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ACTON**

Decision – #13-06
Comprehensive Permit – 6 Post Office Square
April 14, 2014



Board of Appeals

TOWN OF ACTON
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**Comprehensive Permit
Issued to Post Office Square, Acton, LLC.
DECISION
#13-06**

6 Post Office Square, Acton, MA
April 14, 2014

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 Post Office Square, Acton, LLC., c/o Philip S. Singleton, 40 Lowell Street, Peabody, MA 01960 (hereinafter the "Applicant") for the property located at 6 Post Office Square in Acton, Massachusetts, owned by Mark Brooks, Trustee, 200 Baker Avenue, Suite 303, Concord, MA 01742. The property is identified on the 2007 Acton Town Atlas map E-4 as parcel 59-1 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit for a project consisting of 12 (twelve) three-bedroom single family detached residences. There is currently no development or disturbance to the existing site and it essentially remains in a natural state, comprised of forest and/or meadow/brushland. The Comprehensive Permit application was submitted to the Board of Appeals on November 12, 2013 and by mutual agreement, the initial public hearing was continued to January 6, 2014. The initial public hearing was further continued to February 3, 2014, at which time, the Board opened a

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duly noticed public hearing. The Board conducted a site walk of the subject property on February 11, 2014 and held continued hearings on March 3, 2014 and April 14, 2014. The Board closed the public hearing on April 14, 2014 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), Richard Fallon (Member), and Suzanne Buckmelter (Alternate) 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 "Post Office Crossing" was filed with the Town Clerk on November 12, 2013. 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 – Department of Housing & Community Development regarding Determination of Project Eligibility under the Local Initiative Program (LIP) dated August 16, 2013;
- Copy of Purchase and Sale Agreement for the subject property between Mark Brooks, Trustee of 6 Post Office Square Realty Trust and Philip S. Singleton, executed on March 8, 2012, and includes P&S Extension Agreement executed January 30, 2013 extending deadline through April 30, 2013;
- Amendment and Restatement of Purchase and Sale Agreement for the subject property between Mark Brooks, Trustee of 6 Post Office Square Realty Trust and Philip S. Singleton, executed on May 17, 2013;
- Amendment and Restatement of Purchase and Sale Agreement for the subject property between Mark Brooks, Trustee of 6 Post Office Square Realty Trust and Philip S. Singleton, executed on January 27, 2014;
- Assignment of Amendment and Restatement of Purchase & Sale Agreement between Philip S. Singleton and Post Office Square Acton, LLC., executed on February 3, 2014;
- Certificate of Organization dated March 7, 2013 and subsequent Certificate of Amendment date February 3, 2014 regarding Post Office Square Acton, LLC. as filed with the Massachusetts Secretary of State;
- Comprehensive Permit Development Impact Report;
- Comprehensive Permit Designer's Certificate;
- Certified Abutters List;
- Stormwater Management Report prepared by Eastern Land Survey Associates, Inc. 104 Lowell Street, Peabody, MA 01960 and dated October 2012;
- Package of Engineering drawings entitled "Definitive Subdivision Plan of Post Office Crossing in Acton, Massachusetts" prepared by Christopher R. Mello, P.L.S., Eastern Land Survey Associates, Inc., 104 Lowell Street, Peabody, MA 01960, dated October 22, 2012, revised January 16, 2014 and consisting of the following:
 - Index Sheet (Sheet 1 of 10);
 - Existing Conditions Plan (Sheet 2 of 10);
 - Definitive Subdivision Plan (Sheet 3 of 10);
 - Site Grading Plan (Sheet 4 of 10);

- Roadway Plan (Sheet 5 of 10);
- Roadway Profile, Notes & Details (Sheet 6 of 10);
- Storm Drainage Plan (Sheet 7 of 10);
- Erosion Control Details (Sheet 8 of 10);
- Site Details (Sheet 9 of 10);
- Affordable Distribution Plan (Sheet 10 of 10);
- List of Requested Waivers sought from Local Laws and Regulations;
- Comprehensive Permit Development Schedule;
- Comprehensive Permit Unit Composition Schedule;
- Comprehensive Permit Development Pro Forma.

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

- Architectural drawings prepared by Wendy Welton, Artform Home Plans, Division of Art Form Architecture, Inc., 95 Lafayette Road, Hampton Falls, NH 03801, and consisting of the following 15 pages:
 - “New Fiddlehead” model type floor plans and elevation drawings (5 pages);
 - “New Englander” model type floor plans and elevation drawings (5 pages); and
 - “April Yarrow” model type floor plans and elevation drawings (5 pages).
- Tree Plan (L-1) with attached planting schedule prepared by RC Design, 14 Clifton Avenue, Salem, MA 01970, dated January 30, 2014 and revised February 26, 2014;
- Typical Unit Plantings Plan (L-2) prepared by RC Design, 14 Clifton Avenue, Salem, MA 01970 and dated January 30, 2014;
- Post Office Crossing, Acton, Massachusetts, Existing Conditions Watershed Plan.

1.2 Interdepartmental communications were received from:

- Planning Department, dated September 5, 2012 and January 31, 2014;
- Engineering Department, dated December 3, 2013 and revised January 29, 2014 and March 18, 2014;
- Health Department, letters dated January 21, 2014 and January 28, 2014, emails dated February 27, 2014 and March 10, 2014;
- Police Chief dated January 24, 2014;
- Acton Community Housing Corporation, letters dated December 27, 2013 and January 21, 2014;
- Natural Resources Director dated January 30, 2014;
- Board of Selectmen dated February 25, 2014;
- Design Review Board memo dated February 20, 2014;
- Water Supply District of Acton, letters dated November 27, 2013 and February 3, 2014, emails dated February 20, 2014 and February 27, 2014;
- Municipal Properties Director & Tree Warden, email dated February 28, 2014; and
- Town Counsel dated February 3, 2014.

1.3 Other Correspondence included:

- Email from John R. Keilty, Esq. dated January 2, 2014 consenting to waive statutory requirement to open public hearing until February 3, 2014 meeting;
- Letter from Isabella V. Choate, Acton resident, dated January 29, 2014;
- Letters from Brewster Conant, abutter to proposed project dated September 10, 2012 and January 27, 2014 accompanied with GIS maps & recorded Plan of Land;
- Letter from James H. MacDowell of Eastern Land Survey Associates, Inc. to Acton Fire Chief, dated January 14, 2014 regarding proposed roadway name;

- Letter from James H. MacDowell of Eastern Land Survey Associates, Inc. to Acton Police Chief, dated January 14, 2014 regarding proposed roadway name;
- Letter from Christopher R. Mello of Eastern Land Survey Associates, Inc. to Zoning Board of Appeals, dated January 15, 2014 regarding responses to Engineering Department memorandum dated December 3, 2013;
- Letter from Christopher R. Mello of Eastern Land Survey Associates, Inc. to Zoning Board of Appeals, dated January 16, 2014 regarding concerns of the Water Supply District of Acton;
- Letter from James H. MacDowell of Eastern Land Survey Associates, Inc. to Chris Allen, District Manager, Water Supply District of Acton, dated January 22, 2014 with Water Import Report attached;
- Letter from Christopher R. Mello of Eastern Land Survey Associates, Inc. to Engineering Department, dated February 3, 2014;
- Letter from John R. Keilty, Esq. to Engineering Department dated February 18, 2014 regarding Applicant's rights with regards to stormwater management system within Acton Technology Park (15 total pages); and
- Letter from James H. MacDowell of Eastern Land Survey Associates, Inc. to Chris Allen, District Manager, Water Supply District of Acton, dated February 19, 2014.

1.4 Extension Agreements:

- Consent and Agreement to Extension of Hearing to January 6, 2014;
- Consent and Agreement to Extension of Hearing to February 3, 2014;
- Consent and Agreement to Extension of Hearing to March 3, 2014; and
- Consent and Agreement to Extension of Hearing to April 14, 2014.

All documents comprising Exhibit 1.1 are hereinafter collectively referred to as the Plan.

2 FINDINGS AND CONCLUSIONS

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

- 2.1 The submitted application substantially complies with the Board's comprehensive permit application requirements as stated in the Town of Acton's "Rules and Regulations for Comprehensive Permits" adopted May 17, 2004, and the 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 January 28, 2014, Acton's SHI percentage is 6.45%. 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 subject property is located within an LI-1 (Light Industrial 1) Zoning District. The overall development site straddles Groundwater Protection District Zones 2 & 4. The 12 (twelve) proposed dwellings and roadway are all located within Groundwater Protection District Zone 4.
- 2.4 The subject property is approximately 3.59 acres (156,380.4 ft²) in area.
- 2.5 The Site is currently undeveloped. There is no disturbance to the existing site conditions and it essentially remains in a natural state, comprised predominantly of forest and/or meadow/brushland.
- 2.6 The entire proposed Project consists of twelve (12) new three-bedroom single family detached residences under the Local Initiative Program which has already been pre-approved by DCHD.

- 2.7 The project will have 3 (three) dwelling units which are made available to families whose incomes and assets qualify them as low or moderate-income.
- 2.8 All dwellings are designed with 2 (two) car garages. All dwellings are also designed with significantly lengthy driveways, the majority of which can accommodate multiple additional vehicles.
- 2.9 There is no designated area identified for guest/visitor parking.
- 2.10 There are 3 (three) different styles of architectural designs for the proposed dwellings. They are 1) April Yarrow, 2) New Englander, and 3) New Fiddlehead. The different design styles would be implemented in a random mixture of elevations to provide sufficient architectural variety.
- 2.11 The plans submitted do not indicate the proposed height dimensions of the dwellings. However, the proposed designs seem to be fairly standard 2-story dwellings and would presumably comply with the requirements of the Zoning Bylaw.
- 2.12 The dwellings are currently proposed with a wood siding material, where a more durable exterior finish would result in better long term ease of maintenance especially with regards to the affordable dwellings units.
- 2.13 The Affordable Units are located on Exclusive Use Area's #1, 7 & 8.
- 2.14 The new proposed road has a pavement width of approximately 20'-0". The proposed turning radii at the Post Office Square intersection and the cul-de-sac, both adequately support SU-30 fire apparatus. The roadway would remain a private way.
- 2.15 The Project does not fit easily into the general 40B policy guidelines with regard to location. The 12 (twelve) unit residential Project is located in an industrial park and industrial zoning district and will be isolated from other residential neighborhoods.
- 2.16 The Project does not show any designated "Open Space" area. "Parcel A", which is the location of the septic system, could be used for a community recreation or child play space.
- 2.17 The Project appears to have an overall FAR of approximately 0.18, where a 0.20 FAR is the maximum permitted in the Light Industrial I Zoning District.
- 2.18 There is an existing daycare, post office, library and Town Hall located within the immediate walking vicinity. The Project is also located within close proximity (less than 1 mile) to Donelan's grocery store and Gould's Plaza.
- 2.19 The Applicant has requested waivers from the following Town of Acton's Zoning Bylaw provisions:
 - Section 3.1 – Provisions for Table of Principle Uses and Principal Use Definitions
 - Table of Principal Uses: 3.3.1 – To allow single family dwellings in a LI-I (Light Industrial I) Zoning District
 - Section 4.3.6.2 – Watershed Recharge
 - Section 4.3.6.3 – Treatment and Renovation of Runoff
 - Section 5 - Dimensional Regulations
 - Section 5.1 – Standard Dimensional Regulations
 - Section 5.2 – Methods of Calculating Dimensional Requirements

- Table of Standard Dimensional Regulations
- Section 5.3 – Special Provisions and Exceptions to Dimensional Regulations

2.20 The Applicant has requested waivers from the following Town of Acton’s Subdivision Rules & Regulations:

- Section 5 – Procedure for the Submission and Approval of Definitive Subdivision Plan
- Section 5.1 – Pre-Application Consultations
- Section 5.2 – Submission of Definitive Plan
- Section 5.3 – Contents of Definitive Plan
 - Specifically Sections 5.3.8, 5.3.13, 5.3.27 & 5.3.28
- Section 5.4 – Plan Revisions and Amendments
- Section 5.5 – Notice to Town Clerk
- Section 5.6 – Notice to Board of Health and Review by Board of Health
- Section 5.7 – Submission of Additional Information
- Section 5.8 – Public Hearing Notice
- Section 5.9 – Planning Board Action on Definitive Plan
- Section 6 – Performance Guarantee
 - In its entirety
- Section 7.1 – Endorsement of Approved Plan
- Section 8.1.12 – Minimum centerline radius as shown in Table 1 “Horizontal Design Standards”
- Section 8.1.18 – Cul-de-Sac turnaround design
 - In its entirety
- Section 8.2.3 – Storm water runoff calculations
- Section 8.3.5 – Velocity Check Dams
- Section 8.4 – Subdivision Standards in the Flood Plain District
 - In its entirety
- Sections 8.5.2 & 8.5.4 – Subdivision Standards in Groundwater Protection District
- Section 8.7 – Easements
 - In its entirety
- Section 9.2.8 – Fire Alarm Call Boxes
- Section 9.5.2 – Sloped granite curbing requirement
- Section 9.6.2 – Sidewalk requirement
- Section 10 – Optional Residential Compound Plan

- In its entirety
 - Section 11 – Administration
 - In its entirety
- 2.21 The Applicant has requested waivers from the following Town of Acton Board of Health Rules and Regulations:
- Article II – Minimum Requirements for the Disposal of Sanitary Sewage in Unsewered Areas
 - Regulation 11-9 – Subdivision Requirements
- 2.22 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 as identified and listed in Findings and Conclusions 2.19, 2.20 and 2.21 above, and all subject to the Conditions of this Decision.
- 2.23 Pursuant to the Act and the regulations promulgated by DHCD 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 Post Office Square Acton, 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 Determination of Project Eligibility Letter dated August 16, 2013, from DHCD 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 submitting an Amendment and Restatement of Purchase and Sale Agreement from Seller, Mark Brooks, Trustee of Post Office Square Realty Trust to Buyer Philip S. Singleton with a proposed closing date of September 30, 2013, but permitting extensions of that deadline until September 1, 2014.

- 2.24 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.

- 2.25 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.
- 2.26 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.
- 2.27 The Board has received comments from various Town departments, which are listed in Exhibit I.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.
- 2.28 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 DHCD's Housing Appeals Committee at 760 CMR 56 et seq., 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 April 14, 2014 to GRANT the requested Comprehensive Permit consisting of a total of 12 (twelve) Dwelling Units (inclusive of 3 (three) 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 identify and provide a designated area for an adequate and acceptable community playground or play area.
- 4.1.2 The post and rail fence shown on the Tree Plan (L-1), shall be extended an additional approximately 94'-0" in a southeastern direction.
- 4.1.3 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.

- 4.1.4 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.
- 4.1.5 Prior to the issuance of any building permit, the plan shall be revised to show the location of any proposed “development identification” signage.
- 4.1.6 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 Homeowners Association Bylaws which shall include a plan for maintenance of the stormwater management system in accordance with this Comprehensive Permit and any applicable permits for stormwater management.

4.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to any of these conditions shall constitute grounds to deny any building permit pursuant to this Comprehensive Permit. Failure to cure any violation of these conditions upon written notice from the Board or the Zoning Enforcement Officer, within the deadline set in the notice and to the satisfaction of the Board or the Zoning Enforcement Officer, shall constitute grounds for the revocation 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 Prior to any blasting occurring at the site which is directly related to and the result of the proposed scope of work approved under this Comprehensive Permit, Materials Safety Data Sheets shall be provided to the Board of Health and the Water Supply District of Acton confirming that all blasting materials are perchlorate free.
- 4.2.2 Prior to a Certificate of Compliance for the construction of the wastewater system, the owner of the property shall install 2 (two) monitoring wells down gradient from the wastewater system at a location acceptable to the Water Supply District of Acton. Should those wells be on the subject property, documentation shall be provided giving the Water Supply District of Acton and the Health Department the right to draw samples from those wells.
- 4.2.3 Prior to the issuance of the tenth (10th) Certificate of Occupancy, the Applicant shall voluntarily submit a contribution of \$9,000.00 to the Town of Acton’s Sidewalk Fund.
- 4.2.4 The entire Project, all twelve (12) dwelling units, including the affordable units, shall be LEED certified.
- 4.2.5 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Commonwealth of Massachusetts.
- 4.2.6 The Applicant shall obtain any and all permits pertaining to Stormwater Management required under any program administered by or for the United States Environmental Protection Agency or by the Commonwealth of Massachusetts..
- 4.2.7 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.2.8 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.
- 4.2.9 No work on the Site shall begin prior to the issuance of a building permit.

- 4.2.10 The Applicant shall be diligent to ensure that no construction debris or material from the site enter any of the abutting properties or the Post Office Square right-of-way.
- 4.2.11 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 Homeowners 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.
- 4.2.12 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 affecting neighboring and abutting properties during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience from construction to residents and businesses in the general area.
- 4.2.13 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.
- 4.2.14 All work on the Site shall be conducted substantially 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.
- 4.2.15 All water service lines shall be installed in accordance with the specifications of the Water Supply District of Acton.
- 4.2.16 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 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.
- 4.2.17 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.

- 4.2.18 By granting waivers from the local bylaws and regulations identified in Findings 2.19, 2.20, 2.21 & 2.22 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.
- 4.2.19 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.
- 4.2.20 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.
- 4.2.21 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 of 10 (the Recordable Plan a.k.a. Definitive Subdivision Plan) and Sheet 10 of 10 (Affordable Distribution 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.
- 4.2.22 The Applicant shall comply with the State Building Code.
- 4.2.23 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 4.2.24 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.
- 4.2.25 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 Tree Plan (L-1), dated January 30, 2014 and revised February 26, 2014, and the Typical Unit Plantings (L-2), dated January 30, 2014 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.

- 4.2.26 The Applicant shall ensure safe and convenient vehicular access into and around the Site during the entire construction 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.
- 4.2.27 All construction vehicles shall be parked on the Site and off of Post Office Square at all times.
- 4.2.28 The Project shall be limited to a total of 12 (twelve) Dwelling Units. All 12 dwelling units shall consist of three bedrooms.
- 4.2.29 The common area landscaping shall be maintained in perpetuity by the Condominium Association or the Homeowners 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.
- 4.2.30 As security for the completion of the infrastructure related to the Project as shown on the Approved Plans, 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 elevation (11) 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 12th newly constructed Dwelling Unit. All water connections shall be approved by the Water Supply District of Acton and completed and paid for by the Applicant in accordance with Water Supply District of Acton's 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.
- 4.2.31 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 Homeowners Association.

- 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 imposed by the Board through this Comprehensive Permit.
- 4.2.33 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 do 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.
- 4.2.34 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 DHCD and, to the extent permitted by DHCD, Town Counsel to ensure consistency with this Decision.
- 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. 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 The roadways, utilities, drainage systems, and all other infrastructure shown in the Approved Plans 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 DHCD, the following conditions shall apply. The Applicant shall support the Town in obtaining the DHCD's approval of the following conditions:

- 4.4.1 Construction of the proposed project shall be phased to ensure that a minimum of one affordable dwelling unit shall be built for every three (3) market rate units constructed.
- 4.4.2 Certificates of Occupancy for all three (3) 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: Subject to the approval of DHCD, the three (3) 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). All three (3) of the Affordable Units, as designated on the Approved Plans or within this decision, shall contain three bedrooms.
- 4.4.4 Sale Price: The maximum sale prices for the Affordable Units shall be reviewed and approved by the DHCD at the time of the lottery for selection of buyers of the Affordable Units. Subject to the approval of DHCD, the sale price for the Affordable Units shall be set to be affordable to a household earning 70% of the Area Median Income published by the Department of Housing and Urban Development for the Boston Metropolitan Primary Statistical Area, adjusted for household size. The applicable household size is four (4) persons for the 3-bedroom units. Any modification or deviation from the designation of the affordable units as originally proposed and reviewed by the DHCD shall be subject to approval by the DHCD.
- 4.4.5 Selection of Buyers for Affordable Units: Subject to approval of the DHCD and to the extent permitted by DHCD, the Applicant shall obtain the DHCD's 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 Water Supply District of Acton, 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 Applicant shall fund the expenses of the Lottery.
- 4.4.4.5 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.
- 4.4.4.6 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.
- 4.4.7 Perpetual Affordability Restriction: Prior to the issuance of any building permits, a Regulatory Agreement, in a form acceptable to DHCD shall be executed and recorded. The Regulatory Agreement shall to the extent permitted by DHCD provide, among other things, that (a) The three (3) Affordable Units in the Project shall be sold and resold subject to a Deed Rider, 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 DHCD's 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.

- 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, in accordance with the requirements of 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, to the maximum extent permitted by law and by DHCD, 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 and DHCD, which will be recorded prior to the conveyance of the first Unit, governing the protection and administration of the Units covered by this Decision. If permitted by DHCD, the Town shall have the right, concurrent with DHCD, to enforce the terms and conditions 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 including without limitation all documents submitted by the Applicant concerning its compliance with or deviation from the Profit Cap. The Market Rate Units and the Affordable Units shall be indistinguishable from the exterior. 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.

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 Approved Plans.
- 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 twelve (12) Dwelling Units on the Site. The construction and use of the Site shall be in conformity with the Approved Plans, 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 Plans, 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 To the extent permitted by law, the Board hereby reserves its right and power to modify or amend the Approved Plans and the terms and conditions of this Comprehensive Permit with or without a public hearing upon the request of the Applicant, his designees, successors 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


Richard Fallon


Suzanne Buckmelter

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

Eva K. Szkaradek, Town Clerk Date

Copies furnished:

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