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TOWN CLERK, ACTON

Decision – 09-03
Comprehensive Permit – Marsh View
April 16, 2010



Board of Appeals

TOWN OF ACTON
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**Decision on Application by Marsh View, LLC
for a Comprehensive Permit**

DECISION

#09-03

93 Central Street

Comprehensive Permit

April 16, 2010

DENIED

This is a Decision of the Acton Zoning Board of Appeals (hereinafter the "Board") on the request for a Comprehensive Permit under Massachusetts General Laws ("M.G.L.") Chapter 40B, §20-23 (the "Act"), made by Marsh View, LLC., 30 Nagog Park Drive, Suite 225, Acton, MA 01720 (hereinafter the "Applicant") for the property located at 93 Central Street in Acton, Massachusetts, owned by Charles D. Micol, 312 Great Road, Littleton, MA 01460. The property is shown on the 2007 Acton Town Atlas map G-2 as parcels 123 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit to construct four (4) 3-bedroom single-family detached dwellings with one (1) of the four (4) dwellings being

designated for low or moderate income housing (the "Project"). The Comprehensive Permit application was submitted to the Board of Appeals on June 29, 2009. Due to scheduling conflicts, the Applicant agreed to begin the hearing beyond the 30 days from the application date. The Board opened a duly noticed public hearing on September 14, 2009. The Board conducted a site walk of the subject property on September 21, 2009 and held continued hearings on October 20, 2009, November 16, 2009, December 15, 2009, January 25, 2010, February 24, 2010 and March 10, 2010. The Board closed the public hearing on March 10, 2010 and began its deliberations at that time. Throughout the duration of the hearings, the Board heard testimony from the Applicant, Town staff, concerned citizens, and abutters to the proposed Project. Board members Kenneth Kozik (Chair), Jonathon Wagner (Member), and Richard Fallon (Alternate Member) were present throughout the hearings. The minutes of the hearings and submissions on which this decision is based may be referred to in the Town Clerk's office or the office of the Board at Acton Town Hall.

1 EXHIBITS

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

- 1.1 The application for a Comprehensive Permit entitled "Marsh View" was filed with the Town Clerk on June 29, 2009. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:
 - Certificate of Organization;
 - Letter from William Francis Galvin, Secretary of the Commonwealth, certifying that the provisions of the General Laws relative to corporations has been complied with and filed accordingly;
 - Draft Regulatory Agreement;
 - MassHousing Project Eligibility Approval Letter and related attachment dated June 23, 2008;
 - Letter from Applicant to MassHousing dated June 18, 2009 requesting change in Project Eligibility. The Applicant was seeking permission to modify the previously approved ownership status from a condominium form of ownership to fee simple ownership;
 - Copy of Purchase and Sale Agreement for the subject property between Charles D. Micol and Marshview, LLC.;
 - Letter from Gould Law Offices dated July 24, 2009 regarding Certificate of Title to Land described as 93 Central Street, Acton, Massachusetts, described in a deed to Charles D. Micol, recorded with Middlesex South District Registry of Deeds in Book 47301, Page 104;
 - Comprehensive Permit Development Impact Report;
 - Copy of 2006 Quitclaim Deed;
 - Certified Abutters List;
 - Plan of Land;
 - Draft "Declaration of Common Driveway Covenant Shared Maintenance Agreement Concerning the Sewage Disposal System, and Restrictive Covenants and Conditions for Marsh View, Acton, Massachusetts" and revised November 6, 2009;
 - Draft "Grant of Title 5 Covenant and Easement";

- Stormwater Management Summary dated June 19, 2009 and revised September 21, 2009;
- List of Zoning Bylaw Waiver Requests, revised November 6, 2009;
- Comprehensive Permit Unit Composition Schedule;
- Affordability Analysis;
- Draft “Affordable Housing Restriction”;
- Comprehensive Permit Development Schedule and revised November 6, 2009;
- Comprehensive Permit Development Pro Forma;
- Letter from Stoneham Savings Bank dated March 17, 2009 stating bank’s interest in providing financing to Marshview, LLC. for the proposed Project;
- Letter from Hammond Residential – GMAC Real Estate identifying projected sale prices of homes, Marketing Proposal and Comparative Market Analysis;
- Developer/Applicant Qualifications;
- Local Needs Assessment and Analysis;
- Package of architectural drawings consisting of “Foundation Plan, First Floor Plan, Second Floor Plan, Front Elevation, Left & Right Elevations, Rear Elevation, and Main House Cross Section” prepared by Integrity Design, 498 Great Road, Acton, MA 01720, dated May 18, 2007;
- Package of drawings entitled “Marsh View” prepared by Acton Survey & Engineering, Inc., 97 Great Road, P.O. Box 666, Acton, MA 01720 and consisting of the following:
 - Cover Sheet, Marsh View, dated June 19, 2009
 - Master Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, and January 6, 2010;
 - Recordable (Record) Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, and January 6, 2010;
 - Existing Conditions Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, and January 6, 2010;
 - Site Development Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, December 9, 2009, December 15, 2009, January 6, 2010, January 19, 2010 and February 1, 2010;
 - Landscape Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, December 15, 2010 and January 6, 2010;
 - Erosion and Sedimentation Control Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009 and January 6, 2010;
 - Proposed Subsurface Sewage Disposal System, dated December 24, 2008, revised November 2, 2009 and January 6, 2010;

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

- Architectural drawings entitled “Marsh View, Unit #1, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans, and A-3: Basement Plan and Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
- Architectural drawings entitled “Marsh View, Unit #2, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans,

- and A-3: Basement Plan and Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
- Architectural drawings entitled “Marsh View, Unit #3, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans, and A-3: Basement Plan & Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
 - Architectural drawings entitled “Marsh View, Unit #4, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans, and A-3: Basement Plan & Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
 - “Marsh View” Site Overview prepared by Acton Survey & Engineering, Inc., 97 Great Road, P.O. Box 666, Acton, MA 01720 and dated September 17, 2009;
 - Letter from Applicant dated October 20, 2009 requesting continuance of October 20, 2009 hearing without discussion to future date;
 - Letter of Authorization from Charles D. Micol dated June 4, 2009 authorizing Marsh View, LLC. to act as purchaser and/or agent regarding development of subject property;
 - Letters from Applicant regarding potential language for Conditions to be inserted into any decision rendered by the Board regarding access to, or lack thereof being provided to neighboring property for landscaping or fencing purposes.

Exhibit 1.1 is hereinafter collectively referred to as the Plan.

1.2 Interdepartmental communications were received from:

- Design Review Board, dated August 5, 2009;
- Acton Community Housing Corporation, dated August 20, 2009;
- Transportation Advisory Committee, email dated September 2, 2009;
- Acton Housing Authority, email dated September 2, 2009;
- Conservation Commission, memos dated September 3, 2009 and October 16, 2009;
- Town Counsel, memos dated September 14, 2009 and October 16, 2009;
- Town Counsel, emails dated September 14, 2009 and January 25, 2010;
- Board of Selectmen, dated October 13, 2009;
- Planning Department, memos dated September 2, 2009 and revised October 15, 2009, November 12, 2009, December 15, 2009, January 19, 2010 and February 19, 2010;
- Engineering Department, dated August 7, 2009, and revised October 14, 2009, November 13, 2009, December 14, 2009, January 14, 2010;
- Municipal Properties Director, memos dated August 10, 2009 and November 17, 2009;
- Health Department, memos dated August 25, 2009, October 15, 2009 and January 21, 2010;
- Health Department, emails dated November 13, 2009, November 13, 2009, December 11, 2009;
- Fire Chief, emails dated September 4, 2009, November 16, 2009, December 15, 2009, January 22, 2010 and February 18, 2010;

- Water Supply District of Acton, memo dated August 21, 2009;
- Water Supply District of Acton, email dated November 13, 2009;
- Building Department, dated August 25, 2009.

1.3 Other Correspondence included:

- Email from Town Counsel to the Board and municipal staff regarding legal issues and timeframes;
- Letter from Gould Law Offices dated November 9, 2009 regarding “Clarification of Validity and Enforceability of Right Of Way”;
- Letter from Blatman, Bobrowski & Mead, LLC. Attorneys at Law dated December 15, 2009 who represent the property owner of 89 Central Street stating opposition to the Project;
- Letter and proposed renderings and isometric drawings of Project from opposed neighbors of Project dated January 25, 2010;
- Letters and emails from citizens and abutters of the proposed Project;
- General response letters from Acton Survey & Engineering, Inc. dated September 29, 2009, November 2, 2009, December 10, 2009 and January 6, 2010;
- Response letter from Acton Survey & Engineering, Inc. dated December 10, 2009 to the Acton Fire Department;
- Response letter from Acton Survey & Engineering, Inc. dated December 10, 2009 to the Acton Board of Health;
- Letter dated January 28, 2010 to Board of Selectmen from opposed abutter requesting formal Design Review Board review of proposed Project
- Email dated February 12, 2010 from direct abutter requesting possible language to be included in a potential decision.

1.4 Extension Agreements

- Letter dated July 30, 2009 from applicant agreeing to extend the opening of public hearing beyond the 30 days from the application date;
- Consent and Agreement to Extension of Hearing to October 20, 2009;
- Consent and Agreement to Extension of Hearing to November 16, 2009;
- Consent and Agreement to Extension of Hearing to December 15, 2009;
- Consent and Agreement to Extension of Hearing to January 25, 2010;
- Consent and Agreement to Extension of Hearing to February 24, 2010;
- Email from Applicant dated March 18, 2010 agreeing to Decision filing deadline.

2 FINDINGS AND CONCLUSIONS

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

- 2.1 The submitted application substantially complies with the Board’s comprehensive permit application requirements as stated in the Town of Acton’s “Rules and Regulations for Comprehensive Permits” adopted May 17, 2004, and the subsequent regulations of the Department of Housing and Community Development’s (“DHCD”) Housing Appeals Committee entitled “Comprehensive Permit; Low or Moderate Income Housing,” 760 CMR 56.00 (the “Regulations”).

- 2.2 According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI) as of April 1, 2010, Acton's SHI percentage is 6.8%. As a result, Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum 10% criterion. Acton does, however, presently benefit from DHCD certification of its Affordable Housing Plan under the Planned Production Regulations, 760 CMR 56.03(4).
- 2.3 The site is located within an R-2 (Residence 2) Residential Zoning District and Groundwater Protection District Zone 4.
- 2.4 The subject property is approximately 0.95 acres (41,255 ft²) in area.
- 2.5 Central Street has a diverse mixture of housing types and styles ranging from Victorians to ranches to duplexes to multi-family apartment buildings.
- 2.6 The Project proposes to create four (4) individual lots to be held in a Fee Simple Ownership status. Each lot is to have one (1) Dwelling Unit (as that term is defined in Section 1.3.5 of the Acton Zoning Bylaw) consisting of 3 bedrooms.
- 2.7 The proposed Comprehensive Permit would create four (4) individual residential lots of approximately 10,000 square feet in area each. The subject zoning district has a minimum lot area requirement of 20,000 square feet. The Comprehensive Permit would create a density that is at least twice the permitted amount in the district.
- 2.8 Access to this proposed development from Central Street would be through a driveway easement on the immediately abutting property (89 Central Street).
- 2.9 The proposed design of the Project is seriously deficient:
 - 2.9.1 A very significant amount of the existing vegetation and trees are proposed to be removed with only a very small percentage being preserved or replaced. Currently, 55% of the property exists as a forested area, with only 14% being preserved or replanted at the end of the Project.
 - 2.9.2 The development, as proposed, significantly increases the amount of impervious surface on the property from 4% currently existing to approximately 29% at the completion of the Project.
 - 2.9.3 The Applicant proposes to construct four (4) "cape" style dwellings. Typically, "cape" style homes have relatively steep roofs with gable ends; 1 or 1½ stories; and dormers to provide additional space, light and ventilation. In fact, the Dwelling Units, as currently proposed, consist of full 2-story dwellings with attics and full height walk-out basements.
 - 2.9.4 Units #1 and 2 are oriented in such a manner that the back of the Dwelling Units face Central Street. Orientation of dwellings in this manner is poor design since it does not engage people and pedestrians travelling along Central Street.
 - 2.9.5 The garages for the proposed Dwelling Units are located in the basement level of the residential structures. The garages for units #1 and 2 face Central Street, exacerbating the unfriendly and stark appearance of the buildings.
 - 2.9.6 Dwellings within the immediately surrounding vicinity of this Project are all oriented with the structures' front elevations and front entrances facing directly onto Central Street.

- 2.9.7 The Site rises from an elevation of approximately 214' at Central Street to over 228' at the rear of the property. This further pronounces the poor and deficient Project design with respect to units #1 and 2. Not only do they face with their backs and with their garages to Central Street, but they result in imposing 3-story structures when viewed from Central Street. This is not what one would normally expect from "cape" style dwellings. The resulting scale with which the Project presents itself to Central Street is entirely inconsistent with the immediately surrounding neighborhood.
- 2.9.8 The Town of Acton's Comprehensive Permit Policy suggests a .25 maximum Floor Area Ratio (FAR). The development as proposed exceeds the .25 FAR.
- 2.10 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.
- 2.11 This Decision has been issued and filed with the Town Clerk within the time frame specified in M.G.L. Chapter 40B, §20-23, and as agreed by the Applicant.

3 GOVERNING LAW & JURISDICTIONAL ELEMENTS

- 3.1 The law governing this Project is the Act, DHCD's Regulations, 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.
- 3.3 Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:
- a) *The applicant must be a public agency, a non-profit organization, or a limited dividend organization. 760 CMR 56.04(1)(a).*

As per MassHousing's findings, "the applicant will be organized as a Limited Dividend Organization and it will meet the general eligibility standards for the NEF Housing Program." Under the 40B Regulations, 760 CMR 56.02, a "Limited Dividend Organization" is "any entity which proposes to sponsor a Project under M.G.L. c.40B, §§20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the Project."

Accordingly, to the extent that Marsh View, LLC. is such an entity which has proposed such a project subject to such an agreement, Marsh View, LLC. is a Limited Dividend Organization.

- b) *The project must be fundable by an authorized subsidizing agency under a low or moderate income housing subsidy program. 760 CMR 56.04(1)(b).*

As per MassHousing's findings, the Project "is eligible under the NEF Housing Subsidy Program and provides 25% of low-income limits for households earning at or below 80% of the Area Median Income."

Accordingly, the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

- c) *The applicant must "control the site" 760 CMR 31.01(1). 760 CMR 56.04(1)(c).*

According to MassHousing's findings, "the Applicant controls the entire 1-acre site under an executed Purchase and Sale Agreement." The P&S is between the owner (Charles D. Micol) and the Applicant (Marsh View, LLC.) and had an anticipated closing date of November 15, 2009. The closing date under the Purchase and Sale Agreement has been extended beyond April 16, 2010, and therefore the Applicant continues to control the Site.

4. BOARD ACTION

At the conclusion of the Board's deliberations on March 10, 2010 a motion was made and seconded seeking approval of the subject Comprehensive Permit. The Board voted one (1) in favor (Kenneth Kozik) and two (2) opposed (Jonathon Wagner and Richard Fallon). Therefore, the motion failed. As a result, this Decision denies the requested Comprehensive Permit for lack of a required majority vote of the Board in favor of the comprehensive permit.

5. BASIS FOR DENIAL

The members voting in the negative believe that the Project does not address legitimate Local Concerns, including without limitation "the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces." See 760 CMR 56.02 and 56.07(3)(c through g). In accordance with the Regulations, 760 CMR 56.07(3)(b)(2), the weight of the Local Concerns is "commensurate with the degree to which the health and safety of occupants or municipal residents is imperiled, the degree to which the natural environment is endangered, the degree to which the design of the site and the proposed housing is seriously deficient, the degree to which additional Open Spaces are critically needed in the municipality, and the degree to which the Local Requirements and Regulations bear a direct and substantial relationship to the protection of such Local Concerns."

In this case, the design of the site and the proposed housing is "seriously deficient" with respect to following matters: (1) height, bulk, and placement of the proposed Project; (2) physical characteristics of the proposed Project; (3) height, bulk, and placement of surrounding structures and improvements; and (4) physical characteristics of the surrounding land. 760 CMR 56.07(3)(e). The Project is also seriously deficient with respect to Open Space, including the "current use of the proposed site and of land adjacent to the proposed site." 760 CMR 56.07(3)(f)(5).

Specifically, the proposed Project – which would add only one affordable unit to the regional housing stock – will cause substantial detrimental impacts to the Project's immediate neighbors and to legitimate Local Concerns. These detrimental impacts include the following:

- The Project will cluster development of much greater density into the midst of an established area of single family homes. While the Central Street area has some multifamily housing, all abutters and the closest proximate housing is single family housing or the occasional 2-family duplex. The large multifamily apartment building several hundred feet down Central Street is set back and hidden and does not change the character of the neighborhood to multifamily.
- The proposed Project will cause a substantial negative impact on one property in particular, i.e. the property at 89 Central Street. Access is through a common easement that does not expressly restrict the scope of the easement to single family use. However, the common sense reality is that the easement has been historically used as access for the property at 89 Central Street and one other single family home. The only reasonable inference is that the easement was drawn with this intent and purpose of in mind - not for shared use with a multifamily development. Despite the developer's best intentions, given the wholesale removal of trees and concentrated development of the Project, putting up fences and other "mitigation" measures does not alter the fact that the single-family property at 89 Central Street is seriously altered for the worse in terms of the physical appearance of immediate surroundings (fences, heavier traffic, parking lot signage, etc.), practical use (shared driveway with 4 other homes) and almost certain diminished financial value. In addition, as a result of the Project this owner may suffer impaired access as well as negative impact on her septic system that is foreseeable if difficult to predict. Weighing the equity of the situation, the addition of a single family affordable unit versus the severe impact on this abutter confirms that the Local Concern outweighs the benefit to the town or region.
- While not as dramatic, the same negative impact will be felt by all abutters and neighboring properties (especially Tuttle Drive residents) because of the insertion of a 4-family Project where a single family dwelling exists now. While the developer has agreed to many mitigation measures in an effort to diminish the visual impact, the result of this Project will be that the neighbors (not just abutters) will now view an area almost totally de-vegetated, an area with a cluster of four homes where normally one is allowed, and an increase in traffic that minimally would be 4 times greater than it is now - all for the addition of a single affordable unit.
- The design of the Project itself is seriously deficient because it (a) is incompatible with the immediate neighborhood; (b) would tower over the small cape with which it would share a driveway; (c) would, from the road, have two back facing units with the imposing appearance of three-story buildings; and (d) would interpose a four-unit Project in the middle of a one-family neighborhood.

The Act sets a standard that affordable housing is a goal which must be assessed in context of the area's Local Concerns. In the particular circumstances of this case, the seriously deficient characteristics of the Project as they relate to legitimate Local Concerns outweigh the regional need for affordable housing. This Project adds one affordable unit to the regional housing stock while essentially devastating the neighboring housing in general and the property at 89 Central Street in particular. While a "stronger showing shall be required on the Local Concern side of the balance where the Housing Need is relatively great than where the Housing Need is not as great," 760 CMR 56.07(b)(3), these legitimate Local Concerns tip the balance in this case where the concerns are legitimate, the adverse effect is significant, the Project would contribute only one unit of affordable housing to the regional affordable housing stock, and therefore the Project

would not make a substantial contribution to meeting regional affordable housing needs. Taken as a whole, the negative impacts of the Project outweigh the one positive benefit. The Project does not protect the environment, promote better site and building design, or preserve Open Spaces. To the contrary, it creates harm in all of these areas. Balancing the weight of the Local Concerns against both the regional housing need and the degree to which the Project addresses the regional housing need, the balance tips decidedly in favor of the Local Concerns in this case.


The Town of Acton in general and the Acton Board of Appeals in particular have embraced all 40B projects previously brought before them. The Board takes seriously the regional need for affordable housing and the responsibility of all communities to help meet that need. The Board has never before denied a 40B project. The Town has (a) a master plan that embraces affordable housing, (b) an approved Housing Production Plan, (c) a policy of promoting affordable housing, (d) both a housing authority and a community housing corporation (created under special home rule legislation) which promote affordable housing in the Town, (e) significant affordable housing projects funded with the Town's Community Preservation Fund, and (f) a proven track record of approving all manner of 40B projects, large and small. Indeed, on the same day that the Board is denying this Project, the Board is approving a comprehensive permit for a 4-unit project proposed by the same principal developer in a nearby location. In contemporaneously approving a comprehensive permit for that project and denying a comprehensive permit for this Project, the Board has distinguished the effect on Local Concerns of the two projects. The design of the Marsh View Project and its adverse effects on Local Concerns is in stark contrast to the approved 40B project at 113 Central Street which is on a hill, abuts an apartment building, and does not share a driveway with an established single family home. The one project is approvable and the other is not; the Board is capable of drawing distinctions between the two; and the Act and the Regulations allow the Board to draw those distinctions where, as here, it is meaningful and important to do so.

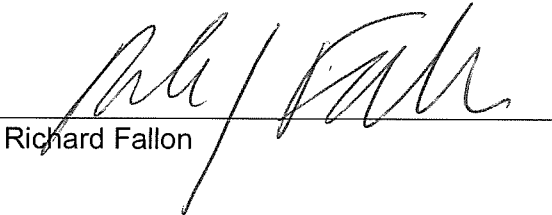
6. APPEALS

The Applicant shall have the right to appeal the Denial of this Comprehensive Permit to the Housing Appeals Committee pursuant to M.G.L., Ch. 40B, S. 22. Should the Housing Appeals Committee find sufficient evidence to overturn this denial, the Board of Appeals respectfully requests that the Housing Appeals Committee include the Conditions and Limitations identified in Exhibit A attached hereto within any comprehensive permit approval decision that permits the construction of the Project. Those Conditions and Limitations are not currently applicable because the Applicant's request for a Comprehensive Permit has been denied.

The Town of Acton Zoning Board of Appeals


Kenneth F. Kozik, Chairman


Jonathan Wagner


Richard Fallon

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 Taylor, Town Clerk

Date

Copies furnished:

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

Building Department
Engineering Department
Planning Department
Police Chief
Municipal Properties
ACHC

Board of Health
Assistant Assessor
Town Manager
Owner
Board of Selectmen
Town Counsel

EXHIBIT A
Proposed Conditions and Limitations for any
Comprehensive Permit Decision Approving Project

The following Waivers, Conditions, Limitations, and Plan Modifications shall apply if and only if (a) an appeal is taken by the Applicant to the Housing Appeals Committee (“HAC”) and (b) the HAC reverses the Board’s denial of the comprehensive permit and orders the issuance of a comprehensive permit for the Project. Otherwise, the Waivers, Conditions, Limitations and Plan Modifications in this Exhibit A shall have no force or effect.

1.1 WAIVERS

1.1.1 The Applicant has requested waivers from the following Zoning Bylaw provisions:

- Section 3.8.1.5 – Common Drives for vehicular and non-vehicular access by way of rights-of-way or easements serving more than one lot.
- Section 5 – Dimensional Regulations. The proposed Project creates four (4) individual residential lots that require waivers for lot area, lot frontage, lot width, and minimum yard setbacks.

1.1.2 Additional waivers requested by the Applicant are:

- Chapter F - Environmental Protection & Town of Acton Wetland Protection Bylaw Rules & Regulations

1.1.3 In the event that the Applicant can not satisfy the Title V requirements as they pertain to the proposed fee simple ownership status and is required to modify the Project to a condominium form of ownership, then a Comprehensive Permit would need to grant the following additional waiver from Zoning Bylaw provision:

- Section 3.3, to allow more than one residential building on a lot. The Project proposes 4 individual residential Dwelling Units.

1.1.4 If and only if ordered by the HAC, the Board grants the foregoing Waivers subject to the Conditions, Limitations and Plan Modifications set forth below.

1.2 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.

1.2.1 Prior to any site clearing or any other pre-construction activities on the Site, the Applicant shall mark the limits of clearing as set forth in this Decision physically on the Site using delineation methodology acceptable to the Conservation Commission.

1.2.2 Prior to the start of construction, staked hay bales and a silt fence shall be installed along the limit-of-work line shown on the Approved Plans. The hay bales and silt fence shall be maintained in functional condition until the Project is sufficiently completed and the vegetation on disturbed areas sufficiently established so that drainage of silt and sedimentation into the wetlands does not become an issue.

- 1.2.3 The Project shall be established and constructed in compliance with Title V and all applicable requirements promulgated by the Acton Board of Health.
- The Applicant's preference is to install a common septic system shared by all four (4) homes (each home consisting of one Dwelling Unit) with the operation and maintenance of this common septic system controlled through a Homeowners Association consisting of the four fee simple lots. Approval of the common septic system and its control through a Homeowners Association shall be subject to all components of Title V 310 CMR 15.400 under the purview of local BOH and DEP. In such circumstances, the Applicant and its successors and assigns shall comply with all conditions set forth herein and in said Title V approval regarding the Homeowners Association.
 - If such approvals as outlined in the preceding paragraph cannot be obtained, the Applicant shall install a common system for all four (4) Dwelling Units with the operation and maintenance of this common septic system controlled through a Condominium Association consisting of all four (4) Dwelling Units. Approval of the common septic system and its operation and maintenance through a Condominium Association shall be subject to all components of Title V 310 CMR 15.400 under the purview of local BOH and DEP. In such circumstances, the Applicant and its successors and assigns shall comply with all Conditions set forth herein regarding the Condominium Documents associated with the creation of the condominium, including, but not limited to, the Master Deed, Condominium Trust, By-laws establishing a Unit Owner's Association, and Rules and Regulations.
- 1.2.4 No Dwelling Unit in the Project shall ever be converted, altered or expanded to add bedrooms. The number of bedrooms per unit shall be clearly identified as three (3) bedrooms per unit in the appropriate legal documents (dependent upon the form of ownership either the Master Deed or the Homeowners Association documents, all hereinafter referred to as the "Ownership Documents," the "Regulatory Agreement" with respect to the Affordable Unit and all deeds for the Dwelling Units). The Ownership Documents may not be amended to increase the number of bedrooms in any Dwelling Unit, or to increase the number of Dwelling Units above 4. This restriction shall be expressly noted on all deeds for all Dwelling Units in perpetuity.
- 1.2.5 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 1.2.6 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.
- 1.2.7 No work on the Site shall begin prior to the issuance of a building permit.
- 1.2.8 The Applicant shall be diligent to ensure that absolutely no construction debris or material from the site enter any of the abutting properties or the Central Street public right-of-way. The Applicant shall be responsible for sweeping, removal of snow, and sanding of the internal roadways permitting access to residents and emergency vehicles during construction and until the Condominium Association or Homeowners Association has been legally established and has assumed said responsibilities.

- 1.2.9 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.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 1.2.13 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 identical to those cited in Section I – Exhibits (above) of this Decision except that they shall be updated in accordance with the requirements of this Decision. Each plan sheet shall be signed by and show the seal of a Registered Professional Engineer, Registered Land Surveyor, Registered Landscape Architect and Registered Professional Architect or some combination of these as appropriate to the data on the sheet. The submission shall in addition include a list of the specific changes made to conform to the requirements of this Decision; this list and the final set of Engineering Drawings and Architectural Plans shall be signed and stamped by the Design Engineer and Project Architect. Upon the Zoning Enforcement Officer finding that the Engineering Drawings and Architectural Plans conform with this Decision, he shall mark “Approved” on the final set of Engineering Drawings and Architectural Plans which shall thereupon constitute the final “Approved Plans” under this Decision and shall be filed with the records of the Board.
- 1.2.14 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.
- 1.2.15 By granting waivers from the local bylaws and regulations identified above, it is the intention of this Comprehensive Permit to permit construction of the Project as shown on the final Approved Plans. If, in reviewing the Applicant’s building permit application(s), the Zoning Enforcement Officer determines that any additional waiver from local zoning,

wetlands, health, or subdivision regulations is necessary to permit construction to proceed as shown on the final Approved Plans, the Zoning Enforcement Officer shall proceed as follows: (a) any matter of de minimis nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature, including those having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver therefrom. Once the Project has been constructed in accordance with the Approved Plans, neither this Comprehensive Permit nor the Waivers set forth herein shall authorize any further waiver of the Acton Zoning Bylaw or other local by-laws, rules and regulations; and any future modification of any building, structure or Dwelling Unit constructed within the Project thereafter shall conform to the Acton Zoning Bylaw and other local by-laws, rules and regulations.

- 1.2.16 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.
- 1.2.17 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.
- 1.2.18 This Decision shall promptly be recorded at the Middlesex South District Registry of Deeds or the Middlesex Registry District of the Land Court, as applicable, along with Sheet 3 (the Record 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.
- 1.2.19 The Applicant shall comply with the State Building Code.
- 1.2.20 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 1.2.21 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.
- 1.2.22 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 January 6, 2010 which shall also be included on the submitted "As-Built Plan". Each plan sheet shall be signed and show the seal of a Registered Professional Engineer, Registered Land Surveyor or professional Landscape Architect, certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit.
- 1.2.23 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.

- 1.2.24 All construction vehicles shall be parked on the Site and off of Central Street at all times.
- 1.2.25 The Project shall be limited to four (4) Dwelling Units that shall contain three (3) bedrooms each.
- 1.2.26 The Applicant shall obtain approvals from the Engineering Department, Police Chief, and Fire Chief on the street address of each Dwelling Unit.
- 1.2.27 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.
- 1.2.28 As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the roadway, sidewalks, parking areas, common areas, drainage facilities, utilities, landscaping, recreational area, and any other specific infrastructure shown on the final Approved Plans (the "Infrastructure"), the release of occupancy permits for all Dwelling Units and the sale of all Dwelling Units in the development shall be subject to the following restrictions:
 - (a) No occupancy permit for any Dwelling Unit shall be issued, and no sale of any Dwelling Unit shall be permitted, until: (1) the base and binder course for the driveway and parking areas shown on the Plan has been installed; (2) all Infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said Project, provided however, that the final coat of pavement for the driveway and parking areas need not be installed in order to obtain occupancy permits for the first three (3) Dwelling Units constructed; and (3) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Zoning Enforcement Officer. The roadway, common parking areas, individual driveways and all remaining Infrastructure must be fully completed and installed prior to the issuance of a certificate of occupancy for the 4th and final Dwelling Unit.
 - (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.
- 1.2.29 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. The Condominium Association or Homeowners

Association Bylaws shall include an adequate plan for maintenance of the stormwater management system. The Applicant shall submit said plan to the satisfaction of the Zoning Enforcement Officer prior to the issuance of the first building permit.

- 1.2.30 The “Declaration of Common Driveway Covenant Shared Maintenance Agreement Concerning the Sewage Disposal System, and Restrictive Covenants and Conditions for Marsh View, Acton, Massachusetts” shall be finalized to the satisfaction of the Zoning Enforcement Officer and Town Counsel prior to the issuance of the 1st Certificate of Occupancy.
- 1.2.31 Prior to any building permit being issued for the subject property, the Applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 1.2.32 Prior to any Certificate of Occupancy being approved or issued for the subject use, the Applicant shall demonstrate compliance with all conditions and comments imposed by the Board through this Comprehensive Permit.
- 1.2.33 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines, which expressly preclude any post-development increase in runoff from the Site.
- 1.2.34 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant’s successors and assigns for as long as the Project and the use of the Site does not strictly and fully conform to the requirements of the Acton Zoning Bylaw; and reference to these conditions shall be incorporated in the Ownership Documents for the Project and for any Dwelling Unit in the Project.
- 1.2.35 At least seven days prior to the start of construction, the Applicant shall provide written notice to the Board and to the residential abutters of the Project of the anticipated construction start date and the anticipated construction schedule.

1.3 CONDITIONS - LEGAL REQUIREMENTS

- 1.3.1 As applicable under Section 1.2.3, 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.

- 1.3.2 Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Comprehensive Permit. This Comprehensive Permit may not be transferred to a person other than the Applicant without the written approval of the Board and the execution of any instruments or documents such as 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.
- 1.3.3 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit. All Condominium Documents or Homeownership Documents, as applicable, and all deeds or unit deeds to Dwelling Units in the Project shall reference and be subject to this Comprehensive Permit Decision. The Ownership Documents shall be recorded at the Middlesex South District Registry of Deeds and filed with the Middlesex South District Land Court Registration office as applicable. Proof of recording and filing, as applicable, shall be forwarded to the Zoning Enforcement Officer prior to issuance of any occupancy permit.
- 1.3.4 In setting the percentages of beneficial interest in the common areas in the Condominium Documents or Homeownership Documents, as applicable, the Applicant shall ensure that the percentages assigned to the Affordable Unit reflect the fair market value of the Affordable Unit, taking into account the affordable housing restrictions that encumber said Unit.
- 1.3.5 The roadways, utilities, drainage systems, and all other Infrastructure shown in the Approved Plan shall remain private. The Town of Acton shall not have, now or ever, any legal responsibility for the operation or maintenance of this Infrastructure, including but not limited to snow removal and trash collection.
- 1.3.6 The Applicant shall ensure that title insurance be made available to purchasers of all lots, Dwelling Units or condominium units in the Project at the purchasers' expense. If title insurance that complies with this condition ceases to be available, that lack of availability shall constitute a project change and the provisions of 760 CMR 56.05(11) shall be applied including prompt notification of the Board.

1.4 CONDITIONS - AFFORDABILITY REQUIREMENTS

To the extent permitted by the Subsidizing Agency, the following conditions shall apply. The Applicant shall support the Town in obtaining the Subsidizing Agency's approval of the following conditions:

- 1.4.1 The Certificate of Occupancy for the Affordable Unit shall be issued prior to any Certificate of Occupancy being issued for the fourth (4th) and final Dwelling Unit.
- 1.4.2 Monitoring Agent: The Monitoring Agent shall be designated by the Subsidizing Agency or the applicable 40B rules and regulations pertaining thereto (the "Monitoring Agent").
- 1.4.3 Affordable Unit: To the extent permitted by the Subsidizing Agency: One (1) of the Dwelling Units within the Project shall be designated as an Affordable Unit and shall be

sold to a household earning no more than 80% of the Area Median Income as published by the Department of Housing and Urban Development (HUD) for the Boston Metropolitan Primary Statistical Area (BMPSA). The Affordable Unit, as designated on the Approved Plan or within this decision, shall contain three bedrooms.

- 1.4.4 Sale Price: The maximum sale price for the Affordable Unit shall be reviewed and approved by the Subsidizing Agency at the time of the lottery for selection of buyers of the Affordable Unit. Subject to the approval of the Subsidizing Agency, the sale price for the Affordable Unit shall be set to be affordable to a household earning 70% of the Area Median Income, adjusted for household size. The applicable household size is four (4) persons for the 3-bedroom unit. The maximum sale price for the Affordable Unit shall be reviewed and approved by the Monitoring Agent. Any modification or deviation from the designation of the affordable unit as originally proposed and reviewed by the Subsidizing Agency shall be subject to approval by the Subsidizing Agency.
- 1.4.5 Selection of Buyer for Affordable Unit: The Applicant shall obtain the Subsidizing Agency's and Monitoring Agent's approval of a buyer selection plan for the sale of the Affordable Unit prior to conducting the buyer selection process for the Affordable Unit. A buyer shall be selected through a fair lottery process (the "Lottery").
- 1.4.5.1 To the maximum extent permitted by law and by the Subsidizing Agency, first preference for the purchase of the Affordable Unit 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. This place is not necessarily the same as the person's voting residence or legal residence.
 - (ii) An employee of the Town of Acton, the Acton Public Schools, the Acton--Borborough Regional School District, or the Acton Water District, or a person who is currently privately or publicly employed within the Town of Acton.
- 1.4.5.2 Purchasers whose selection is based on any of the above "Acton Connection" preference criteria shall continually meet at least one of these criteria from the time of selection to the time of closing on the purchase of an affordable unit. Such a purchaser's failure to meet at least one of these criteria during this time period shall be a cause for that purchaser's disqualification and selection of a new purchaser in accordance with the procedures of the Lottery.
- 1.4.5.3 Within a pool of potential buyers, preference shall be given to households requiring the total number of bedrooms in the Unit with at least one occupant and no more than two occupants per bedroom.

- 1.4.5.4 The selection of purchasers for the Affordable Unit, including the administration of the Lottery, shall be administered by the Monitoring Agent and entirely funded by the Applicant. The Lottery shall be implemented pursuant to the Monitoring Agent's rules and regulations and the Monitoring Agent shall oversee the lottery.
- 1.4.5.5 Income eligibility shall be governed by the rules and regulations of the Monitoring Agent, 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.
- 1.4.5.6 Disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Monitoring Agent. A party aggrieved by a qualification-related decision of the Monitoring Agent may appeal the decision to the Board for a final determination.
- 1.4.5.7 The provisions of this section are intended to complement and not to override or supersede any rules, regulations, or requirements of the Department of Housing and Community Development, 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.

1.4.6 Perpetual Affordability Restriction: Prior to the issuance of any building permits, a Regulatory Agreement, in a form acceptable to the Subsidizing Agency and Monitoring Agent shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) sale and resale of 25% of the units in the Project shall be subject to a Deed Rider, in a form acceptable to the Subsidizing Agency and Monitoring Agent, 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 Applicant shall support the Town's efforts to obtain Subsidizing Agency and Monitoring Agent approval of the Regulatory Agreement.

The Deed Rider attached to the Regulatory Agreement 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. Chapter 184, §§31-33.

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 Unit so long as the Project is not in compliance with the Town of Acton's zoning bylaw, so that the unit continues 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.

- 1.4.7 Profit Cap: To conform to the intent of the Act that profits from the Project be reasonable and limited, the Applicant shall be limited to a profit cap of twenty percent (20%) of total development costs of the Project, as defined by applicable law, rules, and regulations, by DHCD guidelines, by the program requirements of the Subsidizing Agency and by the Monitoring Agreement (the "Profit Cap"). In accordance with 760 CMR 56.04(8), the Subsidizing Agency shall be responsible for the monitoring and enforcement of the Profit Cap limitations, subject to the Subsidizing Agency's right to delegate such functions as set forth in 760 CMR 56.02.
- 1.4.8 Financial Information: The Applicant shall forward to the Zoning Enforcement Officer copies of all correspondence, documents, and information by and between the Applicant and the Subsidizing Agency or the Monitoring Agent.
- 1.4.9 The Market Rate Units and the Affordable Unit shall be indistinguishable from the exterior. The Affordable Unit shall be the unit designated as Unit #1 on the Approved Plans. In addition, the Affordable Unit 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.

1.5 LIMITATIONS

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

- 1.5.1 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.
- 1.5.2 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.
- 1.5.3 This Comprehensive Permit applies only to the Site identified in this decision and to the proposed development as shown on the Plan.
- 1.5.4 Except as set forth herein, other 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.
- 1.5.5 This Decision permits the construction, use, and occupancy of four (4) 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.

- 1.5.6 If construction authorized by a comprehensive permit has not begun within three 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.
- 1.5.7 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.
- 1.5.8 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.