Association or Homeowners Association.

4.3.4 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. All 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.

4.3.5 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.

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

4.4 CONDITIONS - AFFORDABILITY REQUIREMENTS

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

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

4.4.2 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.

4.4.3 Affordable Units: The seven (7) 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). Five (5) of the Affordable Units, as designated on the Approved Plan or within this decision, shall contain three bedrooms. The other two (2) Affordable Units, as designated on the Approved Plan or within this decision, shall contain two bedrooms.

4.4.4 Sale Price: The maximum sale prices for the Affordable Units shall be reviewed and approved by the DHCD at the time of the lottery for selection of buyers of the Affordable Units. Subject to the approval of DHCD, the sale price for the Affordable Units shall be set to be affordable to a household earning 70% of the Area Median Income published by the Department of Housing and Urban Development for the Boston Metropolitan Primary Statistical Area, adjusted for household size. The applicable household size is four (4) persons for the 3-bedroom units and three (3) persons for the 2-bedroom units. Any modification or deviation from the designation of the affordable units as originally proposed and reviewed by the DHCD shall be subject to approval by the DHCD.

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

4.4.4.1 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.

4.4.4.2 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.

4.4.4.3 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.

4.4.4.4 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.

4.4.4.5 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.

4.4.4.6 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.

4.4.4.7 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.

4.4.4.8 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.

4.4.5 Notwithstanding the above Sections 4.4.3 through 4.4.5, Habitat for Humanity shall have the right-of-first-refusal regarding the purchase of the existing dwelling unit located closest to Great Road and having a street address of 265 Great Road. Habitat for Humanity shall be responsible for conducting their own income-qualified buyer selection process. In the event that Habitat for Humanity does not wish to purchase this dwelling unit, than said unit shall become an affordable dwelling unit subject to the requirements set forth in Sections 4.4.3 through 4.4.5 above.

4.4.6 Notwithstanding the above Sections 4.4.3 through 4.4.5, the Acton Housing Authority shall have the right-of-first-refusal regarding the purchase of the proposed duplex dwelling unit identified on the Plan as Units R & S (northeast corner of property). Upon purchasing the aforementioned duplex dwelling unit, the Acton Housing Authority shall rent said units to income-qualified families. In the event that the Acton Housing Authority does not wish to purchase the duplex

dwelling unit, than said duplex dwelling unit shall become an affordable dwelling unit subject to the requirements set forth in Sections 4.4.3 through 4.4.5 above.

4.4.7 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 seven 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.

4.4.8 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.

4.4.9 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.

4.4.10 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 two (2) existing units. 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 forgoing, and in addition to the Applicant's obligations to the DHCD, (a) upon issuance of a final certificate of occupancy for all of the Units and every ninety (90) days thereafter until the last Unit is sold, the Applicant shall cause the CPA to deliver to the 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 twenty-six (26) 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.

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

Kenneth F. Kozik, Chairman

Jonathan Wagner

Marilyn Peterson

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

Eva K. Szkaradek, Town Clerk Date

Copies furnished:

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