

TOWN OF WELLESLEY



REPORT TO THE SPECIAL TOWN MEETING

**MONDAY, MAY 13, 2019
7:00 P.M.**

**at the
MIDDLE SCHOOL AUDITORIUM
WELLESLEY MIDDLE SCHOOL**

**by the
ADVISORY COMMITTEE**

Please read this Report and bring it with you to Town Meeting.

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TOWN OF WELLESLEY



ADVISORY COMMITTEE LETTER SPECIAL TOWN MEETING May 13, 2019, 7:00 p.m. Wellesley Middle School

TERM ENDS 2019

Jane Andrews
Rose Mary Donahue
Dave Murphy
Thomas Skelly, Chair
Andrea Ward, Secretary

TERM ENDS 2020

Todd Cook, Vice Chair
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TERM ENDS 2021

Julie Bryan
Bob Furlong
Jeff Levitan
Bill Maynard
Mary Scanlon

To the Town Meeting Members of the Town of Wellesley:

April 29, 2019

A Special Town Meeting (STM) will convene on Monday, May 13, 2019, at 7:00 pm in the Wellesley Middle School Auditorium. The primary focus of this STM will be Zoning Bylaw and Map changes necessary to advance several residential development projects in Town. In addition, the Board of Selectmen and the Board of Health will seek additional funding for Fiscal Year 2020 (FY20) for mental health and social services.

The *Advisory Report* following this letter provides background information on all the articles and related motions coming before this STM. However, it provides recommendations only with respect to the two non-zoning articles that are on the STM warrant: the increased mental health/social services funding (Article 9) and the change in posting location for Notice of Town Meeting (Article 10). The Planning Board is scheduled to vote on the zoning-related articles (Articles 2 through 8) at its May 6 meeting; Advisory in turn will vote on them at its May 8 meeting, and transmit its considerations and recommendations to Town Meeting as soon as possible thereafter.

A word about background materials: A dedicated "Special Town Meeting" tab containing material about and information underlying the articles on this STM warrant can be found on the Town website's home page. <https://www.wellesleyma.gov/1326/Special-Town-Meeting>. Citations are made throughout this *Advisory Report* to documents contained there.

Zoning Amendments Related to Wellesley Office Park Project

Articles 2 and 3 relate to the proposed project at the 26-acre Wellesley Office Park site on William Street, located at the intersection of Routes 9 and 128/95. For the past year, the Town has been working with John Hancock, the current owner of the site, on a development agreement that would allow a high-density mixed-use residential project on the site under the terms of the state's Smart Growth Zoning provisions, commonly known as Chapter 40R. Phase I of the project will entail replacing one of the eight office buildings on the site with a rental apartment community containing 345-350 units, 25% of which will be designated as affordable under state law. Town Meeting's adoption of the Chapter 40R provisions into the Town's Zoning Bylaw will, in conjunction with the development agreement reached between the Town and John Hancock, result in several benefits for the Town. First, it will advance the Town's goals of increasing the diversity and affordability of housing. All of the planned 345-350 rental

units (not just the 25% designated as affordable) will count towards the Town's Subsidized Housing Inventory (SHI), thereby reaching the 10% statutory minimum that will allow the Town, not developers acting under the provisions of the state's Chapter 40B/comprehensive permit provisions, to control the location and scope of future affordable housing development. Second, the Town is expected to realize significant financial benefits from the Phase I development, including (i) a series of incentive and bonus payments from the state under Chapter 40R, estimated to total \$1.3 million; (ii) building permit fees of approximately \$1.7 million; and (iii) net positive annual property tax and other revenues on the order of \$900,000. The development agreement provides that the Town will use some of the Chapter 40R incentive funds (up to a maximum of \$500,000) to reimburse John Hancock for a portion of specified infrastructure improvements (e.g., new water and sewer lines).

The development agreement and zoning provisions contemplate and set limits on future phases of development, including an additional 250 rental apartment units, a limited service hotel, small-scale retail establishments, and office space. While the development of the residential units is allowed "by-right" and is subject only to limited review under the specific provisions of Chapter 40R, any non-residential development on the site will go through the Town's ordinary Project of Significant Impact (PSI) review and other relevant review processes. Please go to <https://wellesleyma.gov/1326/Special-Town-Meeting-Documents> to find a variety of background materials about this project, including the executed development agreement, the proposed zoning provisions, presentations made to various Town boards and committees, analyses of infrastructure, traffic and fiscal impacts (including impacts on schools and other Town services), and a description of environmental strategies. For more information on the regulatory provisions governing affordable housing and the Town's current status/goals, please see <https://www.wellesleyma.gov/987/Housing-Production-Plan> (Housing Production Plan) and <https://www.wellesleyma.gov/893/Chapter-40B-Development-Projects> (Chapter 40B information).

Zoning Amendments Related to Delanson Circle and Weston Road Projects

Articles 4, 5, 6 & 7 facilitate the development of two multi-family condominium-style residential projects – a 35-unit project located at Delanson Circle/12-18 Hollis Street and a 25-unit project at 140/148 Weston Road. Both projects were originally proposed as significantly larger Chapter 40B projects (90 units at Delanson Circle and 55 units at 140/148 Weston Road) and both projects received preliminary approval from the state. See <https://www.wellesleyma.gov/893/Chapter-40B-Development-Projects> for more information on the original proposals. The Town has worked with the developer and the neighbors over the past eight months to reach agreement on the redesigned lower density projects. In order for the projects to proceed, Town Meeting must approve a series of Zoning Bylaw changes, including amending the Town's current Residential Incentive Overlay (RIO) District to enable its use in Single Residence and General Residence Districts and on smaller parcels than currently allowed. Additional zoning changes include (1) amending the Yard Regulations to allow relief from frontage requirements for projects in the RIO District and (2) amending the Zoning Map to overlay the RIO District onto the project sites and to rezone included parcels currently zoned (or split-zoned) as Single Residence into the General Residence District. Please go to <https://wellesleyma.gov/1326/Special-Town-Meeting-Documents> to find background materials on these projects, including the development agreements, project narratives and plans, and the proposed zoning changes.

Additional Funding for Mental Health and Social Services

Article 9 seeks an additional \$175,000 in FY20 funding for mental health and social services. In response to questions raised by the Advisory Committee last year about existing mental health/social services capabilities and the coordination between Town departments providing

such services, as well as discussions during the 2018 Annual Town Meeting, an interdepartmental Social Services and Mental Health Committee was established last spring. The committee issued its report in January 2019, and the Board of Selectmen (BOS) and the Board of Health (BOH) now seek to implement several of the report's recommendations, including: (1) hiring a full-time Licensed Independent Clinical Social Worker to directly address the increasing number and complexity of cases being seen in Town, as well as to help coordinate existing Town social services (\$110,000, including benefits); (2) contracting with the Town of Weston for a shared law enforcement clinical support position that can assist the police departments of the two towns in responding to the scene of a mental/behavioral health crisis and following up as needed with affected individuals and families (\$40,000); and (3) adding \$25,000 to the Town's contract with Human Relations Services, Inc. to allow for increased mental and behavioral health care services to Town residents (approximately 450 additional counseling hours per year). Please go to <https://wellesleyma.gov/1326/Special-Town-Meeting-Documents> to read a copy of the Report of the Social Services and Mental Health Committee and view the presentation provided by the BOS/BOH to Advisory on April 8, 2019.

Other Matters

The remaining two articles on the warrant are primarily housekeeping in nature. Article 8 will amend the list of zoning districts in Section 1 of the Zoning Bylaw to include the Smart Growth districts proposed under Article 2, as well as to add another district that was established by a prior vote of Annual Town Meeting but never added to the list. Article 10 will amend the General Bylaws to change one of the two required posting sites for Notice of Town Meeting from Wellesley Square to the Police Station; this is the corollary to the change in posting location for Notice of Elections approved several weeks ago by Annual Town Meeting under Article 35.

I am thankful to my colleagues on the Advisory Committee for their work, during and on the heels of the Annual Town Meeting, preparing for this STM and producing this *Advisory Report*. I also appreciate the citizens who shared their views and raised questions, whether by attending Advisory Committee meetings and the Public Hearing for this STM or through emails. Finally, we should all be grateful to the Town Board members and Town staff who have collaborated tirelessly over the past year in an effort to ensure that the projects underlying this STM advance the long-term interests of the Town.

Sincerely,

Tom Skelly, Chair
Advisory Committee

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ARTICLE 1. To see if the Town will vote to choose a Moderator to preside over said meeting and to receive reports of town officers, boards and committees, including the Report of the Advisory Committee; or take any other action in relation thereto.

(Board of Selectmen)

Advisory expects no motion under this Article.

ARTICLE 2. To see if the Town will vote to amend the Zoning Bylaw to adopt two new sections; Section XIVJ (14J) Smart Growth Overlay Districts and Section XIVJ.1. (14J.1) Wellesley Park Smart Growth Overlay District, or take any other action in relation thereto.

(Board of Selectmen)

Through this Article, the Board of Selectmen seeks to amend the Zoning Bylaw to add two new sections, Section 14J (Smart Growth Overlay Districts) and Section 14J.1 (Wellesley Park Smart Growth Overlay District), that will facilitate the proposed redevelopment of the Wellesley Office Park site as a high-density mixed-used residential project.

Introduction

Wellesley Office Park consists of a 26-acre site on William Street, at the intersection of Routes 9 and 128/95, bordered on the northeast by the Charles River. A map of the existing site is included in Appendix A of this *Advisory Report*. The site consists of eight lots, which currently contain office buildings that were developed between 1961 and 1984. Last year, John Hancock Life Insurance Company (John Hancock), the owner of Wellesley Office Park, approached the Town about redeveloping the property under the provisions of Massachusetts General Law (M.G.L.) Chapter 40R, Smart Growth Zoning and Housing Production. John Hancock's concept proposed the long-term, phased redevelopment of the site to include high-density residential housing, as well as the possibility of small-scale retail establishments, a limited service hotel, and new office space. As explained more fully below, the use of Chapter 40R was identified as offering potential benefits to both John Hancock (in the form of by-right development and expedited review for the housing elements of the project) and the Town (in the form of state incentive and bonus payments). Moreover, as both parties recognized, the proposed development of a 345-350 unit rental apartment community (of which 25% of the units would be affordable) as an initial phase of the redevelopment would enable the Town to fully satisfy its current deficit in state-mandated affordable housing units, thereby allowing the Town greater control over the location and scope of future developments proposed under Chapter 40B, the state's affordable housing statute.

Context: Affordable Housing

The state regulatory system governing affordable housing provides important background for this project. More detailed information is available via the Town website. Please see <https://wellesleyma.gov/DocumentCenter/View/14359/Town-of-Wellesley-Housing-Production-Plan> (the Town's Housing Production Plan); <https://wellesleyma.gov/893/Chapter-40B-Development-Projects> (materials on Chapter 40B); and <https://wellesleyma.gov/1298/Wellesley-Park-40R-District> (materials on Chapter 40R). Below is a brief overview, as relevant for this Special Town Meeting:

Chapter 40B

- Chapter 40B is a state law that encourages low- and moderate-income housing development by lifting local zoning restrictions. The law establishes a statewide goal that at least 10% of the housing units in every city and town will be deed-restricted affordable housing.

- At present, the Town's Subsidized Housing Inventory (SHI) shows that only 6.3% (or 575) of Wellesley's total housing units (9,090) are affordable. This leaves the Town with a shortfall of 334 affordable units from the state's 10% minimum.
- In order to facilitate the construction of low- and moderate-income housing, Chapter 40B authorizes local review boards (in Wellesley, the Zoning Board of Appeals (ZBA)) to grant comprehensive permits – covering all approvals required under local bylaws and regulations – to pre-qualified developers (i.e., those who have received project eligibility determinations from a state subsidizing agency). For Towns like Wellesley that fall below the 10% state minimum (and cannot demonstrate compliance with certain other criteria, like annual housing production), Chapter 40B allows for all local zoning provisions to be waived in order to meet the local housing need, and sets strict timelines for local review to avoid perceived delays to developers' proposals to construct affordable housing. While local review boards like the ZBA work to factor in local considerations like public health and safety, environmental resources, traffic, or design, Chapter 40B tips the balance in favor of the developer insofar as any conditions imposed by the local review board cannot render the project "uneconomic," i.e., impossible to proceed and still realize a reasonable return within the time limits set by the state subsidizing agency.
- There are currently five projects seeking comprehensive permits from the ZBA (two are earlier iterations of the projects underlying Articles 4-7 of this Town Meeting) and one other seeking preliminary site eligibility from a state subsidizing agency.

Housing Production Plan

- In recognition of all the foregoing, the Town worked during 2018 to produce a Housing Production Plan (HPP). The Board of Selectmen (BOS) and the Planning Board adopted the HPP in September 2018 and the state Department of Housing and Community Development (DHCD) approved it in October 2018. The HPP contains a series of goals with respect to increasing the Town's supply of affordable and mixed-income housing, including, as relevant here, promoting the redevelopment of office parks to create desirable mixed-income and mixed-use neighborhoods (Goal 5). The HPP further outlined a number of housing development strategies to achieve these goals, including zoning amendments that would facilitate the redevelopment of land in the Administrative and Professional (AP) District near Routes 9 and 128/95. Indeed, the HPP specifically discusses the possibility of creating a Chapter 40R overlay district on the Wellesley Office Park site and notes that multi-family apartments could work well within the Route 9/AP District.

Chapter 40R

- Chapter 40R is a state law enacted in 2004 to encourage "smart growth" higher density housing development in eligible locations, such as those with substantial transit access or in areas of concentrated development. Chapter 40R contains a number of requirements:
 - There is a minimum required density for residential development depending on the type of housing (for multi-family housing, there must be 20 units/acre).
 - At least 20 percent of the housing units must be affordable.
 - The development of the housing units must be allowed by-right, subject only to Site Plan Review for compliance with the Chapter 40R bylaw and design standards.
 - The Town must demonstrate that the infrastructure is adequate or may be practicably upgraded to support the project.
- Chapter 40R allows mixed-use development, with the non-housing components of a project subject to ordinary Town permitting and review processes. Chapter 40R also

provides for cash incentive payments (once a 40R district has been approved by Town Meeting, DHCD and the Attorney General) and bonus payments (once a building permit has been issued for the housing units).

Process: Spring 2018-Present

Town staff from a number of departments (including the Selectmen's Office, Planning Department, Department of Public Works, School Department, Municipal Light Plant, Police Department, Fire Department, and Health Department) as well as representatives of various appointed and elected boards have been working with John Hancock, Town Counsel and outside experts over the past year to explore a host of issues related to the proposed redevelopment. This Town Development Review Team (TDRT) sought to examine infrastructure adequacy; traffic issues; fiscal impacts, such as net tax revenue changes, state incentive/bonus payments, and potential increases in Town service costs (e.g., Schools, Police, Fire); environmental considerations; and zoning requirements. The goal of this TDRT was to produce a development agreement and underlying zoning provisions acceptable to the Town, John Hancock and state regulators.

During this process, reports and analyses on different topics related to the Wellesley Office Park redevelopment have been produced and made available for review. These documents can be found under the Special Town Meeting tab on the Town website. See <https://wellesleyma.gov/1326/Special-Town-Meeting>. Specifically, these documents include:

- Infrastructure adequacy. See <https://wellesleyma.gov/DocumentCenter/View/14134/Attachment-7-1---Infrastructure-Certification>.
- Infrastructure cost estimates. See <https://wellesleyma.gov/DocumentCenter/View/14653/Infrastructure-Cost-Estimates---Stantec---2-25-19>
- Estimated power and gas loads. See <https://wellesleyma.gov/DocumentCenter/View/14652/Estimated-Power-Loads---WBA---12-14-18> and <https://wellesleyma.gov/DocumentCenter/View/14658/Estimated-Gas-Loads---WBA---12-14-18>.
- Traffic impacts. See <https://wellesleyma.gov/DocumentCenter/View/14654/Transportation-Impact-Assessment---Vanasse-and-Associates---3-21-19> and <https://wellesleyma.gov/DocumentCenter/View/14657/Phase-I-Traffic-Volume-Comparison---11-26-18>.
- Fiscal impacts. See <https://wellesleyma.gov/DocumentCenter/View/14656/Fiscal-Impact-Analysis---Fougere-Planning-and-Development---1-17-19>.

Town boards and committees, including the BOS and Planning Board, have discussed the project at a number of their regularly scheduled public meetings over the past nine months. In addition, both the BOS (December 3, 2018 and January 28, 2019) and the Planning Board (April 10, 2019 and May 6, 2019) held public hearings on the proposed zoning changes. The Advisory Committee received an overview presentation about the Wellesley Office Park project on November 7, 2018, an update on February 6, 2019 and another presentation on March 27, 2019. Advisory also held a public hearing on the warrant articles for this STM on April 11, 2019, at which several residents spoke regarding the proposed redevelopment.

As required under Chapter 40R, the Town submitted an application to DHCD in February seeking a preliminary determination of eligibility concerning the proposed Smart Growth zoning districts. See <https://wellesleyma.gov/DocumentCenter/View/14144/40R-District-Application-Prelim-Determination-of-Eligibility>. DHCD provided some comments in early April. Those

comments have been incorporated into the proposed zoning language and resubmitted to DHCD. The Town understands from DHCD that the formal letter of eligibility, which is necessary for Town Meeting to proceed with its consideration of the new zoning provisions, is forthcoming.

Development Agreement

On April 9, 2019, the BOS, acting on behalf of the Town, entered into a development agreement (Agreement) with John Hancock regarding the Wellesley Office Park site. The executed Agreement is reprinted in Appendix A of this *Advisory Report*. The full set of exhibits to the Agreement can be found online at <https://wellesleyma.gov/DocumentCenter/View/14957/WOP--Development-Agreement-w-Exhibits-Executed?bidId=>. The Agreement is contingent upon Town Meeting's approval of the underlying zoning provisions. Although Town Meeting is not required to formally approve the Agreement, Town Meeting's consideration of the proposed zoning provisions will be informed by the terms of the Agreement.

Key aspects of the Agreement include:

- Phase I of the project will consist of the demolition of the office building at 40 William Street and construction of a 345-350 unit residential apartment building and parking garage, along with limited accessory retail space, landscaping and associated site improvements. Appendix A of this *Advisory Report* includes a depiction of Phase I.
- Future phases of redevelopment are anticipated to require razing additional office buildings on the site, which may be replaced by a mix of uses, potentially including 250 units of additional rental housing, a limited service hotel, additional accessory retail, and/or new office space.
- All residential housing units developed at the site (up to the maximum 600 allowed under the proposed zoning bylaw) will be rental housing, and no less than 25% of those will be affordable units. This ensures that all housing units developed at the site can count towards the Town's SHI.
- The Agreement runs with the land; all future owners of the site or any portion thereof are bound by the Agreement.
- New municipal water and sewer lines will be constructed by John Hancock prior to the issuance of a final certificate of occupancy (CO) for the Phase I building. The Town will reimburse John Hancock for 50% of the actual cost of constructing the water and sewer lines, up to a maximum of \$500,000. The Town is not required to reimburse John Hancock unless and until it receives the expected Chapter 40R payments from the state.
- John Hancock will construct a new sewer pump station at its sole expense prior to issuance of the Phase I CO, and will be responsible for all future maintenance and operating costs.
- John Hancock will make minor traffic improvements along Route 9 (e.g., restriping on Frontage Road, an improved island on William Street, and other pedestrian/safety improvements) prior to issuance of the Phase I CO.
- John Hancock will complete and make a 25% design submission to the state Department of Transportation (MassDOT) – again, prior to issuance of a final CO for the Phase I building – for additional improvements to the William Street/Frontage Road/Route 9 intersection, including the addition of a right-turn slip-lane from William Street to the I-95 northbound on-ramp and any associated roadway, traffic control or related improvements.
- John Hancock will study traffic impacts and implement additional traffic mitigation measures for all subsequent phases of development.
- John Hancock will pay for the installation of communication equipment, as specified by the Police and Fire Departments, at the Phase I building, and in any future new building containing five or more stories.

- John Hancock agrees to diligently pursue and implement, to the extent practicable, a variety of specified environmental strategies for Phase I and future phases. See <https://wellesleyma.gov/DocumentCenter/View/14655/Environmental-and-Sustainability-Strategies---2-28-19>.
- John Hancock will expeditiously apply for site plan review for the Phase I multi-family project after the zoning provisions have been approved by Town Meeting, DHCD and the Attorney General.

Proposed Smart Growth Zoning Provisions

As noted above, the Agreement is contingent on Town Meeting's adoption (and ultimate approval by DHCD and the Attorney General) of the two new Chapter 40R districts into the Zoning Bylaw: the umbrella or enabling "Smart Growth Overlay Districts" provision (Section 14J) and the specific "Wellesley Park Smart Growth Overlay District" (Section 14J.1) that will govern this 26-acre site. The two provisions are reprinted in Appendix A to this *Advisory Report*. If Town Meeting adopts Section 14J, the Town can in the future consider creating additional specific Smart Growth Overlay Districts elsewhere in Town, assuming any such project could meet the minimum regulatory requirements.

Like other overlay districts that already exist in the Town's Zoning Bylaw, the Wellesley Park Smart Growth Overlay District will be added to, but will not replace, the existing zoning at the site. The Wellesley Office Park site will remain within the Administrative and Professional District, but the provisions of the new overlay district are necessary to allow the proposed redevelopment to occur.

The Wellesley Park Smart Growth Overlay District complies with the requirements of Chapter 40R insofar as:

- The site is an eligible location, in an "Area of Concentrated Development."
- The infrastructure may be practicably upgraded to serve the proposed housing density.
- The district satisfies the required minimum density for multi-family housing development (20 units per acre): The 26.55 acre site requires that at least 530 units be permitted by-right; the bylaw allows for 600 units. See Section 14J.1(D)(1).
- The district satisfies the minimum 20% affordability requirement, insofar as the bylaw requires that 25% of all units be affordable. See Section 14J(K)(1).
- The district size does not exceed 15% of the Town's land area: It is 0.4% of Wellesley's total land area.
- The district allows residential development by-right, subject to the specific Site Plan Review provisions laid out in the bylaw. Note that by-right development of non-residential uses is not required under Chapter 40R, and the bylaw provides that certain potential uses at the site (e.g., restaurants in excess of 5,000 square feet, assisted elderly housing, independent elderly housing, nursing homes and skilled nursing facilities, offices and office-high tech, child care and hotels) are all subject to the Town's existing Project of Significant Impact special permit process. See Section 14J.1(C)(2). The Town's existing design guidelines also continue to apply under the new overlay zoning. See Section 14J(E)(5)(b).

Additional features of the new bylaw include:

- Limits on overall density of different uses allowed within the district, e.g., 600 total multi-family dwelling units; 19,500 square feet of total small-scale retail establishments; 700,000 square feet of total office and office-high tech space; and 175 total hotel rooms.
- Limits on the total allowable new non-residential uses at the site.
- Maximum building height of 85 feet (compared to 71.6 feet for tallest existing building), and 575 feet maximum aggregate height of all buildings in the district.

- Minimum required and maximum allowable parking per type of use, subject to modification by the ZBA upon certain findings.

Fiscal Impact Analysis

John Hancock commissioned a Fiscal Impact Analysis to answer questions about the financial benefits and costs that the Town might incur as a result of the proposed project. The report was completed in January and can be found at

<https://wellesleyma.gov/DocumentCenter/View/14656/Fiscal-Impact-Analysis---Fougere-Planning-and-Development---1-17-19>. The fiscal analysis, as well as further information provided by Town staff, indicates that:

- The Town should receive an estimated \$1,340,000 in Chapter 40R incentive and bonus payments for the Phase I 350-unit apartment complex, based on current DHCD payment scales. Of that total, \$350,000 would be expected as an incentive payment following approval of the Chapter 40R zoning districts, and an additional \$990,000 would be expected as bonus payments upon issuance of the building permit for Phase I.
- The Town will be required to use up to a maximum of \$500,000 from the Phase I 40R incentive/bonus payments to reimburse John Hancock for 50% of the estimated costs that will be incurred for the new water and sewer lines.
- The Town could expect an additional \$1 million in combined incentive and bonus payments from the future development of a 250-unit apartment building.
- The Town should receive an estimated \$1.7 million in building permit fees for Phase I.
- The Phase I development should generate annually about \$1.2 million in property taxes and about \$200,000 in additional income (e.g., motor vehicle excise taxes and Community Preservation Act (CPA) surcharges), resulting in gross revenues of \$1.4 million and a net gain (when existing property tax revenues for the redeveloped building are taken into account) of about \$1.1 million.
- The Town will incur additional costs as a result of the Phase 1 project (e.g., Police, Fire, Schools). The fiscal impact analysis, which included data review as well as discussions with Town officials including the Police Chief, Fire Chief, and Superintendent of Schools, projects that Phase I will result in an additional annual 134 Police calls and 59 Fire calls, as well as an increase of 65 children to the Town's public schools (36 in grades K-5; 13 in grades 6-8; and 16 in grades 9-12). The fiscal impact analysis projects associated annual costs of approximately \$500,000 attributable to these (and other) incremental Phase I municipal services, which would include hiring new police officers, firefighters and teachers, as well as providing school bus services to the new apartment building.
- After subtracting the cost of the incremental municipal services from the projected gross revenues, Phase I is expected to generate a net positive to the Town of about \$900,000 annually.
- Future potential phases of redevelopment are also projected to generate additional net positive revenue to the Town but the scope and timing of such future redevelopment are uncertain at this time. John Hancock has indicated that any future redevelopment within the site will likely be years off, following the completion of the Phase I multi-family project, and is dependent on market and existing tenant considerations.
- With respect in particular to the impact of the project on Schools, the School Department and School Committee have indicated that the two nearby elementary schools, Fiske and Schofield, could absorb the 36 elementary students expected from Phase I as well as the 26 that might result from development of the second, 250-unit apartment building. Officials cited the ongoing trend of declining elementary enrollment and the Town's eventual need to redistrict in connection with the school building projects as additional factors that would mitigate the impact of the new development.

Advisory Considerations

Advisory greatly appreciates the work of the many Town staff and board members over the past year on this important project.

Advisory believes it would be prudent to wait to make a final recommendation on the proposed additions to the Zoning Bylaw until after the Planning Board, the entity charged under the Town's governmental structure with primary responsibility for oversight of the Zoning Bylaw, votes on them. The Planning Board vote is scheduled for May 6, 2019, with a Report of the Planning Board to be issued shortly thereafter. Advisory anticipates voting on May 8, 2019 and will update Town Meeting accordingly.

Passage requires a two-thirds vote.

Advisory will make its recommendation at or before Special Town Meeting.

ARTICLE 3. To see if the Town will vote to amend the Zoning Map to rezone properties located at 20 William Street, 40 William Street, 45 William Street, 55 William Street, 60 William Street, 65 William Street, 80 William Street, and 100 William Street (Assessor's Parcel ID#s 2-1, 4-1-A, 3-4, 3-3, 3-1, 3-2, 3-1-B, 3-1-A), the area to be rezoned totaling approximately 26 acres in area, into the Wellesley Park Smart Growth Overlay District; the underlying zoning of the properties would remain unaffected, or take any other action in relation thereto.

(Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) seeks to amend the Zoning Map to place the parcels on William Street comprising the current Wellesley Office Park into the Wellesley Park Smart Growth Overlay District. A map showing the proposed zoning amendment is available on the Special Town Meeting tab of the Town website. See https://www.wellesleyma.gov/DocumentCenter/View/14966/2019_SGOD_Rezoning_Exhibit.

If Town Meeting approves Article 2, establishing the overarching Smart Growth Zoning Districts provision (Section 14J) and the specific Wellesley Park Smart Growth Overlay District provision (Section 14J.1), then the relevant parcels of land must be rezoned into the latter district in order for the redevelopment project to proceed. This Article and accompanying motion will therefore amend the Zoning Map to place the Wellesley Park Smart Growth Overlay District onto the 8 parcels of land on William Street, totaling approximately 26 acres, that comprise the current Wellesley Office Park. As noted in the bylaw (Section 14J(C)), the overlay district is superimposed over the underlying zoning districts of the parcels. Following this Zoning Map amendment, therefore, the parcels will be in both the Administrative and Professional District and the Wellesley Park Smart Growth Overlay District.

Passage requires a two-thirds vote.

Advisory will make its recommendation at or before Special Town Meeting.

ARTICLE 4. To see if the Town will vote to amend the Zoning Bylaw to modify Section XIVF (14F) Residential Incentive Overlay for the purposes of allowing its application over a greater number of zoning districts, allowing for additional levels of residential density, and making other associated changes, or take any other action in relation thereto.

(Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) seeks to amend Section 14F of the Zoning Bylaw, the Residential Incentive Overlay District, to allow its use in Single and General Residence Districts and to reduce the minimum lot size and certain other requirements. The amendments will facilitate the development of two multi-family condominium-style residential projects – one at Delanson Circle and 12-18 Hollis Street and the other at 140/148 Weston Road – which have been proposed in lieu of substantially higher density Chapter 40B projects at each site.

Residential Incentive Overlay District

Section 14F of the Zoning Bylaw is the Residential Incentive Overlay (RIO) District. See Appendix B of this *Advisory Report* for the text of the current bylaw (redlined to show proposed changes). The RIO is a tool that enables the development of multi-family housing, assisted elderly living, independent elderly housing, nursing homes and skilled nursing facilities in areas where the existing zoning would not permit such uses. In order for the RIO provisions to be used in the development of any project, Town meeting must first approve their application onto the parcel(s) in question. Town Meeting originally enacted the RIO provisions into the Zoning Bylaw in 1998 and Town Meeting subsequently approved their overlay onto an area of approximately 10 acres in Lower Falls to facilitate the Waterstone at Wellesley development. To date, Waterstone is the only project to have used the RIO provisions.

The RIO specifies minimum lot sizes for development (currently two acres), maximum unit density, and minimum required open space. The RIO also regulates building setbacks, building height and allowable signage. Projects employing the RIO provisions are subject to the Town's ordinary review processes under Section 16A of the Zoning Bylaw. Use of the RIO is currently limited to the Business District, Business District A, Industrial District, Industrial District A, Transportation District and the Lower Falls Village Commercial District.

The Delanson Circle and Weston Road Projects

The proposed changes to the RIO provisions have their genesis in two projects originally pursued under Chapter 40B by the same developer: Wellesley Crossing, a 90-unit multi-family project at 1-8 Delanson Circle, and Wellesley Park, a 55-unit multi-family project at 148 Weston Road. As shown on the overview map included in Appendix B of this *Advisory Report*, the two sites are located near the center of Town, less than half a mile from one another. MassHousing granted Wellesley Crossing project eligibility/site approval in October 2017, and the developer filed for a comprehensive permit with the Zoning Board of Appeals (ZBA) in November 2017. The Massachusetts Housing Partnership granted Wellesley Park project eligibility/site approval in January 2018, and the developer filed for a comprehensive permit with the ZBA in February 2018. For more information on these specific projects and Chapter 40B generally, see <https://www.wellesleyma.gov/893/Chapter-40B-Development-Projects>.

Since that time, the developer has been engaged in discussions with the neighbors and the Town regarding redesigned, lower density projects for both sites. The redesigned Wellesley Crossing (now called Wellesley Square, but referred to hereafter as the Delanson Circle project) would replace all five properties on Delanson Circle, and renovate the existing buildings on two additional properties to the rear at 12-14 and 16-18 Hollis Street. The total area of the

development site is 81,774 square feet. The plans call for a three-story residential over garage “U-shaped” building, with a smaller one- to two-story stepped wing closest to Hollis Street. There will be 35 market rate condominiums (compared to 90 units in the original proposal), with a maximum of 75 bedrooms, in the main building. The two Hollis Street properties, which currently house four units, would be renovated to create an additional four affordable condominium units. The Delanson Circle and Hollis Street properties are currently in the Single Residence or General Residence Districts. The project plans and narratives for the Delanson Circle project can be found on the Special Town Meeting tab of the Town website as Exhibits B and C to the development agreement. <https://www.wellesleyma.gov/1326/Special-Town-Meeting>.

The new Wellesley Park project (referred to hereafter as the Weston Road project) consists of a 46,412 square foot site. The bulk of the site (35,967 square feet) is at 148 Weston Road, where a previous single family home has been demolished. As part of the development agreement for the site, the developer will acquire the property at 140 Weston Road subject to a life estate in the home for the current owner. That acquisition will allow the developer to use an additional 10,445 square feet from the rear of 140 Weston Road for the project. The plans call for a three-story residential over garage “T-shaped” building containing 25 market rate condominium units (compared to 55 units in the original proposal), with a maximum of 58 bedrooms. There will be a publicly-accessible courtyard and amenity space at the rear of the project (which borders the North 40 and the Cochituate Aqueduct), including a direct walkway to the street. At the termination of the life estate on the 140 Weston Road property, the developer will renovate the existing single family home into two affordable housing units. Both 148 and 140 Weston Road are currently zoned in the Single Residence District. The project plans and narratives for the Weston Road project can be found online as Exhibits B and C to the development agreement. <https://www.wellesleyma.gov/1326/Special-Town-Meeting>.

Proposed Changes to the RIO District

With the Planning Department’s input, the BOS has proposed changes to the RIO provisions in order to allow for the development of the redesigned lower density projects. Please see the redlined version of Section 14F reprinted in Appendix B of this *Advisory Report*. The key changes include:

- Redefining the Purpose in Section A more broadly to allow for the use of the RIO in areas that are within close proximity to the Town’s commercial districts and public transportation. Section A currently focuses on constrained sites, parcels in other districts bordering residential districts and parcels bordering unique natural features, open space or historic resources.
- Eliminating the Applicability language in Section B that currently limits use of the RIO to the Business District, Business District A, Industrial District, Industrial District A, Transportation District and the Lower Falls Village Commercial District. By removing these restrictions, the RIO can be overlaid onto parcels in any zoning district, including, as relevant here, the Single Residence and General Residence Districts.
- Reducing the Minimum Lot or Building Site Area in Section E from two acres to 45,000 square feet (or approximately one acre). This change was necessary to allow both projects to proceed under the RIO; neither site meets the RIO’s current minimum two-acre requirement. Significantly, although the minimum lot size has been reduced, the maximum allowable density per square foot has not changed. Section H (Maximum Development Density) continues to require 1,800 square feet of lot area for each multi-family dwelling unit. The 81,774 square feet at the Delanson Circle project would result in a maximum of 45 units, and the plans call for 39. The 46,412 square feet at the Weston Road project would result in a maximum of 25 units, which is the actual project size.

- Reducing the side and rear yard Building Setbacks in Section I from 40 feet to 10 feet. This will facilitate the Weston Road project. The 60 foot setback for projects in commercial districts that abut residential districts is maintained.
- Reducing the maximum Building Height in Section J from 45 feet to 36 feet for projects located in the Single and General Residence Districts. This ensures that the height of any projects developed via the RIO will be consistent with the provisions of Section 20 of the Zoning Bylaw.
- Establishing specific requirements for Signs in Section K for projects in the Single and General Residence Districts. Signs for RIO projects in those districts are limited in number, square footage, and type.
- Expanding the Project Approval/Special Permits provision in Section O to allow the Planning Board to waive certain dimensional requirements in cases where it finds that a project provides/improves pedestrian or public transit and access to a river, open space, public trails or other public amenities. Findings specific to the Lower Falls Village Commercial District under the Lower Falls Guidelines are retained but renumbered.

Other changes to the RIO include replacing certain specific language that had previously applied to the Lower Falls or the Lower Falls Commercial District (in conjunction with the Waterstone project) with more general language to reflect the RIO's proposed broader applicability. See, e.g., Section N and Section O.4.

Neighborhood Support

At its regular meeting on April 3 and its public hearing on April 11, the Advisory Committee heard from Anne Marie Towle, a direct abutter to the Delanson Circle project and a member of the Steering Committee for the College Heights Neighborhood Association (the Association). Ms. Towle informed Advisory that the Association, which represents more than 100 families, had been formed almost two years ago in opposition to the original 90-unit Chapter 40B project at Delanson Circle. Since that time, the Association has worked closely with the developer and the Town to find a solution that would work for all parties. Ms. Towle described herself and the Association as very supportive of the revised Delanson Circle project given, among other changes, its reduced number of units (and therefore cars), reduced project height, and improvements to sidewalks and Hollis Street. The Association has entered into a memorandum of understanding with the developer concerning the Delanson Circle project. In response to Advisory questions, Ms. Towle indicated that, although the Association has been less involved with the Weston Road project than the Delanson Circle project, it was equally supportive of that redesign. Other than Ms. Towle, the Advisory Committee did not hear from any residents regarding Articles 4-7 on the warrant or the Delanson Circle/Weston Road projects generally.

Development Agreements

The development agreements for both the Delanson Circle project and the Weston Road project have been executed by the developer and the BOS and are included in Appendix B to this *Advisory Report*. The complete set of exhibits to the development agreements can be found online at <https://www.wellesleyma.gov/1326/Special-Town-Meeting>. The development agreements are contingent on Town Meeting's adoption of Zoning Bylaw changes and Zoning Map changes proposed under Articles 4, 5, 6 and 7. Although no action is required by Town Meeting with respect to the agreements themselves, they may help inform Town Meeting's understanding of the projects and the use of the amended zoning provisions. Highlights of the agreements include:

- The developer will adhere to the revised size and scope of the two projects as laid out in the development plans and project narratives and to the specified construction management plans. See Exhibits B (project plans), C (project narratives) and F

- (construction management plans) for each development agreement, which can be found online at <https://www.wellesleyma.gov/1326/Special-Town-Meeting>. The agreements specifically reference a maximum of 35 units and 75 bedrooms for the Delanson Circle project and a maximum of 25 units and 58 bedrooms for the Weston Road project.
- The developer will seek a “standstill” agreement with the ZBA on the 40B applications once the Planning Board makes a favorable recommendation on the warrant articles. The developer will withdraw the 40B applications upon issuance of building permits for the revised projects.
- The agreements are terminated if Town Meeting does not adopt the Zoning Bylaw amendments in Articles 4 and 5. The developer can also terminate the agreements if permit approvals are denied.
- The developer agrees to renovate the four affordable units on Hollis Street to certain specifications and, upon termination of the life estate at 140 Weston Road, to renovate that house into two affordable units according to certain specifications. See Exhibit E (Renovation Outline Specifications) for each development agreement, which can be found online at <https://www.wellesleyma.gov/1326/Special-Town-Meeting>.
- With respect specifically to the Delanson Circle project:
 - In order to ensure the timely renovation of the four affordable units, the agreement limits the number of certificates of occupancy (COs) that can be issued for the main, 35-unit project until COs have been issued for the four affordable units.
 - The developer agrees to install a crosswalk across Linden Street at a location to be determined by the Planning Board; widen the pavement on Hollis Street; repave the full length of Hollis Street west of Linden Street; and construct a sidewalk on the developer’s property on the west side of Hollis Street.
- With respect specifically to the Weston Road project, the agreement recognizes that the termination of the life estate at 140 Weston Road may not occur for several years, and provides several protections to the Town to assure that the work required to convert the house into the two affordable units will be completed:
 - At the time the first unit in the main project is sold, the Town will be given a first mortgage to encumber the 140 Weston Road house.
 - Prior to receiving a CO for more than four units at the main project, the developer must deposit into escrow the amount anticipated to be needed for the renovation work on the 140 Weston Road house.

Advisory Considerations

Advisory appreciates the efforts of all parties – Town staff, Board members, the developer and the neighborhood residents – over the past eight months to work together to bring the redesigned, lower density projects at Delanson Circle and Weston Road to fruition.

As with the other zoning articles, Advisory will wait to make a final recommendation on the proposed changes to the RIO provisions until after the Planning Board votes on May 6.

Passage requires a two-thirds vote.

Advisory will make its recommendation at or before Special Town Meeting.

ARTICLE 5. To see if the Town will vote to amend the Zoning Bylaw to modify Section XIX (19) Yard Regulations to provide for exemption of parcels in the Residential Incentive Overlay district from certain dimensional requirements, or take any other action in relation thereto.
(Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) seeks to amend Section 19 of the Zoning Bylaw, "Yard Regulations," to eliminate the frontage requirements for lots located in a Residential Incentive Overlay (RIO) district.

Appendix B of this *Advisory Report* contains a redlined version of Section 19, "Yard Regulations." Under the existing version of Subsection B ("Requirements"), lots in several districts are already exempt from the frontage requirements of Section 19:

This Section shall not apply to lots in districts zoned as Lower Falls Village Commercial, Wellesley Square Commercial District, Business, Business A, Industrial, or Industrial A, except for requirements for front yards.

Because the RIO provisions to date have been applicable only in districts included in the list above, RIO projects have already effectively been exempt from frontage requirements.¹ Once the use of the RIO provisions is extended into the Single and General Residence Districts, as proposed under Article 4, however, a disparity will result: some RIO projects (those in the districts expressly listed in Section 19(B)) will not be subject to frontage requirements, while others (those in all other districts, including the Single and General Residence Districts) will be subject to frontage requirements.

In order to prevent this disparate treatment of properties within RIO districts, the BOS, with the input of the Planning Department, proposes to add the following sentence to Subsection B:

The frontage requirements of this Section shall not apply to lots located in a Residential Incentive Overlay district, regardless of whether or not the lot is developed under the provisions of Section 14F.

The second clause of the sentence makes the RIO overlay controlling as to frontage. In other words, even if the underlying zoning district has frontage requirements (as in the Single and General Residence Districts), a parcel's inclusion within a RIO district will exempt the parcel from those frontage requirements, regardless of whether development occurs pursuant to the RIO provisions or pursuant to the underlying zoning.

In addition to equalizing treatment of all parcels within RIO districts, the change is necessary as a practical matter to facilitate the Weston Road project. Following the transfer of the approximately 10,000 square feet of land from 140 Weston Road to 148 Weston Road, discussed in the Article 4 write-up, neither parcel would be able to satisfy the existing frontage requirements for the Single Residence District (current zoning) or General Residence District (proposed zoning per Article 7). The inability to satisfy the frontage requirements would impact the future redevelopment of the 140 Weston Road home, following termination of the life estate, into the two affordable units contemplated under the project.

Passage requires a two-thirds vote.

Advisory will make its recommendation at or before Special Town Meeting.

¹ The RIO also applies to properties in the Transportation District, which is not one of the districts specifically exempted from the requirements of Section 19. However, no RIO projects to date have been undertaken in that district.

ARTICLE 6. To see if the Town will vote to amend the Zoning Map to rezone properties to the Residential Incentive Overlay district located at:

- 1-3 Delanson Circle, 2-4 Delanson Circle, 6 Delanson Circle, 8 Delanson Circle, 5-7 Delanson Circle, 12-18 Hollis Street (Assessor's Parcel ID#s 123-13, 123-9, 123-10, 123-11, 123-12, 123-14), the area to be rezoned totaling approximately 82,000 square feet in area, into the Residential Incentive Overlay district; and
- 112 Weston Road, 134 Weston Road, 138 Weston Road, 140 Weston Road, 144 Weston Road, and 148 Weston Road (Assessor's Parcel ID#s 137-36, 150-1, 149-1, 149-2, 149-3, 149-4), the area to be rezoned totaling approximately 155,000 square feet in area, into the Residential Incentive Overlay district.

Or take any other action in relation thereto.

(Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) seeks to amend the Zoning Map to place certain parcels on Delanson Circle, Hollis Street and Weston Road into the Residential Incentive Overlay (RIO) district. Maps showing the proposed zoning amendments are available on the Special Town Meeting tab of the Town website. See <https://www.wellesleyma.gov/DocumentCenter/View/14961/Article-6---ZM-RIO-Delanson-Exhibit> (Delanson Circle/Hollis Street) and <https://www.wellesleyma.gov/DocumentCenter/View/14962/Article-6-ZM-RIO-Weston-Road-Exhibit> (Weston Road).

If Town Meeting approves Articles 4 and 5, amending the RIO provisions (Section 14F) and Yard Regulations (Section 19) of the Zoning Bylaw in order to permit the Delanson Circle and Weston Road redevelopment projects to occur, then the relevant parcels of land must be rezoned into the RIO district. This Article and accompanying motion will therefore amend the Zoning Map to, first, place the RIO district onto the six parcels of land on Delanson Circle and Hollis Street (1-3 Delanson, 2-4 Delanson, 6 Delanson, 8 Delanson, 5-7 Delanson and 12-18 Hollis), totaling approximately 82,000 square feet, at which the Delanson Circle project will take place. Second, this Article and motion will amend the Zoning Map to place the RIO district onto an additional six parcels of land, totaling approximately 155,000 square feet, on Weston Road (112 Weston, 134 Weston, 138 Weston, 140 Weston, 144 Weston, and 148 Weston).

On Weston Road, the RIO district will be overlaid onto not only the two parcels of land at issue in the Weston Road project – 140 and 148 Weston Road – but also the four other parcels located between 148 Weston Road and Central Street. Extending the RIO district along the southwest edge of Weston Road serves to cluster together and separate those standalone parcels from the larger North 40 property to the west. As with other overlay districts in the Zoning Bylaw, the RIO district will be superimposed onto the underlying zoning for the parcels. See Section 14F(B), Applicability. The underlying zoning for the Delanson Circle, Hollis Street and Weston Road parcels is currently a mix of the Single Residence and General Residence Districts. Should the amendments proposed in Article 7 be approved, however, all those properties will be within the General Residence District.

Passage requires a two-thirds vote.

Advisory will make its recommendation at or before Special Town Meeting.

ARTICLE 7. To see if the Town will vote to amend the Zoning Map to rezone property located at:

- 6 Delanson Circle (Assessor's Parcel ID# 123-10) and portions of properties located at 2-4 Delanson Circle and 8 Delanson Circle (Assessor's Parcel ID#s 123-9 and 123-11), the area to be rezoned totaling approximately 20,000 square feet in area, from the Single Residence District and 10,000 Square Foot Area Regulation District to the General Residence District; and
- 138 Weston Road, 140 Weston Road, 144 Weston Road, and 148 Weston Road (Assessor's Parcel ID#s 149-1, 149-2, 149-3, 149-4), the area to be rezoned totaling approximately 77,000 square feet in area, from the Single Residence District and 15,000 Square Foot Area Regulation District to the General Residence District.

Or take any other action in relation thereto.

(Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) seeks to amend the Zoning Map to rezone certain parcels, or portions thereof, on Delanson Circle and Weston Road from the Single Residence District to the General Residence District. Maps showing the proposed zoning amendments are available on the Special Town Meeting tab of the Town website. See <https://www.wellesleyma.gov/DocumentCenter/View/14963/Article-7---ZM-GR-Delanson-Exhibit> (Delanson Circle) and <https://www.wellesleyma.gov/DocumentCenter/View/14964/Article-7-ZM-GR-Weston-Road-Exhibit> (Weston Road).

The BOS, with the input of the Planning Department, proposes changing the underlying zoning of some of the parcels onto which Article 6 would place the Residential Incentive Overlay (RIO) district. The first change concerns parcels on Delanson Circle. Most of the parcels on Delanson Circle and Hollis Street that will be zoned into the RIO district pursuant to Article 6 are currently within the General Residence District. Only 6 Delanson and portions of 8 Delanson and 2-4 Delanson are currently within the Single Residence District and 10,000 Square Foot Area Regulation District. In order to (i) eliminate the split-zoning on 8 Delanson and 2-4 Delanson and (ii) make the underlying zoning on all the parcels in the RIO district uniform, the proposed Zoning Map amendments will rezone 6 Delanson, 8 Delanson and 2-4 Delanson fully into the General Residence District.

The second proposed change concerns the properties on Weston Road. Of the six properties onto which Article 6 overlays the RIO district, two (112 Weston and 134 Weston) are currently within the General Residence District. The remaining four properties (138 Weston, 140 Weston, 144 Weston and 148 Weston) are currently within the Single Residence District and 15,000 Square Foot Area Regulation District. Rezoning those four properties into the General Residence District is thought to produce several benefits: (i) the smaller, 10,000 square foot minimum lot size in the General Residence District will make the properties more conforming, as 138 Weston Road (12,652 square feet), 144 Weston Road (8,100 square feet) and 140 Weston

Road (10,000 square feet)¹ do not conform to the current 15,000 Square Foot Area Regulation District in which they are located, and (ii) the allowance for two-family housing within the General Residence District will facilitate the future redevelopment of the house at 140 Weston Road into the two affordable units that are part of the Weston Road project.

Passage requires a two-thirds vote.

Advisory will make its recommendation at or before Special Town Meeting.

ARTICLE 8. To see if the Town will vote to amend the Zoning Bylaw to modify Section 1 to add to the list of zoning districts the Smart Growth Overlay Districts, Wellesley Park Smart Growth Overlay District and Commercial Recreation Overlay District, or take any action in relation thereto.

(Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) seeks to add three items to the list of districts in Section 1A of the Zoning Bylaw, Establishment of Districts. A redlined version of Section 1A showing the proposed changes is reprinted in Appendix C and is available online. See <https://www.wellesleyma.gov/DocumentCenter/View/14960/Amendments-to-Establishment-of-Districts-42219?bidId=>.

More specifically, the BOS proposes to add the following three items to the list of districts:

- “28. Commercial Recreation Overlay District (Section 14I)”
- “29. Smart Growth Overlay Districts (Section 14J)”
- “30. Wellesley Park Smart Growth Overlay District (Section 14J.1)”

As to the first item: The 2017 Special Town Meeting approved the adoption of the Commercial Recreation Overlay District, but no corresponding addition to the list of districts was made at that time. As to the remaining items: Assuming Town Meeting approves the adoption of both the Smart Growth Overlay Districts and the Wellesley Park Smart Growth Overlay District proposed in Article 2, these districts need to be added to the list.

Passage requires a two-thirds vote.

Advisory will make its recommendation at or before Special Town Meeting.

¹ The lot at 140 Weston Road is currently 20,445 square feet. As noted in the Article 4 write-up, 10,445 square feet of that lot will be split off for use as part of the Weston Road project.

ARTICLE 9. To see what funds, if any, the Town will appropriate to fund Mental Health and Social Services for fiscal year 2020,

Or take any other action in relation thereto.

(Board of Health/Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) and the Board of Health (BOH) seek to transfer \$175,000 from Free Cash for additional Fiscal Year 2020 (FY20) mental health and social services.

Background

In late 2017 and early 2018, during budget presentations from various Town departments and boards that provide mental health and social services, Advisory raised a number of questions about the scope of these services, the adequacy of current resources (including state and regional providers), and the degree of coordination/collaboration among the departments and providers. In response to these questions, as well as to some additional discussion in April 2018 at Annual Town Meeting (ATM), the BOS formed an inter-departmental Social Services and Mental Health Committee consisting of the Executive Director and staff/leadership from the Health Department, the School Department, the Council on Aging, Youth Services, and the Police and Fire Departments. Throughout the remainder of 2018, the committee worked to identify current services provided across Town, how those services are delivered, and whether they are meeting the needs of the Town's residents.

The Social Services and Mental Health Committee issued its report in January 2019. That report can be found at https://wellesleyma.gov/DocumentCenter/View/15258/Report_FINAL-of-the-Social-Services-and-Mental-Health-Committee; an executive summary can also be found in the *2019 ATM Advisory Report* at pp. 224-227. Among the committee's findings were:

- There is a significant rise in the number of cases that are complex and not easily resolved.
- Town social workers, who help coordinate care and services for affected individuals/families, lack sufficient time to follow-up.
- School-based resources are not available outside of School hours.
- The demand for mental health services in the area exceeds the supply of providers, particularly those accepting insurance.
- Many emergency calls to law enforcement have an underlying mental health component.

The Committee also made a series of recommendations. First, it identified some additional items already proposed in the FY20 budgets of the School Department and BOH that, if approved by ATM, would provide valuable increased social work and mental health services. Second, the Committee recommended several non-monetary efforts, including initiating a formal outreach effort to collaborate with local houses of worship and continuing to support and strengthen the level of coordination among Town departments, community agencies and state services. Finally, the Committee identified three additional positions (a licensed independent clinical social worker, a licensed social worker, and an emergency services social worker) that the Town should consider hiring or contracting for in the future.

On February 28, 2019, based in large part on the recommendations in the report, the BOS voted to include an additional \$160,000 in the FY20 budget for what it called a Mental Health Services Initiative (MHSI), consisting of: (1) hiring a full-time licensed independent clinical social

worker (LICSW) to provide additional direct services to residents as well as to provide leadership/coordination across Town departments (\$110,000 including benefits); (2) partnering with the Town of Weston to contract for and share the services of a law enforcement emergency clinician who could assist the Police Department in responding to and following up on mental health-related calls (\$40,000); and (3) increasing the Town's existing mental health services contract with Human Relations Services, Inc. (HRS) to provide additional direct treatment hours for residents (\$10,000).

This request for funding was presented to Advisory for the first time two days later, during Advisory's March 2, 2019 voting meeting on ATM articles. Advisory acknowledged the findings of increased mental health and social services needs presented in the report, but raised a number of questions regarding the responsibilities of the proposed new LICSW position and its reporting structure, particularly given the role of the LICSW in overseeing and supporting existing services provided by autonomous departments. Advisory expressed concern that the lateness of the budget request prevented it from conducting appropriate due diligence, which is particularly important where new, full-time benefitted positions are proposed to be added to the Town's payroll. Because the MHSI was (by definition as a new initiative) both over guidelines and added FTEs, Advisory conducted a supportive/unsupportive vote. The vote was ten members unsupportive and three members supportive. Prior to the start of ATM, the BOS withdrew the Mental Health Services Initiative from the Article 8 budget, but indicated that it would likely return with additional information and a revised proposal for the STM.

At its meetings on April 4 and April 8, the BOS discussed and ultimately voted 5-0 to support a revised mental health and social work proposal. The BOS, together with the BOH, appeared at the April 8 meeting of the Advisory Committee. The boards reviewed the responsibilities of the LICSW position, indicating that 80% of the job would be direct service provision and 20% would provide coordination/support to existing social workers throughout Town. They described a "hub and spoke" model of overall social work coordination as the norm, where, in this instance, the Health Department and in particular the Health Director (a certified health officer licensed for oversight) would manage the LICSW. The boards also provided additional details regarding the emergency response and follow-up capabilities of the law enforcement clinical support position, as well as the need for increased funding to HRS for direct mental and behavioral health care.

The current proposal – which underlies the request for funding in Article 9 at this STM – is revised slightly from the original presented in March, insofar as the total FY20 funding request is \$175,000 (as compared to \$160,000), which includes a \$25,000 (as compared to a \$10,000) increase in the HRS contract for direct mental and behavioral health care. The boards explained that the \$25,000 would allow HRS to provide an estimated additional 450 hours of direct service to Town residents and thereby permit 40-50 more families to be seen. Significantly, the boards also committed to prepare a first-year progress report and a three-year implementation plan, as well as to undertake more formalized data gathering and measurement.

At Advisory's April 11, 2019 public hearing on the warrant for the Special Town Meeting, several residents spoke in favor of the Article 9 request for additional mental health and social services funding.

Advisory Considerations

Advisory members expressed appreciation for the work of the Social Services and Mental Health Committee, as well as the BOS and BOH, over the past year in reviewing and assessing the services provided in Town and making recommendations for the future. During the discussion in early March around the original mental health and social services proposal, as well as more recent discussions concerning the revised request for this STM, Advisory members

repeatedly voiced their understanding of and agreement with the need for additional services. Some Advisory members who were previously unsupportive of the original request noted the importance of (1) the additional work done since early March to provide more details on the reporting structure for and elements of the new LICSW position, and (2) the commitment by the BOS and BOH to prepare a one-year progress report and to review the responsibilities of the LICSW position over time. Several Advisory members urged the boards to consider issuing a six-month progress report; given that the LICSW hiring process may take several months, these members felt that a six-month report would provide relevant information that could be considered during the Town's FY21 budget process. Members also noted the importance of the boards' commitment to developing metrics for evaluating service delivery, given the Town's finite resources and consequent inability to meet all demonstrated mental health/social services needs. Another Advisory member encouraged the allocation of resources to the economically fragile, a currently underserved population.

Advisory recommends favorable action, 10 to 0.

ARTICLE 10. To see if the Town will vote to amend the General Bylaws to modify Article 8.10. Notice of Town Meeting to change of the locations of the posting of attested copies of warrants from Wellesley Square to the Police Station.

Or take any other action in relation thereto.

(Board of Selectmen)

Through this Article, the Board of Selectmen (BOS) seeks to amend Section 8.10 of the Town's General Bylaws to change one of the two required locations for posting Notices of Town Meeting. A redlined version of Section 8.10 showing the proposed change is available on the Special Town Meeting tab of the Town website. See <https://www.wellesleyma.gov/DocumentCenter/View/15312/TBL-Art8-Amendments-424>.

Section 8.10, Notice of Town Meeting, governs the timing and publication of notices for Annual and Special Town Meetings. As relevant here, Section 8.10 provides that:

Additionally, the Selectmen shall post attested copies of the warrant for that Meeting in no less two conspicuous places in the Town including but not limited to the Town Hall and Wellesley Square and shall make the warrant available on the Town's website.

The BOS proposes to replace the term "Wellesley Square" with "the Police Station." Problems in recent years with notices being removed from, or falling down in, Wellesley Square have prompted this change, as well as the change to a related provision, Section 8.3, Notice of Elections, that was unanimously approved last month by Annual Town Meeting under Article 35.

Advisory Considerations

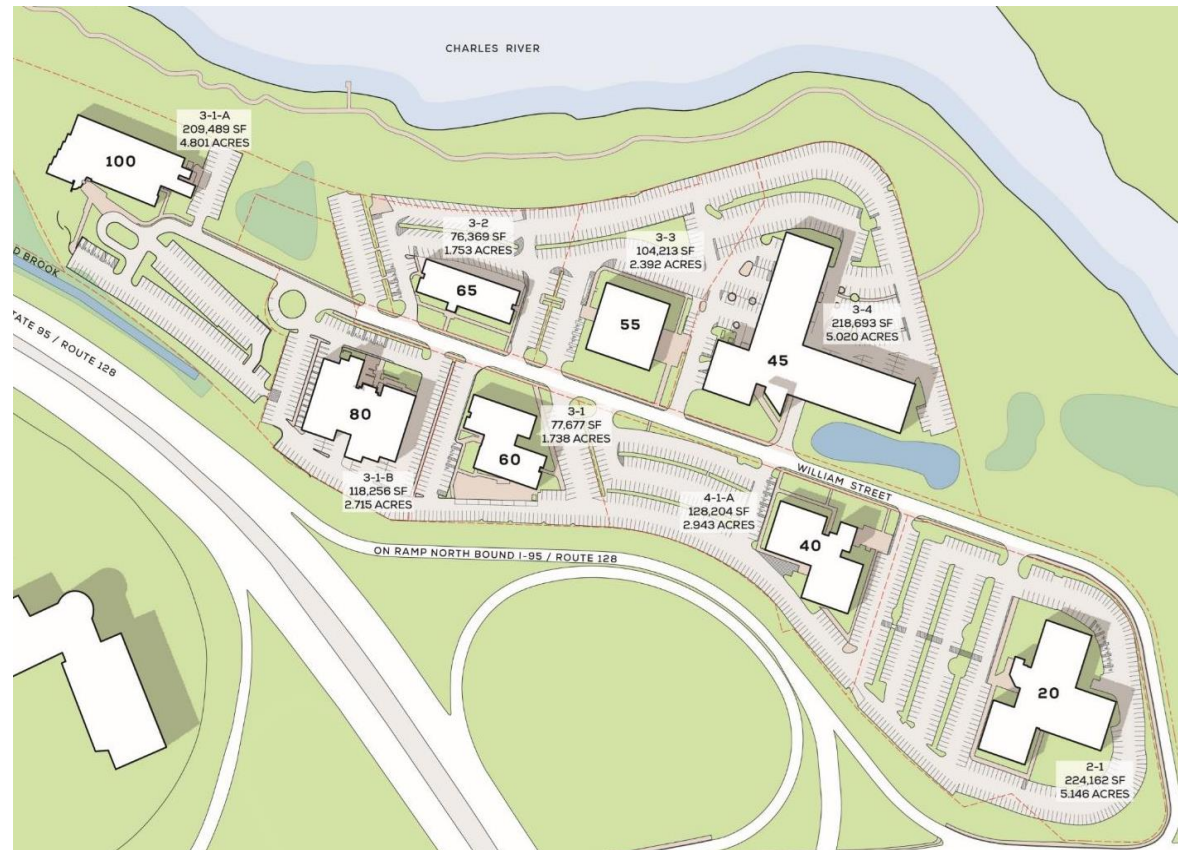
Advisory believes – as it did with respect to the change in posting locations for Notice of Elections that was recently approved by ATM – that the Police Station, which is attended and accessible at all times, is a superior posting site to Wellesley Square. Advisory also believes it is important for the posting locations to be consistent within Article 8 of the General Bylaws.

Advisory recommends favorable action, 10 to 0.

APPENDIX A: WELLESLEY OFFICE PARK

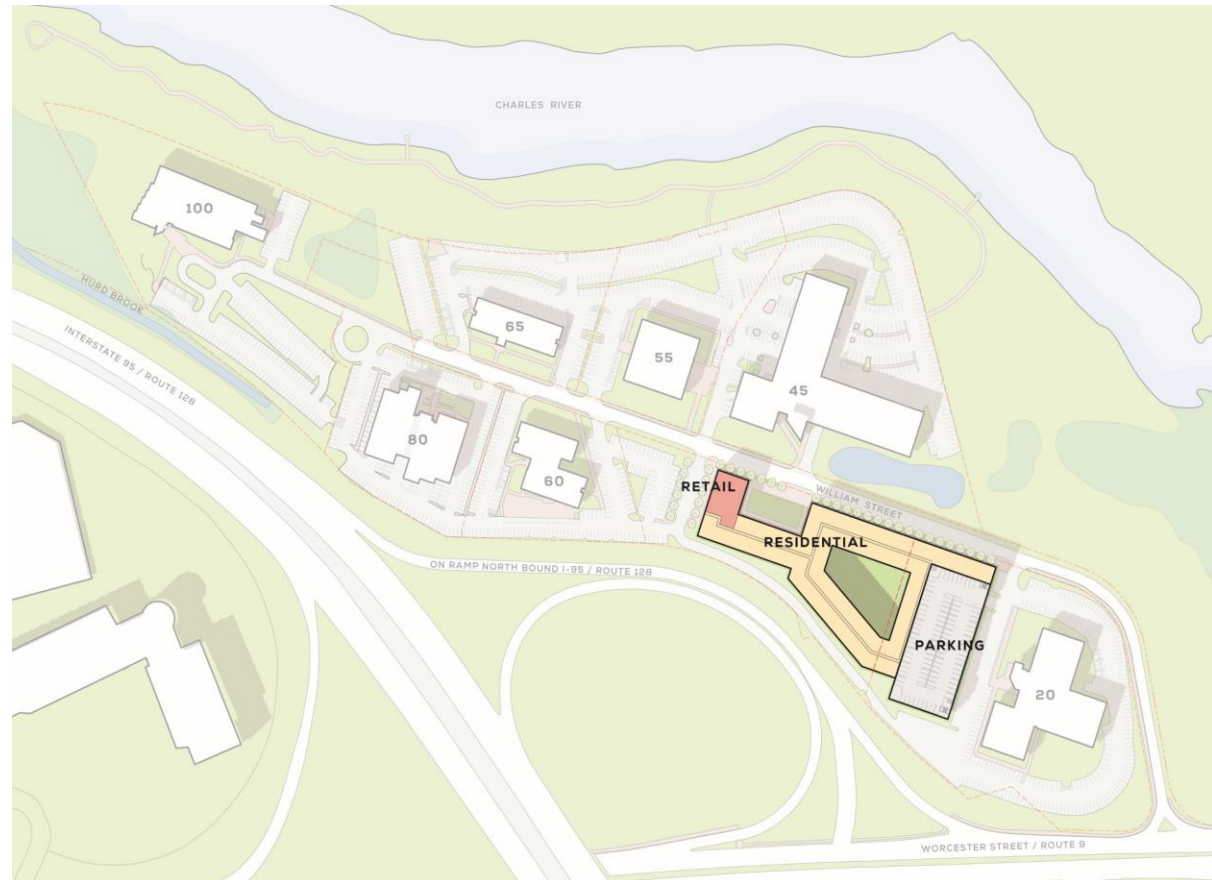
Wellesley Office Park - Existing

- 8 Office Buildings/ 8 lots
- Built between 1961 and 1984
- Building height 3 to 4 floors (Bldg 45 = 71.6')
- 649,000 gross sq. ft.
- 1,927 surface parking spaces
- Café and fitness center in Bldg 55



Wellesley Office Park - Phase I Conceptual Plan

- 575,000 +/- SF
Gross leasable office area
(all existing)
- 350± Residential units
- Amenity retail
- Structured parking for residential and office uses



DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into this 9th day of April, 2019, by and between the **Town of Wellesley** (the “Town”), acting by and through its Board of Selectmen, and **John Hancock Life Insurance Company (U.S.A.)**, a Michigan corporation (the “Owner,” and together with the Town, the “Parties”).

RECITALS

WHEREAS, the Owner owns certain real property comprising approximately 26 acres of land known as the Wellesley Office Park located within the Administration & Professional (“AP”) zoning district along Boylston Street (Route 9), Wellesley, Norfolk County, Massachusetts (the “Site”), which Site is more particularly described and depicted on **Exhibit A** attached hereto and incorporated herein;

WHEREAS, the Site is identified in the Town’s Housing Production Plan as a priority site for multi-family and mixed-use residential development in order to produce housing units eligible to be counted on the Town’s subsidized housing inventory (“SHI”), a critical municipal housing production goal;

WHEREAS, the Town desires to have a minimum of ten percent of its housing stock be eligible for and included in the SHI;

WHEREAS, according to the Housing Production Plan, the Town currently has 663 units of affordable housing listed on the SHI and needs an additional 336 units of affordable housing to reach its goal of having a minimum of ten percent of its housing stock be included in the SHI;

WHEREAS, the Owner is planning for the phased, mixed-use redevelopment of the Site (the “Master Plan”) that is anticipated to advance this important housing production goal by adding approximately 350 (but no less than 345) units of SHI-eligible affordable housing units in the first phase of the Master Plan (“Phase I”) while also providing net positive fiscal and other benefits to the Town, including direct financial payments to the Town under G.L. c. 40R, as supported by a fiscal analysis performed on behalf of the Owner and peer-reviewed on behalf of the Town;

WHEREAS, Phase I is anticipated to include the demolition of the office building at 40 William Street and the construction of an approximately 350 (but no less than 345) unit residential apartment building and parking garage along with limited accessory retail space, landscaping and associated site improvements, as depicted in the conceptual plan attached hereto as **Exhibit B**;

WHEREAS, the Owner will agree herein that all housing units included in Phase I (and all housing units in subsequent phases of the Master Plan) will count towards the Town’s SHI and will therefore help the Town make progress towards the goals identified in its Housing Production Plan, including redeveloping office parks and creating additional affordable housing;

WHEREAS, subsequent Master Plan phases are not yet fully defined but are anticipated to require razing additional existing office buildings which may be replaced by a mix of potential

uses, including approximately 250 units of additional rental housing, a limited service hotel, additional accessory retail, and/or new office space, the size and configuration of which has not yet been determined;

WHEREAS the Department of Housing and Community Development (“DHCD”) is expected to find that the proposed Wellesley Park Smart Growth Overlay District (the “District”) meets the approval requirements established pursuant to G.L. c. 40R and 760 CMR 59.04(1) in order to establish a “Smart Growth” overlay zoning district;

WHEREAS, to further the Town’s housing production goals through the development of the Master Plan, the Town is seeking approval by Wellesley Town Meeting at a Special Town Meeting scheduled for May 13, 2019 (the “Special Town Meeting”) of the Wellesley Park Smart Growth Overlay District, Sec. XIVJ.1. of the Zoning Bylaw of the Town (the “District Bylaw”), substantially in the form attached hereto as Exhibit C, an overlay zoning district prepared pursuant to G.L. c. 40R and accompanying regulations at 760 CMR 59.00, encompassing the Site;

WHEREAS, engineering studies supporting the adequacy of existing or practicably upgraded water, sewer, electric, and traffic infrastructure serving the Site have been performed on behalf of the Owner and/or Town and have been reviewed by the Town;

WHEREAS, based on the engineering studies that have been performed, the Parties have identified the water, sewer, and traffic infrastructure improvements in connection with Phase I of the redevelopment of the Property, and which will be undertaken by the Owner as provided for herein;

WHEREAS, under the provisions of said G.L. c. 40R and the regulations promulgated thereunder, the Town has certified that the impacts of the build-out of the 600 residential units that would be allowed if the District Bylaw is approved will not overburden Site infrastructure as it exists or may be practicably upgraded to provide adequate accommodation of the demands of the District’s existing and future residents and uses;

WHEREAS, this Agreement is entered into by the Parties in an effort to establish a framework to supplement the District Bylaw and facilitate (i) the development of housing units to count on the Town’s SHI as well as (ii) infrastructure upgrades and other improvements to benefit the District and the Town in conjunction with the phased development of the Master Plan;

NOW, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. HOUSING

1.1 Number of Units. The Owner agrees with the Town that there shall be a maximum of 600 dwelling units allowed upon the Site, which shall include approximately 350

(but no less than 345) dwelling units in Phase I and approximately 250 dwelling units in a subsequent phase or phases. The Owner shall not develop, apply for, permit or construct any additional dwelling units on the Site, whether pursuant to the Town's Zoning Bylaws, G.L. c.40B, Sections 20-23, or otherwise.

1.2 Housing Style. The Owner agrees that all dwelling units constructed on Site shall be apartment style.

1.3 Affordable Rental Housing. The Owner agrees that all residential housing units developed upon the Site up to the maximum of 600 units allowed under the District Bylaw shall be rental housing, and that no less than 25% of such housing units shall be affordable units, qualifying for enumeration under G.L. c. 40B, Sections 20-23 (the "Affordable Units"), to ensure that all housing units developed upon the Site count on the Town's SHI.

1.4 Local Preference. To the maximum extent permitted by law and applicable regulation, local preference for the initial occupancy of Affordable Units within the Project shall be given to residents of the Town, employees of the Town and businesses located in the Town, and households with children attending the Town's schools, satisfying all applicable eligibility requirements.

1.5 Miscellaneous. The Owner shall undertake a lottery and implement an Affirmative Fair Housing Marketing Plan to solicit interest for the occupancy of the Affordable Units in accordance with applicable DHCD procedures then in effect. Consistent with the terms and conditions established in this section, the Owner and the Town, in concert with DHCD's review and approval, shall draft and execute a binding recordable affordable housing agreement that will detail the protocol for the marketing, leasing, management and oversight of the Affordable Units.

2. WATER AND SEWER INFRASTRUCTURE

2.1 Water Improvements. Municipal water infrastructure improvements supporting the Master Plan are informed by the memorandum prepared by Stantec Consulting Services, Inc. dated February 25, 2019 attached hereto as **Exhibit D** (the "Stantec Memorandum"), with additional consultation from the Town Department of Public Works. In preparation for the development of the Master Plan, the Owner will coordinate with the Town and the Massachusetts Department of Transportation ("MassDOT") to prepare plans and specifications, obtain necessary permits, and privately install a new 12" water line (the "Water Line") paralleling the existing 12" water line running east-west under Route 95 prior to the issuance of a final certificate of occupancy for the Phase I building, estimated to cost approximately \$500,000. The Owner's obligation to complete the installation of the Water Line is subject to the final design and construction approval of MassDOT and the Town for the new Water Line.

2.2 Sewer Improvements. Municipal sewer improvements supporting the Master Plan are informed by the Stantec Memorandum with additional consultation from the Town Department of Public Works. In preparation for the development of the Master Plan, the Owner will coordinate with the Town, at the Owner's sole cost and expense, to complete the design, permitting and installation of a replacement sewer pump station on the Site, which specifications

shall be approved by the Town and which shall include a properly sized wet well, dual operation pumps on a serviceable slide rail system with an emergency backup power source, estimated to cost approximately \$310,000. Upon completion of the new pump station, the Owner will take responsibility for all costs associated with its ongoing operation and maintenance. The Owner will also coordinate with the Town and MassDOT to prepare plans, obtain necessary permits, and privately install a new 6" force main (the "Sewer Line") as a replacement to the existing 4" force main running east-west under Route 95 prior to the issuance of a certificate of occupancy for the Phase I building, estimated to cost approximately \$500,000. The Owner's obligation to complete the installation of the Sewer Line is subject to the final design and construction approval of MassDOT and the Town.

2.3 Town Water Line and Sewer Line Contribution. Upon completion of the installation of the Water Line and the Sewer Line, the Owner shall submit to the Town documentation detailing the total cost incurred by the Owner to complete the Water Line and the Sewer Line (the "Cost Summary"). The Town shall contribute to the Owner fifty percent (50%) of the total project costs incurred by the Owner in planning, permitting, and installing both the Water Line and the Sewer Line, in an amount not to exceed the lesser of (i) \$500,000 and (ii) the money it receives from the Commonwealth of Massachusetts in the form of "Incentive Payments" and "Bonus Payments" from the Master Plan pursuant to G.L. c.40R (the "Town Infrastructure Contribution"). Such payment to the Owner shall be contingent upon actual receipt of the 40R Payments (defined herein). The Town Infrastructure Contribution shall be paid in one or more installments to the Owner within thirty (30) days of the Town's receipt of (i) the Cost Summary and (ii) "Incentive Payments" and/or "Bonus Payments" from the Commonwealth of Massachusetts pursuant to G.L. c. 40R (the "40R Payments").

3. TRANSPORTATION

3.1 Phase I Traffic Improvements. Transportation improvements supporting Phase I of the Master Plan are informed by the Preliminary Transportation Impact Analysis memorandum (the "Traffic Memorandum") prepared by Vanasse & Associates, Inc. dated March 21, 2019 attached hereto as Exhibit E, with additional consultation from BETA Group on behalf of the Town. In support of the development of Phase I of the Master Plan, the Owner will coordinate with the Town and MassDOT, at their sole cost and expense, to prepare plans, obtain necessary permits, and implement the traffic safety and operational improvements at the William Street/Frontage Road intersection that are identified in the Traffic Memorandum (the "Phase I Traffic Improvements") prior to the issuance of a final certificate of occupancy for the Phase I building. The Owner and the Town acknowledge that the Phase I Traffic Improvements require final design and construction approval of MassDOT which may result in design modifications or alternative means of improvement. The Owner will also prepare, in accordance with MassDOT design guidelines and submittal requirements, the necessary plans, studies and documentation required to support a formal 25 Percent Design Submission to MassDOT for additional improvements to the William Street/Frontage Road/Route 9 intersection, including the addition of a right-turn slip-lane from William Street to the I-95 northbound on-ramp and any associated roadway, traffic control or related improvements (the "Design Submission"), as set forth in the Traffic Memorandum. The Design Submission and associated plans and documentation will be presented to the Town's Planning Department for review prior to submission to MassDOT, and

will be completed and submitted to MassDOT prior to the issuance of a final certificate of occupancy for the Phase I building. In order to encourage alternate means of transit and to minimize, to the extent practicable, the traffic impacts associated with the Master Plan, the Owner also agrees to identify and implement the Transportation Demand Management policies, measures and transportation improvements ("TDM Measures") associated with Phase I as set forth in the Traffic Memorandum. These TDM Measures shall be reviewed and finalized during the site plan approval process for Phase I.

3.2 Future Phase Traffic Improvements. Additional traffic and pedestrian improvements may be required in conjunction with future phases of the Master Plan, which are currently undefined in nature and scope. The Owner agrees to assess traffic operations at the Site and the potential traffic impacts of such futures phases of the Master Plan as they are identified and pursued, and to implement additional traffic mitigation measures (including additional TDM Measures) as may be warranted, which measures shall include consideration of all improvements identified in the Design Submission. To the extent that a subsequent traffic study indicates that existing operations and/or predicted traffic conditions so warrant, the Owner shall, in the course of the site plan review process or Project of Significant Impact Special Permit process, as may be applicable, propose potential traffic improvements to alleviate such impacts to the reasonable satisfaction of the Town, as may be reflected as conditions of site plan approval or Project of Significant Impact Special Permit. The Town and the Owner acknowledge that any future traffic improvements may require final design and construction approval of the Town and MassDOT.

4. EMERGENCY RESPONSE SERVICES

4.1 Communications Equipment. Prior to the issuance of a final certificate of occupancy for the Phase I building and in any future new building containing five (5) or more stories within the Master Plan, the Owner shall coordinate with the police and fire departments to install within such new building or upon the Site, at the Owner's sole cost and expense, police and fire communications equipment as specified by the police and fire department intended to ensure adequate emergency communications within all portions of such building upon the Site. The estimated cost of this equipment to serve the building within Phase I is approximately \$20,000.

5. ENVIRONMENTAL STRATEGIES

5.1 Phase I Environmental Strategies. As design of the Phase I building and potential future development is only at a conceptual stage, the Owner proactively agrees to consider implementation of a comprehensive array of environmental strategies in any new buildings on the Site. These environmental strategies are informed by the summary table prepared by the Owner dated February 28, 2019 attached hereto as **Exhibit F** (the "Environmental Table"), which has been informed by consultation with representatives and staff of the Wetlands Protection Committee, Natural Resources Commission, Trails Committee, and Design Review Board. In order to enhance the Site, the Owner agrees to diligently pursue and, to the extent practicable, implement at its sole cost and expense measures consistent with the environmental strategies for Phase I outlined in the column labeled "Phase I" in the Environmental Table. The Owner shall document the strategies selected for implementation in the course of site plan

approval by the Planning Board and review by the Wetlands Protection Committee for the Phase I building.

5.2 Future Phase Environmental Strategies. Prior to the issuance of a certificate of occupancy for the first building constructed after Phase I, the Owner agrees to diligently pursue and implement, as appropriate to the stage of development, at its sole cost and expense measures consistent with the environmental strategies outlined in the column labeled "Phase 2" in the Environmental Table. As with Phase I, the Owner shall document the strategies selected for implementation in the course of review by the Planning Board and the Wetlands Protection Committee for any subsequent new building development upon the Site.

6. MISCELLANEOUS

6.1 Effective Date; Termination. This Agreement shall become effective upon approval of the District Bylaw by Wellesley Town Meeting at the Special Town Meeting. In the event that (i) the District Bylaw is disapproved by DHCD or the Massachusetts Attorney General, or (ii) Owner fails to obtain or maintain all final and effective discretionary federal, state and local permits necessary to allow for the construction and operation of Phase I, upon Owner's delivery of written notice to the Town, this Agreement shall be null and void.

6.2 Successors and Assigns. The Parties agree that the Owner may amend or otherwise modify the existing subdivision plan of the Site (including through the creation of one or more condominiums or long term ground leases) and may transfer all or any subdivided portion of the Site to another entity (each a "New Entity"), subject to the Owner's and any New Entity's acknowledgement that:

6.2.1 This Agreement shall run with title to each subdivided portion of the Site and shall be binding upon the Owner insofar as it is the owner of the Site, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Site and/or their respective subdivided portion(s) thereof, provided that each predecessor-in-title shall be forever released from this Agreement upon procuring a written acknowledgment from its immediate successor, addressed to the Town, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Board of Selectmen with respect to such successor's subdivided portion(s) of the Site; and

6.2.2 The obligations created hereunder shall not be treated as assumed by any New Entity until such notice is delivered to the Town.

6.3 Notices. Notices, when required hereunder, shall be deemed sufficient if sent registered mail to the Parties at the following addresses:

Town: Town of Wellesley
 Executive Director
 525 Washington Street
 Wellesley, MA 02482

with a copy to:

Miyares and Harrington LLP
40 Grove Street
Wellesley, MA 02482
Attn: Thomas J. Harrington, Esq.

Owner: John Hancock Real Estate
197 Clarendon Street
Boston, MA 02116
Attn: Anjali U. Chitre, Esq.

with a copy to:

Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110-3333
Attn: Peter L. Tamm, Esq.

6.4 Force Majeure. The Owner shall not be considered to be in breach of this Agreement for so long as the Owner is unable to complete any work or take any action required hereunder due to a *force majeure* event or other events beyond the reasonable control of the Owner.

6.5 Default; Opportunity to Cure. Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within fifteen days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within sixty days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such sixty-day period, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default. Notwithstanding the foregoing, the Owner shall cure any monetary default hereunder within thirty days following the receipt of written notice of such default from the Town. No default hereunder by the owner (whether the Owner or a New Entity) of any subdivided portion of the Site shall be deemed to be a default by any other owner (whether the Owner or a New Entity) of any other subdivided portion of the Site

6.6 Limitations on Liability. The obligations of the Owner or any New Entity do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. The liability of the Owner or a New Entity is in all cases limited to their interest in the Site or subdivided portion thereof at the time such liability is incurred and shall not extend to any other portion of the Site

for which another party has assumed responsibility pursuant to Section 6.1 hereof. In the event that all or any portion of the Site is subjected to a condominium regime or a long term ground lease, the condominium association or the ground lessee, as applicable, shall be deemed to be the owner/New Entity of the affected portion of the Site

6.7 Estoppels. Each Party agrees, from time to time, upon not less than twenty-one days' prior written request from the other, to execute, acknowledge and deliver a statement in writing certifying (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, setting them forth in reasonable detail); (ii) that the party delivering such statement has no defenses, offsets or counterclaims against its obligations to perform its covenants hereunder (or if there are any of the foregoing, setting them forth in reasonable detail); (iii) that there are no uncured defaults of either party under this Agreement (or, if there are any defaults, setting them forth in reasonable detail); and (iv) any other information reasonably requested by the party seeking such statement. If the Party delivering an estoppel certificate is unable to verify compliance by the other Party with certain provisions hereof despite the use of due diligence, it shall so state with specificity in the estoppel certificate, and deliver an updated estoppels certificate as to such provisions as soon thereafter as practicable. Any such statement delivered pursuant to this Section 7.7 shall be in a form reasonably acceptable to, and may be relied upon by any, actual or prospective purchaser, tenant, mortgagee or other party having an interest in the Master Plan. The Town Manager is hereby authorized to execute and deliver any such estoppel certificate on behalf of the Board of Selectmen.

6.8 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Norfolk.

6.9 Entire Agreement; Amendments. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives. This Agreement may not be amended, altered or modified except by an instrument in writing and executed by the Owner or any New Entity and by a majority of the Board of Selectmen of the Town.

6.10 Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. If any provision of this Agreement or its applicability to any person or circumstance shall be held invalid, the remainder thereof, or the application to other persons shall not be affected.

6.11 Time is of the Essence; Cooperation. Time shall be of the essence for this Agreement and, subject to economic conditions and approval of the District Bylaw by the Town at the Special Town Meeting, DHCD, and the Massachusetts Attorney General, the Owner shall diligently pursue the remaining permitting and development of Phase I, beginning with the site plan review submission for Phase I within 120 days of the Owner's receipt of notice of the Town's receipt of DHCD's "Letter of Approval" of the District Bylaw. The Parties agree to work cooperatively, on a going-forward basis, to execute and deliver documents, and take such other actions, whether or not explicitly set forth herein, that may be necessary in connection with the design, permitting, and development of the Master Plan, the Water Line, the Sewer Line or the implementation of the goals and objectives of this Agreement, including but not limited to the execution and delivery of utility easements in public right-of-ways to third parties, the negotiation, execution and delivery of utility easements with third parties, the modification of existing utility easements, MassDOT applications related to water and sewer services and transportation improvements, and other state and local instruments and documents. The Town shall also work cooperatively with the Owner in permitting matters related to the Master Plan.

6.12 Counterparts; Signatures. This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.

6.13 Record Notice. A notice of this Agreement in a form reasonably acceptable to the Owner may be recorded with the Norfolk Registry of Deeds.

6.14 No Third-Party Beneficiaries. Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby.

[Remainder of this page intentionally left blank. Signature page follows.]

EXECUTED under seal as of the date and year first above written,

TOWN OF WELLESLEY BOARD OF SELECTMEN

By: 

Name: JACK WOLKOFF

Its: Chair, Board of Selectmen

JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.)

By: 

Name: ROBERT MAUDEN

Its: VP, SR. MANAGING DIRECTOR

LIST OF EXHIBITS

Exhibit A – Site Depiction

Exhibit B – Phase I Conceptual Plan

Exhibit C – District Bylaw

Exhibit D – Stantec Memorandum

Exhibit E – Traffic Memorandum

Exhibit F – Environmental Table

SECTION 14J. SMART GROWTH OVERLAY DISTRICTS

A. Purpose

The purposes of this Section are:

1. To allow for the establishment of Smart Growth Overlay Districts to promote the redevelopment of certain areas and properties in a form that meets the objectives of “smart growth” in accordance with and within the purposes of Mass. Gen. Laws Ch. 40R;
2. To provide for a more diversified housing stock within the Town of Wellesley, including affordable housing and housing types that meet the needs of the Town’s population, all as currently identified in the Wellesley Housing Production Plan;
3. To promote advanced site planning, sustainable design, improved transportation management, and environmental enhancements in the development of projects; and
4. To the extent not in conflict with the purposes of Mass. Gen. Laws Ch. 40S and the provisions for As-of-Right development under the Governing Laws, generate positive tax revenue, and to benefit from the financial incentives provided by Mass. Gen. Laws Ch. 40R, while providing the opportunity for new business growth and additional local jobs.

B. Definitions

As used in this Section and in sections associated with any district created under this Section, the following terms shall have the meanings set forth below. Additional terms and definitions contained in Section 1B that are applicable to the administration of this Section and any sections associated with any district created under this Section shall have the meanings ascribed to them by the definitions established as of the date of adoption of this Section, unless amendments to these definitions are subsequently approved by the Massachusetts Department of Housing and Community Development. To the extent that there is any conflict between the definitions set forth below or in Section 1B and the Governing Laws, the terms of the Governing Laws shall govern.

Administering Agency or Monitoring Agent - The Wellesley Housing Development Corporation or its designee, subject to the approval of the Department, which shall have the power to monitor and to enforce compliance with the provisions of this Bylaw related to Assisted Units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Assisted Units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Assisted Unit in the District.

Affordable Housing - Housing that is affordable to and occupied by Eligible Households.

Affordable Housing Restriction - A deed restriction of Affordable Housing meeting statutory requirements in Mass. Gen. Laws Ch. 184 Section 31 and the requirements of subsection K., Housing and Housing Affordability, of this Section.

Affordable Rental Unit - An Affordable Housing Dwelling Unit required to be rented to an Eligible Household in accordance with the requirements of Section 14J.K.

Affordable Homeownership Unit - An Affordable Housing Dwelling Unit required to be sold to an Eligible Household in accordance with the requirements of Section 14J.K.

Applicant - A landowner or other petitioner who files a site plan for a Development Project subject to the provisions of this Section.

Application - A petition for Site Plan Approval filed with the Approving Authority by an Applicant and inclusive of all required documentation as specified in administrative rules adopted pursuant to Section 14J.E.

Approving Authority or Plan Approval Authority - The Zoning Board of Appeals of the Town of Wellesley acting as the authority designated to review projects and issue approvals under this Section.

As-of-Right Development - To the extent consistent with and subject to the same meaning as the term As-of-Right in the Governing Laws, a Development Project allowable under this Section without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject only to this Section, including the Site Plan Review requirements, shall be considered an As-of-Right Development.

Assisted Units - shall have the same meaning as defined in Section 1B to the extent that such definition means housing that is affordable to and occupied by Eligible Households and that such definition is not materially inconsistent with, and is nonetheless subject to, the definitions of Affordable Housing in the 40R Guidelines and Affordable under the Governing Laws.

Child Care Use - shall have the same meaning as “day care center” or “school age child care program,” as those terms are defined in Mass. Gen. Laws Ch. 28A Section 9.

Conservation Use - Any woodland, grassland, wetland, agricultural, or horticultural use of land, and/or any use of land for the construction and use of ponds or stormwater management facilities.

Department - The Massachusetts Department of Housing and Community Development (“DHCD”), or any successor agency.

Design Guidelines - To the extent approved by DHCD and consistent with and subject to the same meaning as the term Design Standards in the Governing Laws, the document

entitled Design Guidelines Handbook, as approved by DHCD pursuant to Mass. Gen. Laws Ch. 40R, Section 10. The Design Guidelines are applicable to all Development Projects within the District that are subject to Site Plan Review by the Approving Authority.

Development Lot - One or more tracts of land defined by metes, bounds or lot lines in a deed or conveyance on a duly recorded plan which are designated as a Development Lot on a site plan for a development proposed within the District and for which Site Plan Approval is required under the provisions of this Section. Where a Development Lot consists of more than a single lot, such lots (i) in combination, shall be treated as the Development Lot, (ii) may be contiguous or non-contiguous, (iii) need not be in the same ownership, and (iv) shall be considered as one lot for all calculation purposes, including parking requirements and Dwelling Units per acre. Any development undertaken on a Development Lot is subject to the Design Guidelines established under Section 14J.I. The owner of any such Development Lot shall be entitled to lawfully divide such lot without modifying the approved Site Plan and without the need for other approvals.

Development Project - To the extent consistent with and subject to the same meaning as the term Project as defined in the Governing Laws, a development comprising any permitted uses provided for hereunder undertaken under this Section. A Development Project shall be identified on a Site Plan which is submitted to the Approving Authority for Site Plan Review.

District - An overlay zoning district adopted pursuant to Mass. Gen. Laws Ch. 40R, in accordance with the procedures for zoning adoption and amendment as set forth in Mass. Gen. Laws Ch. 40A and approved by the Department of Housing and Community Development pursuant to Mass. Gen. Laws Ch. 40R and 760 CMR 59.00.

Eligible Household - An individual or household whose annual income is at or below eighty percent (80%) of the area-wide median income as determined by the United States Department of Housing and Urban Development (“HUD”), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

Governing Laws - Mass. Gen. Laws Ch. 40R, 760 CMR 59.00, and DHCD administrative guidance relating to Mass. Gen. Laws Ch. 40R.

Gross Floor Area - The floor area of space on all floors inclusive of heated basements, hallways, measured from the exterior faces of exterior walls. Gross floor area does not include covered walkways, open roofed-over areas, porches, balconies, exterior terraces or steps, chimneys, roof overhangs, parking garages and unheated basements.

Gross Leasable Floor Area - The Gross Floor Area of a building exclusive of hallways, mechanical rooms, storage space and other miscellaneous space not exclusively occupied by a single tenant or occupant.

Multi-Family Dwelling - A residential building containing four or more Dwelling Units.

Office or Office Use - A place for the regular performance of business transactions and services, generally intended for administrative, professional and clerical activities, including a medical or dental office or health clinic.

Office High-Tech or Office High-Tech Use - A place for the regular performance of research and development, high tech, biotechnology, life sciences and/or other related uses, provided that such use does not involve disturbing or offensive noise, vibration, smoke, gas, fumes, odors, dust or other objectionable or hazardous features.

Principal Use - The main or primary purpose for which a structure, building, or Development Lot is designed, arranged, licensed, or intended, or for which it may be used, occupied, or maintained under this Section. More than one Principal Use is permitted as-of-right on a Development Lot or within a Development Project.

Recreational Accessory Use - A use subordinate to a Principal Residential Use on the same Development Lot or in the same structure and serving a purpose customarily incidental to the Principal Residential Use, and which does not, in effect, constitute conversion of the Principal Use of the Development Lot, site or structure to a use not otherwise permitted in the District. Recreational Accessory Uses may include, but are not limited to greenhouse, tool shed, clubhouse, swimming pool, tennis court, basketball court, and playground.

Recreational Use - The principal use or intended principal use of land or structures for relaxation, entertainment, amusement, sports, or the like, whether on a fee or non-fee basis, including fitness clubs, play areas and dog parks.

Restaurant - Any business establishment principally engaged in serving food, drink, or refreshments, whether prepared on or off the premises.

Small-Scale Retail Establishment - A business establishment, not exceeding 5,000 sq. ft. of Gross Leasable Floor Area, selling goods and/or services to customers on site, generally for end-use personal, business, or household consumption. A reasonable amount of storage of said goods shall also be assumed to be an integral part of small-scale retail use.

Site Plan - A plan depicting a proposed Development Project for all or a portion of the District and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of Section 14J.E of this Bylaw.

Site Plan Approval - To the extent consistent with and subject to the same meaning as the term Plan Approval under the Governing Laws, the Approving Authority's authorization for a proposed Development Project based on a finding of compliance with this Section of the Bylaw and Design Guidelines after the conduct of a Site Plan Review.

Site Plan Review - To the extent consistent with and subject to the same meaning as the term Plan Review as defined in the Governing Laws, the review procedure established by this Section and administered by the Approving Authority. While similar to Site Plan Review as established in Section 16A, Site Plan Review as used and referenced in this Section is a separate and distinct process not subject to the provisions of Section 16A.

Underlying Zoning - The zoning requirements adopted pursuant to Mass. Gen. Laws Ch. 40A that are otherwise applicable to the geographic area in which the District is located, as said requirements may be amended from time to time.

Unrestricted Unit - A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.

C. Establishment and Delineation of Districts

1. Generally

The specific districts established under this Section shall serve as overlay districts, to be superimposed over the underlying zoning districts. The boundaries of the districts are delineated on the Zoning Map of the Town of Wellesley, pursuant to Section 1A.

2. Specific Districts

The following are the specific districts established under this Section:

- a. Wellesley Park Smart Growth Overlay District; as contained in Section 14J.1.

D. Authority and Applicability

The districts established under this Section are done so pursuant to the authority of Mass. Gen. Laws Ch. 40R and 760 CMR 59.00. At the option of the Applicant, development of land within the districts established pursuant to this Section may be undertaken subject to the zoning controls set forth in this Section, or by complying with all applicable Underlying Zoning controls set forth in the Zoning Bylaw of the Town of Wellesley. Notwithstanding anything to the contrary in the Zoning Bylaw, Development Projects proceeding under this Section shall be governed solely by the provisions of this Section and the standards and/or procedures of the Underlying Zoning shall not apply. Except as otherwise specifically provided for in this Section, Development Projects proposed pursuant to this Section shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or Dwelling Unit limitations. Where other provisions of the Zoning Bylaw are specifically referenced as applying to Development Projects, generally under this Section or within the districts established under this Section, such provisions shall be administered as established as of the date of

adoption of this Section, unless amendments are subsequently approved the Massachusetts Department of Housing and Community Development.

E. Site Plan Review

Development Projects within districts established pursuant to this Section shall be subject to the Site Plan Review process encompassing the following. Development Projects within such districts shall not be subject to the separate and distinct Site Plan Review process established under Section 16A.

1. Pre-Application Review

The Applicant is encouraged to participate in a pre-Application review at a regular meeting of the Approving Authority. The purpose of the pre-Application review is to minimize the Applicant's cost of engineering and other technical experts, and to obtain the advice and direction of the Approving Authority prior to filing the Application. Should the Applicant choose to participate in the pre-Application review, the Applicant shall outline the proposal and seek preliminary feedback from the Approving Authority, other municipal review entities, and members of the public. The Applicant is also encouraged to request a site visit by the Approving Authority and/or its designee in order to facilitate pre-Application review.

2. Application Procedures

- a. The Applicant shall file an original of the Application with the Town Clerk for certification of the date and time of filing. Said filing shall include any required forms established by the Approving Authority, provided such forms have been approved by DHCD and are on file with the Town Clerk. A copy of the Application, including the date and time of filing certified by the Town Clerk, as well as the required number of copies of the Application, shall be filed forthwith by the Applicant with the Approving Authority and Building Inspector. As part of any Application for Site Plan Approval for a Development Project, the Applicant must submit the following documents to the Approving Authority and the Administering Agency:
 - i. Evidence that the Development Project complies with the cost and eligibility requirements of Section 14J.K.;
 - ii. Development Project plans and reports that, subject to approval by DHCD, demonstrate compliance with the design and construction standards of Section 14J.K.; and
 - iii. A form of Affordable Housing Restriction that satisfies the requirements of Section 14J.K.

- iv. These documents in combination, to be submitted with an Application for Site Plan Approval shall include details about construction related to the provision, within the development, of units that are accessible to the disabled and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.
- b. Upon receipt by the Approving Authority, Applications shall be distributed to the Planning Board, Building Inspector, Fire Chief, Police Chief, Health Department, Wetlands Protection Committee, Design Review Board, the Board of Selectmen, and the Department of Public Works. Any reports from these parties shall be submitted to the Approving Authority within thirty (30) days of filing of the Application; and
- c. Within thirty (30) days of filing of an Application with the Approving Authority, the Approving Authority or its designee shall evaluate the proposal with regard to its completeness and shall advise the Applicant whether the Application is complete or whether additional materials are required. If the Application is deemed incomplete, the Approving Authority or its designee will identify with specificity what additional materials are required. The Approving Authority or its designee shall forward to the Applicant, with its report, copies of all recommendations received to date from other boards, commissions or departments.

3. Public Hearing

The Approving Authority shall hold a public hearing and review all Applications according to the procedure specified in Mass. Gen. Laws Ch. 40R Section 11 and 760 CMR 59.04(1)(f).

4. Site Plan Approval Decision

- a. The Approving Authority shall make a decision on the Site Plan Application, and shall file said decision with the Town Clerk, within one hundred twenty (120) days of the date the Application was received by the Town Clerk. The time limit for public hearings and taking of action by the Approving Authority may be extended by written agreement between the Applicant and the Approving Authority. A copy of such agreement shall be filed with the Town Clerk;
- b. Failure of the Approving Authority to take action within one hundred twenty (120) days or extended time, if applicable, shall be deemed to be an approval of the Application;
- c. The Approving Authority's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the Application for Site Plan Approval. The written decision shall contain the name

and address of the Applicant, identification of the land affected and its ownership, and reference by date and title to the plans that were the subject of the decision. The written decision shall certify that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the Approving Authority;

- d. The decision of the Approving Authority, together with the detailed reasons therefor, shall be filed with the Town Clerk, the Planning Board, and the Building Inspector. A certified copy of the decision shall be mailed to the owner and to the Applicant, if other than the owner. A notice of the decision shall be sent to the parties in interest and to persons who requested a notice at the public hearing; and
- e. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If the Application is approved by reason of the failure of the Approving Authority to timely act, the Town Clerk shall make such certification on a copy of the notice of Application. A copy of the decision or notice of Application shall be recorded with the title of the land in question in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The responsibility and the cost of said recording and transmittal shall be borne by the owner of the land in question or the Applicant.

5. Criteria for Approval

The Approving Authority shall approve the Development Project upon the following findings:

- a. The Applicant has submitted the required fees and information as set forth in applicable regulations;
- b. The proposed Development Project as described in the Application meets all of the requirements and standards set forth in this Section and applicable Design Guidelines, or a waiver has been granted therefrom; and
- c. Any extraordinary adverse potential impacts of the Development Project on nearby properties can be adequately mitigated.

For a Development Project subject to the Affordability requirements of Section 14J.K., compliance with condition (b) above shall include written confirmation by the Approving Authority that all requirements of that Section have been satisfied, subject to approval by DHCD. Prior to the granting of Site Plan Approval for a Project, the Applicant must demonstrate, to the satisfaction of the Administering Agency, that the method by which such affordable rents or affordable purchase prices are computed

shall be consistent with state or federal guidelines for affordability applicable to the Town of Wellesley.

6. Criteria for Conditional Approval

The Approving Authority may impose conditions on a Development Project as necessary to ensure compliance with the District requirements of this Section and applicable Design Guidelines, or to mitigate any extraordinary adverse impacts of the Development Project on nearby properties, insofar as such conditions are compliant with the provisions of Mass. Gen. Laws Ch. 40R and applicable regulations and do not unduly restrict (i.e. by adding unreasonable costs or by unreasonably impairing the economic feasibility of a proposed Development Project) opportunities for residential development.

7. Criteria for Denial

The Approving Authority may deny an Application for Site Plan Approval pursuant to this Section of the Bylaw only if the Approving Authority finds one or more of the following:

- a. The Development Project does not meet the requirements and standards set forth in this Section and applicable Design Guidelines; or
- b. The Applicant failed to submit information and fees required by this Section and necessary for an adequate and timely review of the design of the Development Project or potential Development Project impacts; or
- c. The Development Project would result in extraordinary adverse impacts on nearby properties that cannot be mitigated by means of suitable conditions.

8. Time Limit

A project approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within two (2) years after the decision issues, which time shall be extended by the time required to adjudicate any appeal from such approval. Said time shall also be extended if the project proponent is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase Development Project.

9. Appeals

Pursuant to Mass. Gen. Laws Ch. 40R Section 11, any person aggrieved by a decision of the Approving Authority may appeal to the Superior Court, the Land Court, or other court of competent jurisdiction within twenty (20) days after the Site Plan decision has been filed in the office of the Town Clerk.

10. Rules and Regulations

The Approving Authority shall adopt administrative rules relative to the Application requirements and contents for Site Plan Review; such rules shall be filed with the Town Clerk. Such administrative rules, and any amendment thereto, must be approved by the Department of Housing and Community Development.

F. Waivers

The Approving Authority may waive the bulk and dimensional, parking, and other provisions required by any district created pursuant to this Section and may waive specific requirements or recommendations of applicable Design Guidelines upon a finding that such waiver will allow the Development Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this Section or the specific district.

G. Project Phasing

The Approving Authority, as a condition of any Site Plan Approval, may allow a Development Project to be constructed in one or more phases.

H. Change in Plans After Approval by the Approving Authority

1. Minor Change

After Site Plan Approval, an Applicant may apply to make minor changes in a Development Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall build out or building envelope (i.e., general massing, height and bulk) of the site, or provision of open space, number of housing units, or housing need or affordability features. A change of one percent (1%) or less in the number of housing units in a Development Project shall constitute a minor change. Such minor changes must be submitted to the Approving Authority on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the Approving Authority. The Approving Authority may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The Approving Authority shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the Applicant for filing with the Town Clerk.

2. Major Change

Those changes deemed by the Approving Authority to constitute a major change in a Development Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a

minor change as described above, shall be processed by the Approving Authority as a new Application for Site Plan Approval pursuant to this Section.

I. Design Guidelines

To ensure that new development shall be of high quality, and shall meet the standards envisioned by the Town of Wellesley in adopting this Section and any districts established under this Section, the Approving Authority shall adopt the Design Guidelines governing the issuance of Site Plan Approvals for Development Projects within the districts established under this Section and shall file a copy with the Town Clerk. Such Design Guidelines and any subsequent amendments to such Design Guidelines must be approved by DHCD and must be within the scope of Design Standards under the Governing Laws. In addition to the standards set forth in this Bylaw, the physical character of Development Projects within the districts shall comply with such Design Guidelines, unless waived hereunder. In the event of any conflict between this Bylaw and the Design Guidelines, this Bylaw shall govern and prevail.

J. Fair Housing Requirement

All Development Projects within the districts established herein shall comply with applicable federal, state and local fair housing laws.

K. Housing and Housing Affordability

1. Number of Assisted Units

Twenty-five percent (25%) of all Dwelling Units constructed in a Development Project shall be maintained as Assisted Units. When the application of this percentage results in a fractional number of required Dwelling Units, the fractional number shall be rounded up to the next whole number.

2. General Requirements

Assisted Units shall comply with the following requirements:

- a. The monthly rent payment for an Affordable Rental Unit, including utilities and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless other affordable program rent limits approved by DHCD shall apply;
- b. For an Affordable Homeownership Unit, the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for

an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one; and

- c. Assisted Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

3. Design and Construction

- a. Design. In compliance with a corresponding marketing plan and Affordable Housing Restriction approved by DHCD, Assisted Units must be equitably integrated and dispersed throughout any phase of a Development Project containing Dwelling Units such that the Assisted Units are, as practicable, spread proportionately across the overall unit mix and comparable in initial construction quality and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Assisted Units must have access to all on-site amenities available to Unrestricted Units. Assisted Units shall be finished housing units; and
- b. Timing. All Assisted Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units and, for Development Projects that are constructed in phases, Assisted Units must be constructed and occupied during the initial lease-up period, insofar as is practicable, in proportion to the number of Dwelling Units in each residential phase of the Development Project.

4. Unit Mix

The total number of bedrooms in the Assisted Units shall, insofar as practicable and as approved by DHCD, be in the same proportion to the total number of bedrooms in the Unrestricted Units.

5. Affordable Housing Restriction

All Assisted Units shall be subject to an Affordable Housing Restriction which has been approved by DHCD and is recorded with the Norfolk County Registry of Deeds or the Land Court. The Affordable Housing Restriction shall provide for the implementation of the requirements of this Section. All Affordable Housing Restrictions must include, at minimum, the following:

- a. Description of the Development Project, including whether the Assisted Unit will be rented or owner-occupied;
- b. A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Development Project containing Dwelling Units or portion of a Development

Project containing Dwelling Units which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Development Project containing Dwelling Units or the rental portion of a Development Project containing Dwelling Units with the initially designated Affordable Rental Units identified in, and able to float subject to specific approval by DHCD in accordance with, the corresponding Affirmative Fair Housing Marketing Plan (“AFHMP”) and DHCD’s AFHMP guidelines.

- c. The term of the Affordable Housing Restriction shall be stated in the Site Plan Approval and shall be the longest period customarily allowed by law but shall be no less than thirty (30) years.
- d. The name and address of an Administering Agency with a designation of its power to monitor and enforce the Affordable Housing Restriction;
- e. Reference to a housing marketing and resident selection plan, to which the Assisted Unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan shall provide for local preferences in resident selection to the maximum extent permitted under applicable law and approved by DHCD. The plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size;
- f. A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
- g. Reference to the formula pursuant to which maximum rent of a rental unit or the maximum resale price of a homeownership unit will be set;
- h. A requirement that only an Eligible Household may reside in an Assisted Unit and that notice of any lease or sublease of any Assisted Unit to another Eligible Household shall be given to the Administering Agency;
- i. Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Administering Agency;
- j. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Administering Agency and the Town of Wellesley, in a form approved by town counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
- k. Provision that the restriction on Affordable Rental Units in a rental Project or rental portion of a Development Project containing Dwelling Units shall run with

the rental Development Project containing Dwelling Units or rental portion of a Development Project containing Dwelling Units and shall run in favor of the Administering Agency and/or the municipality, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household;

- l. Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Administering Agency, in a form specified by that agency, certifying compliance with the provisions of this Bylaw and containing such other information as may be reasonably requested in order to ensure affordability;
- m. A requirement that residents in Assisted Units provide such information as the Administering Agency may reasonably request in order to ensure affordability; and
- n. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.

6. Administration

- a. Administering Agency. The Administering Agency shall ensure the following:
 - i. Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
 - ii. Income eligibility of households applying for Assisted Units is properly and reliably determined;
 - iii. The housing marketing and resident selection plan conforms to all requirements, has been approved by DHCD, and is properly administered;
 - iv. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given; and
 - v. Affordable Housing Restrictions meeting the requirements of this section are recorded with the Norfolk County Registry of Deeds or the Land Court.
- b. Housing Marketing and Selection Plan. The housing marketing and selection plan may make provision for payment by the Applicant of reasonable costs to the Administering Agency to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements.
- c. Age-Restrictions. Nothing in this Section 14J shall permit the imposition of restrictions on age upon Development Projects unless proposed or agreed to

voluntarily by the Applicant. However, the Approving Authority may, in its review of a submission under Section 14J.E allow a specific Development Project within the District designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Development Project shall be in compliance with all applicable federal, state and local fair housing laws and regulations

- d. Failure of the Administering Agency. In the case where the Administering Agency cannot adequately carry out its administrative duties, upon certification of this fact by the Board of Selectmen or by the Department of Housing and Community Development, the administrative duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Board of Selectmen or, in the absence of such designation, by an entity designated by the Department of Housing and Community Development.

7. No Waiver

Notwithstanding anything to the contrary herein, without the express written approval of DHCD, no provisions of Section 14J.K. shall be waived without the express written approval of DHCD.

L. Annual Update

On or before July 31 of each year, the Board of Selectmen shall cause to be filed an Annual Update with the DHCD in a form to be prescribed by DHCD. The Annual Update shall contain all information required in 760 CMR 59.07, as may be amended from time to time, and additional information as may be required pursuant to Mass. Gen. Laws Ch. 40S and accompanying regulations. The Town Clerk of the Town of Wellesley shall maintain a copy of all updates transmitted to DHCD pursuant to this Bylaw, with said copies to be made available upon request for public review.

M. Notification of Issuance of Building Permits

Upon issuance of a residential building permit within the districts established herein, the Building Inspector of the Town of Wellesley shall cause to be filed an application to the DHCD, in a form to be prescribed by DHCD, for authorization of payment of a one-time density bonus payment for each Bonus Unit to receive a building permit pursuant to Mass. Gen. Laws Ch. 40R. The application shall contain all information required in 760 CMR 59.06(2), as may be amended from time to time, and additional information as may be required pursuant to Mass. Gen. Laws Ch. 40S and accompanying regulations. The Town Clerk of the Town of Wellesley shall maintain a copy of all such applications transmitted to DHCD pursuant to this Bylaw, with said copies to be made available upon request for public review.

N. Date of Effect

The effective date of this Bylaw shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of Mass. Gen. Laws Ch. 40A Section 5 and Mass. Gen. Laws Ch. 40R; provided, however, that an Applicant may not proceed with construction pursuant to this Bylaw prior to the receipt of final approval of this Bylaw and accompanying Zoning Map by both the DHCD and the Office of the Massachusetts Attorney General.

O. Severability

If any provision of this Section and/or any provision associated with a specific district created under this Section is found to be invalid by a court of competent jurisdiction, the remaining provisions shall not be affected but shall remain in full force, and such invalidity shall not affect the validity of the remainder of the Zoning Bylaws of the Town of Wellesley.

SECTION 14J.1. WELLESLEY PARK SMART GROWTH OVERLAY DISTRICT

A. Purpose

The purposes of this Section are:

1. To establish a specific District pursuant to the provisions of Section 14J;
2. To establish the Wellesley Park Smart Growth Overlay District to promote the redevelopment of the Wellesley Office Park into a vibrant, workable, livable community with a rich sense of place in a form that meets the objectives of “smart growth” within the purposes of Mass. Gen. Laws Ch. 40R;
3. To provide for a more diversified housing stock within the Town of Wellesley, including affordable housing and housing types that meet the needs of the Town’s population, all as currently identified in the Wellesley Housing Production Plan;
4. To promote advanced site planning, sustainable design, improved transportation management, and environmental enhancements in the mixed-use redevelopment of the Wellesley Park Smart Growth Overlay District; and
5. To the extent not in conflict with the purposes of Mass. Gen. Laws Ch. 40S and the provisions for As-of-Right development under the Governing Laws, generate positive tax revenue, and to benefit from the financial incentives provided by Mass. Gen. Laws Ch. 40R, while providing the opportunity for new business growth and additional local jobs.

B. Establishment and Delineation of District

This District, to be known as the Wellesley Park Smart Growth Overlay District (the “Wellesley Park Overlay District”), is established pursuant to and subject to the provisions of Section 14J. The Wellesley Park Overlay District is an overlay district having a land area of approximately 26 acres in size that is superimposed over the underlying zoning district. The boundaries of the Wellesley Park Overlay District are delineated as the “Wellesley Park Smart Growth Overlay District” on the Zoning Map of the Town of Wellesley.

C. Permitted Uses

1. The following Principal Uses, either alone or in any combination thereof, as well as any Accessory Uses to the following Principal Uses, shall be permitted upon Site Plan Approval pursuant to the provisions of this Section and Section 14J. All uses not expressly allowed are prohibited.
 - a. Multi-Family Dwellings;

- b. Small-Scale Retail Establishments
 - c. Restaurants, excluding drive-through windows or service;
 - d. Assisted Elderly Housing;
 - e. Independent Elderly Housing;
 - f. Nursing Homes and Skilled Nursing Facility;
 - g. Child Care;
 - h. Offices;
 - i. Office-High Tech;
 - j. Hotels;
 - k. Banks;
 - l. Conservation Uses;
 - m. Recreational Uses; and
 - n. Parking accessory to any of the above Principal Uses, including surface parking, parking under buildings, and above- and below-grade structured parking.
2. The following Principal Uses in excess of the area standards established under Section 16A, or as otherwise provided for below, shall require the issuance of a Project of Significant Impact Special Permit pursuant to Section 16A as a prerequisite to Site Plan Approval. If such Principal Use is proposed in combination with another, otherwise permitted use, the otherwise permitted use shall not be subject to issuance of a Project of Significant Impact Special Permit.
- a. Restaurants, which shall not include drive-through windows or service, in excess of 5,000 square feet;
 - b. Assisted Elderly Housing;
 - c. Independent Elderly Housing;
 - d. Nursing Homes and Skilled Nursing Facility;
 - e. Child Care;
 - f. Offices and Office-High Tech; and

g. Hotels.

D. Dimensional and Other Requirements

Buildings and Development Lots within the Wellesley Park Overlay District shall be subject to the following requirements:

1. Density

Development of the following uses within the Wellesley Park Overlay District shall be limited, as follows:

- a. Multi-Family Dwellings: no more than six hundred (600) total Dwelling Units or twenty (20) units per acre based on the entire area of the District, whichever is greater;
- b. Small-Scale Retail Establishments: not to exceed a total of 19,500 gross square feet;
- c. Offices and Office-High Tech: not to exceed a total of 700,000 gross square feet; and
- d. Hotels: not to exceed a total of 175 rooms.

2. Total Allowable New Non-Residential Uses

The total non-residential Gross Leasable Floor Area within the District, including but not limited to Small-Scale Retail, Restaurant, Assisted Elderly Housing, Independent Elderly Housing, Nursing Homes and Skilled Nursing Facility, Child Care, Office, Hotel, Bank, Office-High Tech, and Recreational Uses, but excluding all existing Gross Leasable Floor Area within the District in existence on the date of adoption of this Section ("Existing Floor Area"), shall not exceed 49% of the residential Gross Leasable Floor Area (constructed and planned). To the extent the Existing Floor Area is reduced for any reason whatsoever, it may be replaced with new non-residential Gross Leasable Floor Area without impacting this calculation.

3. Minimum Area

There shall be no minimum area of a Development Lot within the Wellesley Park Overlay District.

4. Setbacks/Yards

There shall be no minimum setback or yard requirements within the Wellesley Park Overlay District, except for the buffer from Adjacent Property requirement described in paragraph 5.

5. Buffer from Adjacent Property

A minimum buffer of twenty-five (25) feet shall be maintained where such a buffer is present at the time of the adoption of this Section along the perimeter of the Wellesley Park Overlay District boundary. No vertical construction or pavement shall be allowed within this minimum buffer, provided that the following elements shall be permitted: pedestrian paths and sidewalks; vehicular access points to the District; cart paths to serve adjacent recreational uses; such emergency access and egress as may be required by the Town of Wellesley; drainage facilities; utilities and related easements but not including a wastewater treatment facility; landscaping; plantings; fences and walls; and signage and lighting approved by the Approving Authority pursuant to this Section.

6. Height

The maximum height of buildings and structures in a Development Project in the Wellesley Park Overlay District shall be eighty-five (85) feet, and the aggregate height of all buildings in the Wellesley Park Overlay District shall not exceed five hundred and seventy-five (575) feet based on the maximum height of each individual building. Independent parking structures shall not be included in the calculation of aggregate height.

For the purposes of Development Projects within the Wellesley Park Overlay District, building or structure height shall be the distance between average finished grade adjacent to the building, exclusive of basements, and the ceiling of the upper-most occupied space in the building in the case of flat roofs and, in the case of buildings with pitched roofs, at the point at which such ceiling intersects with the exterior portion of the building. The calculation of building height shall not apply to roof tanks and their supports, roof decks, parapets, ventilating, air conditioning and similar building service equipment, chimneys, railings, skylights, mechanical penthouses, and other similar features of buildings which are in no way designed or used for living purposes nor the portion of the pitched roof above the intersection of the ceiling of the upper-most heated space and the exterior of the building.

7. Non-Frontage Development

In the Wellesley Park Overlay District and on parcels that are contiguous to the Wellesley Park Overlay District, a Development Lot lacking frontage may be developed and used without regard to the lack of frontage, provided that the non-frontage development has permanent access to a private or public way that is located within the Wellesley Park Overlay District through easements recorded with the Norfolk County Registry of Deeds and appropriate provisions are made for parking,

drainage and utilities. The development and use of such non-frontage development located entirely within the District shall be consistent with the requirements of this Section. Such non-frontage development may be subdivided and sold or transferred, provided that each Development Lot so subdivided retains or is granted such cross access, drainage and utility easements to serve such non-frontage development. Should such transfer occur after an approval hereunder, in addition to the easements referenced above, the transferee shall demonstrate to the Approving Authority that the non-frontage development shall remain in compliance with any conditions of Site Plan Approval and, for parcels that are contiguous to the Wellesley Park Overlay District, with applicable zoning requirements.

8. Number of Buildings on a Development Lot

In the Wellesley Park Overlay District, more than one principal building may be erected on a Development Lot. Buildings may also be erected in the Wellesley Park Overlay District across Development Lot lines.

E. Parking

Parking provided in the Wellesley Park Development District, including structured parking, shall comply with these provisions and shall not be subject to Section 21 or any other provisions of the Zoning Bylaw. Regardless of these requirements, parking shall be designed and constructed to comply with all applicable disability access requirements including, but not limited to, the Americans with Disabilities Act.

1. Required Parking

Parking shall be provided for uses according to Table 1, Required Parking, below. When application of the requirements set forth below results in a number that includes a fraction, the fraction shall be rounded up to the next whole number.

Table 1 - Required Parking		
Use	Minimum Parking Required	Maximum Allowable Parking
Multi-Family Dwelling Unit	1 space per unit	2 spaces per unit
Small-Scale Retail Establishments	None, if individual establishments are less than 10,000 gross square feet; 3 spaces per 1,000 gross square feet in excess of 10,000 gross square feet	4 spaces per 1,000 gross square feet in excess of 10,000 gross square feet
Banks		
Child Care		
Restaurant		
Recreational Uses		

Assisted Elderly Housing or Independent Elderly Housing or Nursing Homes and Skilled Nursing Facility	0.25 spaces per bed	1 space per bed
Office or Office-High Tech	2 spaces per 1,000 gross square feet	4 spaces per 1,000 gross square feet
Hotel	0.5 spaces per room	1 space per room
Conservation Use	5 dedicated spaces	No maximum

2. On-Street Parking Offset

Parking spaces within the public right-of-way may be counted toward the minimum parking required pursuant to paragraph 1., Required Parking.

3. Parking Design and Construction Standards

The design and construction standards for parking shall be approved by the Approving Authority in conjunction with the Site Plan Approval of a Development Project; such design and construction standards shall address the dimensions for parking spaces, maneuvering aisles, driveways, and landscape islands, and materials and specifications for paving, curbing, lighting, and landscaping.

4. Modification in Parking Requirements

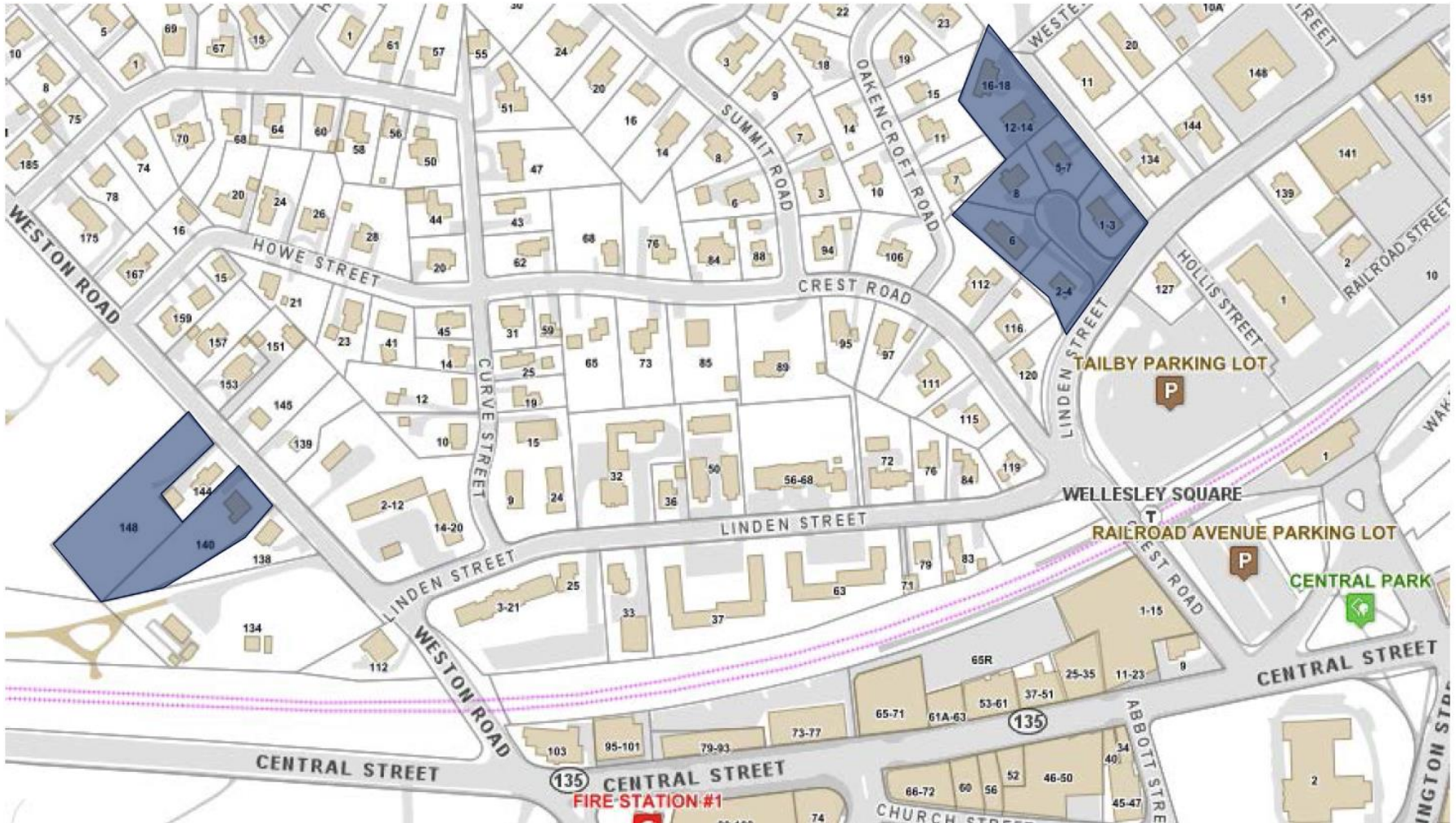
Notwithstanding anything to the contrary herein, any minimum required or maximum permitted amount of parking may be modified by the Approving Authority through the Site Plan Approval process, if the Applicant can demonstrate that the modified amount of parking will not cause excessive congestion, endanger public safety, or that a modified amount of parking will provide positive environmental or other benefits, taking into consideration:

- a. The availability of public or commercial parking facilities in the vicinity of the use being served;
- b. Shared use of parking spaces serving other uses having peak user demands at different times;
- c. Age or other occupancy restrictions which are likely to resulting a lower level of auto usage; and
- d. Such other factors, including the availability of valet parking, shuttle service, or a transportation management plan as may be considered by the Approving Authority. Where such reduction is authorized, the Approving Authority may impose conditions of use or occupancy appropriate to such reductions.

F. Signage

All new signage in the Wellesley Park Overlay District shall be approved by the Approving Authority in conjunction with the Site Plan Approval of a Development Project. The Applicant shall submit, as part of its Site Plan Review filing, a master signage plan for approval by the Approving Authority establishing allowances, requirements, and limitations for all new signage within the Wellesley Park Overlay District. The master signage plan, as may be updated and revised with the approval of the Approving Authority, shall, with respect to both existing and future signs, specify all applicable sign types, dimensions, materials, quantities and other standards for review by the Approving Authority in the course of Site Plan Approval. Upon approval by the Approving Authority, the master signage plan shall become the sole governing source of standards and requirements for all new signage within the Wellesley Park Overlay District under the Zoning Bylaw. Sign permits for any sign meeting these established standards may be issued by the Inspector of Buildings of the Town of Wellesley upon approval of the master signage plan.

APPENDIX B: DELANSON CIRCLE/WESTON ROAD



DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of this 32 day of April 2019, by and between the Board of Selectmen (the "Board") of the Town of Wellesley, Massachusetts (the "Town"), and Delanson Realty Partners, LLC as owner of the Property (as hereinafter defined) (together, with its/their successors and assigns, the "Owner," and together with the Board, the "Parties").

WHEREAS, the Owner owns or has agreements to purchase the parcels of land located at 1-3, 2-4, 5-7, 6 and 8 Delanson Circle, and 12-14 and 16-18 Hollis Street (the "Property"), and further described and identified in **Exhibit A**.

WHEREAS, the Owner has filed with the Town of Wellesley Zoning Board of Appeals (the "ZBA") an application for development of the Property under G.L. c. 40B §§ 20 et seq. known as Case Number ZBA-2017-99 (the "40B Application"). The next session of the hearing under said Application has been continued by the Owner and the ZBA until May 1, 2019 and will be further continued as provided herein.

WHEREAS, the Owner and the Board have determined that a less impactful development of the Property, as described in more detail herein (the "Revised Project"), would be more appropriate for the Property but would require an amendment of the zoning applicable to the Property.

WHEREAS, the Board, as the chief executive officer of the Town is authorized to propose the zoning amendments described herein, call a Special Town Meeting, and execute this Agreement on behalf of the Town.

WHEREAS, this Revised Project is a multifamily residential condominium development at the Property consisting of a single new building containing 35 dwelling units (not to exceed 75 bedrooms) and the renovation, but not expansion, of four existing dwelling units at 12-14 and 16-18 Hollis Street.

WHEREAS, the Parties wish to establish a framework to facilitate the development of the Revised Project as more particularly described and depicted on a certain plan of land entitled "Wellesley Square Residences dated March 27, 2019", containing 14 sheets and attached hereto and incorporated herein as **Exhibit B** (the "Delanson Development Plan") and described in a certain Project Narrative by Embarc Design attached hereto and incorporated herein as **Exhibit C** (the "Project Narrative").

NOW THEREFORE, the development of the Revised Project shall be subject to the terms and restrictions set forth in this Agreement and the Owner shall impose such restrictions and undertake and complete such obligations, as set forth in this Agreement as follows:

1. PROPOSED ZONING AMENDMENTS

1.1 The Board agrees to propose a Zoning Bylaw amendment to the Planning Board and to a Special Town Meeting, to be held May 13, 2019 in the form substantially as set forth in **Exhibit D** (the "Bylaw Amendments") which would allow the Revised Project to be developed

under and subject to the processes and limitations contained within Zoning By-Law Section 14F. Residential Incentive Overlay and Section 16A. Project Approval; and to support a favorable report on the Bylaw Amendments by the Planning Board and the adoption thereof by Town Meeting.

2. 40B PETITION

2.1 Upon the Planning Board's favorable recommendation on the Warrant Articles the Owner will seek a so-called "standstill" agreement with the ZBA, which shall extend, pursuant to 760 CMR 56.05 (3), the time for conducting the public hearing on the 40B Application, making a decision on that Application, and filing that decision with the Town Clerk for a sufficient time so that the ZBA may suspend its review of the 40B Petition while the Owner pursues all local approvals for the Revised Project.

2.2 Upon the Owner's receipt of its first building permit for the Revised Project the Owner shall simultaneously withdraw the 40B Petition with prejudice.

3. REVISED PROJECT

3.1 Forthwith upon adoption of the Zoning Bylaw amendment by Town Meeting and approval by the Attorney General, the Owner will apply for such special permits, site plan approvals and other required local approvals from the Town as is required by the Zoning Bylaw Amendment (the "Revised Project Permits").

3.2 The Owner's application for the Revised Project shall adhere to the Delanson Development Plan **Exhibit B** and the Project Narrative **Exhibit C**. The number of units shall not exceed 35, the number of bedrooms shall not exceed 75 bedrooms. The Owner acknowledges that the special permit and site plan approval for the Revised Project may include conditions typical for such projects in Wellesley including without limitation conditions related to drainage and utility design, traffic impacts (and offsite mitigation to mitigate traffic impacts, including, but not limited to a crosswalk on Linden Street), landscaping, sequencing of construction, a construction management plan, and post-construction reviews.

3.3 In addition to the 35 new units described above, the Owner shall renovate, but not expand, the existing four (4) dwelling units each containing two (2) bedrooms located at 12-14 and 16-18 Hollis Street in accordance with and to the standards of the Outline Specification attached as **Exhibit E**. The Owner shall subject all four (4) renovated units to a Department of Housing and Community Development (DHCD) approved form of Regulatory Agreement in perpetuity. The Regulatory Agreement shall be in a form approved by Town Counsel, shall be recorded in the Norfolk County Registry of Deeds and shall be sufficient to make all four (4) renovated units at 12-14 and 16-18 Hollis Street (the "**Affordable Units**") eligible for inclusion on the DHCD's Subsidized Housing Inventory (the "SHI") as provided for in 760 CMR 56.02. The finishes in the Affordable Units are described in **Exhibit E**.

The Affordable Units will be declared as Condominium units within the Condominium Master Deed created for the new thirty-five (35) units, and the Affordable Units will have access to common areas and amenities of the Condominium in accordance with the Condominium Master Deed and the rules and regulations of the Condominium, and the Affordable Units will have

appurtenant percentages of interest in the Condominium established in accordance with G.L. c. 183A. The Affordable Units shall be sold to eligible individuals by the Owner. The Revised Project Permits may provide that not more than 6 Certificates of Occupancy may be issued for any new construction units within the Revised Project unless Certificates of Occupancy have been issued for the 4 Affordable Units at 12-18 Hollis Street following renovation pursuant to the requirements of this section. The Revised Project permits may also require that the common areas located at or adjacent to the Affordable Units shall be properly maintained by the Condominium Association, subject to enforcement by the Inspector of Buildings and the permit granting authorities.

3.4 Construction of the Revised Project shall be managed in accordance with the Construction Management Plan dated February 8, 2019 and attached hereto as **Exhibit F**. All construction related traffic shall follow the trucking routes detailed in said Construction Management Plan, however, the Construction Management Plan is subject to change and/or refinement by local permit granting authorities.

3.5 In the event the Zoning Bylaw Amendment is not adopted by a Special Town Meeting on May 13, 2019, then this Agreement, unless extended in writing by the Parties, shall terminate and the Parties shall have no further obligations to the other hereunder. If the Zoning Bylaw Amendment is adopted, in its current or substantially similar form, The Owner shall in good-faith pursue governmental permitting and approvals necessary for the project as defined in **Exhibits B and C** and shall not seek permits and approvals for any other development of the site for the duration of this Agreement.

3.6 The owner may terminate this agreement if and only if any of the approvals are (1) denied, (2) annulled, or (3) not exercised by the owner because either (a) the Permit is appealed by third party and neither the Owner nor the Town elects to defend the Permit in the appeal and allows the Permit to be annulled or lapse, or (b) the Permit is issued subject to conditions unacceptable to the Owner. The Owner shall notify the Town of said termination in writing and shall record in the Registry of Deeds a notice of termination which shall be binding on all parties and their successors or assigns.

3.7 The Board and the Owner recognize that the Revised Project may undergo revisions and modifications in the usual course of the local approval process. This Agreement shall remain in full force and effect, so long as such revisions and modifications are satisfactory to the applicable regulatory board and shall not result in an increase in the number of dwelling units or bedrooms, or in the size or height of the buildings or any conditions specifically referred to or adopted in this Agreement.

4. TRAFFIC IMPROVEMENTS AND MITIGATION

4.1 The final site plans submitted in connection with the Revised Project shall be consistent with the Delanson Development Plan **Exhibit B** and shall include the following improvements (the "Roadway Improvements") to be undertaken by the Owner prior to the issuance of the first Certificate of Occupancy of the Revised Project:

- (a) Crosswalk across Linden Street (to be located by the Planning Board);

- (b) The width of the pavement on Hollis Street shall be extended on the Owner's (west) side of Hollis Street, for the full length of the Property, in order to provide a paved travel way of not less than 18 feet. Furthermore, subject to the approval revised permit granting boards, the Owner shall: 1) repave the full length of Hollis Street located to the west of Linden Street, 2) constructing a sidewalk and installing curbing, or other improvements, on its Property on the west side of Hollis Street.

5. MISCELLANEOUS

5.1 Forbearance from Suit

The Parties shall forego any actions at law or equity attempting to contest the validity or prevent the enforceability of any provision(s) of this Agreement. Such forbearance shall not preclude any Party from bringing any action for breach of contract on the part of the other Party or acts of intentional misconduct with respect to matters contemplated herein.

5.2 Cooperation

The Parties agree to work cooperatively, on a going-forward basis, to execute and deliver documents, and take such other actions, whether or not explicitly set forth herein, that may be necessary in connection with implementation of the goals and objectives of this Agreement.

5.3 Successors and Assigns

The Parties agree that the Owner may transfer all or any interest in the Property to another entity (each a "New Entity"), subject to the terms of this Agreement, provided that all obligations under this Agreement shall be joint and several among any parties with an interest in the Property, and further provided that the obligations of this Agreement shall run with the Property. To that end, any transfer to a New Entity shall be subject to any New Entity's acknowledgement that:

- i. This Agreement shall run with title to the Property and shall be binding upon the Owner insofar as it is the owner of the Site, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Property and/or their respective interest in the Property.

- ii. Any predecessor-in-title shall be released from its obligations under this Agreement only upon procuring a written acknowledgment from its immediate successor, addressed to the Town, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Board of Selectmen with respect to such successor's subdivided portion(s) of the Site; and

- iii. The obligations created hereunder shall not be treated as assumed by any New Entity until such notice is delivered to the Town.

iv. In accordance with the terms of this section, a notice of this Agreement in a form reasonably acceptable to the Owner may be recorded with the Norfolk Registry of Deeds providing for termination as provided in Section 3.6 hereof.

5.4 Notices

Notices, when required hereunder, shall be deemed sufficient if sent registered mail to the Parties at the following addresses:

Town:	Board of Selectmen Town of Wellesley Wellesley Town Hall 525 Washington Street Wellesley, MA 02482
with a copy to:	Thomas J. Harrington, Town Counsel Miyares and Harrington LLP 40 Grove Street Suite 190 Wellesley, MA 02482 tom@miyares-harrington.com
Owner:	Delanson Realty Partners Aura Properties, LLC 49 Coolidge Street Brookline, MA 02446
with a copy to:	Alan J. Schlesinger Schlesinger and Buchbinder, LLP 1200 Walnut Street Newton, MA 02461

5.5 Default; Opportunity to Cure

Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within fifteen (15) days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within thirty (30) days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such 30-day period, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default.

5.6 Limited Undertaking

Nothing in this Agreement shall be construed as an undertaking by the Owner to construct or complete the Revised Project, or any portion thereof, and the obligations hereunder

being limited to compliance with the provisions hereof to the extent the Revised Project, or any portion thereof, is commenced, constructed or completed.

5.7 Limitations on Liability

The obligations of the Owner or any New Entity do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise.

5.8 Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the objectives of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Norfolk.

5.9 Entire Agreement; Amendments

This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives. Amendments to the terms of this Agreement may be agreed to on behalf of the Town by its Board of Selectmen. No representation, promise or other agreement with respect to the subject matter hereof shall be binding on any Party unless it is expressly set forth herein. The Parties expressly acknowledge and agree that this Agreement does not and shall not apply to any development by Owner, or any of its affiliates, other than the Project.

5.10 Interpretation

Capitalized terms used but not defined herein shall have the meanings assigned to them under the Town of Wellesley Zoning Bylaws.

5.11 Counterparts; Signatures

This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.

5.12 No Third-Party Beneficiaries

Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby, and no third party shall have any right to enforce any obligations or exercise any rights hereunder.

5.13 Headings.

Headings are inserted for convenience only and do not form part of this Agreement.

[Signatures on following page(s)]

EXECUTED under seal as of the date and year first above written,

DELANSON REALTY PARTNERS LLC

By: 

Manager

TOWN OF WELLESLEY BOARD OF
SELECTMEN

By: 

Name: 

Its: 

LIST OF EXHIBITS

Exhibit A – Land Description

Exhibit B – Revised Plan

Exhibit C – Project Narrative

Exhibit D – Warrant Articles

Exhibit E – Hollis Street Outline Specification

Exhibit F – Construction Management Plan

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of this 22 day of 2019, by and between the Board of Selectmen (the "Board") of the Town of Wellesley, Massachusetts (the "Town"), and Wellesley Park, LLC as owner and contract purchaser of the Property (as hereinafter defined) (together, with its/their successors and assigns, the "Owner," and together with the Board, the "Parties").

WHEREAS the Owner has agreements to purchase certain parcels of land located at 148 Weston Road and 140 Weston Road, within the Town (such parcels collectively, as further described on Exhibit A, the "Property"). A portion of the property at 140 Weston Road is to be conveyed to the Owner outright, and a second portion containing a house (the "140 House Lot") will be conveyed to the Owner subject to a life estate (the "Life Estate") in favor of the current owner.

WHEREAS the Owner has filed with the Town of Wellesley Zoning Board of Appeals a petition for development of the Property under G.L. c. 40B §§ 20 et seq. known as Case Number ZBA-2018-24 (the "40B Petition"). The next session of the hearing under said application has been continued by the Owner and the ZBA until May 1, 2019 and will be further continued as provided herein.

WHEREAS the Owner and the Board have determined that a less impactful development of the Property, as described in more detail herein (the "Revised Project"), would be more appropriate for the Property but would require an amendment of the zoning applicable to the Property.

WHEREAS, the Board, as the chief executive officer of the Town is authorized to propose the zoning amendments described herein, call a Special Town Meeting, and execute this Agreement on behalf of the Town.

WHEREAS, this Revised Project is a multifamily residential condominium development at the Property consisting of a single new building containing 25 dwelling units (not to exceed 58 bedrooms) and the eventual renovation (as provided herein) of the existing single-family dwelling at 140 Weston Road.

WHEREAS, the Parties wish to establish a framework to facilitate the proposed development of the Property for the Revised Project as more particularly described and depicted on a certain plan of land entitled "Wellesley Park Residences, Weston Road, Wellesley, MA 02402, February 22, 2019", containing 9 sheets and attached hereto and incorporated herein as Exhibit B (the "148 Weston Development Plan") and described in a certain Project Narrative by Embarc Design attached hereto and incorporated herein as Exhibit C (the "Project Narrative").

NOW THEREFORE, the development of the Revised Project shall be subject to the terms and restrictions set forth in this Agreement. The Owner shall impose such restrictions and undertake and complete such obligations, as set forth in this Agreement.

1. PROPOSED ZONING AMENDMENTS

1.1 The Board agrees to propose a Zoning Amendment to the Planning Board and to a Special Town Meeting to be held May 13, 2019 in the form substantially as set forth in **Exhibit D** (the “Bylaw Amendments”) which would allow the Revised Project to be developed under and subject to the processes and limitations contained within Zoning ByLaw section 14F, Residential Incentive Overlay, and section 16A. Project Approval; and to support a favorable report on the Bylaw Amendments by the Planning Board and the adoption thereof by Town Meeting.

2. 40B PETITION

2.1 Upon the Planning Board’s favorable recommendation on the Bylaw Amendments the Owner will seek a so-called “standstill” agreement with the ZBA, which shall extend, pursuant to 760 CMR 56.05 (3), the time for conducting the public hearing on the 40B Petition, making a decision on that Application, and filing that decision with the Town Clerk for a sufficient time so that the ZBA may suspend its review of the 40B Petition while the Owner pursues all local permits for the Revised Project.

2.2 Upon the Owner’s receipt of its first building permit for the Revised Project the Owner will withdraw the 40B Petition with prejudice.

3. REVISED PROJECT

3.1 Forthwith upon adoption of the Warrant Articles by the Town Meeting and their approval by the Attorney General, the Owner will apply for such special permit, site plan approvals and other required local approvals from the Town as is required by the Zoning Bylaw Amendment (the “Revised Project Permits”).

3.2 The Owner’s application for the Revised Project shall adhere to the 148 Weston Development Plan Exhibit B and the Project Narrative Exhibit C. The number of units shall not exceed 25 and the number of bedrooms shall not exceed 58. The Owner acknowledges that the special permit and site plan approval for the Revised Project may include conditions typical for such projects in Wellesley including without limitation conditions relative to drainage and utility design, traffic impacts (and offsite mitigation to mitigate traffic impacts), landscaping, sequencing of construction, a construction management plan, and post-construction reviews.

3.3 In addition to the 25 new units the Owner will acquire 140 Weston Road subject to the Life Estate on the 140 House Lot. Upon termination of the Life Estate the Owner will renovate the 140 House into 2 housing units (the “Affordable Units”) in accordance with and to the standards of the Outline Specification attached as **Exhibit E**. The Owner shall subject the Affordable Units to a Department of Housing and Community Development (DHCD) approved form of deed restriction or Regulatory Agreement in perpetuity. The deed restriction or Regulatory Agreement shall be in a form approved by Town Counsel which shall be recorded in the Norfolk County Registry of Deeds and shall be sufficient to make the Affordable Units eligible for inclusion on the Department of Housing and Community Development’s Subsidized Housing Inventory (the “SHI”) as provided for in 760 CMR 56.02, or any successor substantially similar measurement of the creation of an “affordable” housing unit. The finishes in the Affordable Units are described in Exhibit E.

Due to the uncertain duration of the Life Estate the date for completion of the Affordable Units is also uncertain. In order to provide security to the Town for the performance of the Owner's obligation to deliver the Affordable Units the Owner agrees:

(i) Prior to or contemporaneous with the sale of the first unit within the Revised Project the Owner will grant to the Town or its designee a first mortgage in form satisfactory to Town Counsel to encumber the lot containing the 140 House; and

(ii) Prior to the issuance of a Certificate of Occupancy for more than 4 units of the Revised Project the Owner shall deposit in escrow with the Town or its designee the sum of _____ to be held pursuant to an escrow agreement (the "Escrow Agreement") providing for draws against the escrowed funds to pay for renovations to create the Affordable Units in accordance with Exhibit E.

The escrowed funds plus the first mortgage are intended to secure the obligations of the Owner to deliver the Affordable Units.

3.4 Pursuant to rights to be reserved to the Owner, the Affordable Units will be declared as condominium units within the condominium Master Deed created for the new twenty-five units, and the Affordable Units will have access to common areas and amenities of the Condominium in accordance with the Condominium Master Deed and the rules and regulations of the Condominium, and the Affordable Units will have appurtenant percentages of interest in the Condominium established in accordance with G.L. c. 183A. The Affordable Units shall be sold to eligible individuals by the Owner. The Revised Project permits may also require that the common areas located on at or adjacent to the Affordable Units shall be properly maintained by the Condominium association, subject to enforcement by the Inspector of Buildings and the permit granting authorities.

3.5 Construction of the Revised Project shall be managed in accordance with the Construction Management Plan dated January 5, 2019 and attached hereto as **Exhibit F**. All construction related traffic shall follow the trucking routes detailed in said Construction Management Plan, however, the Construction Management Plan is subject to change and/or refinement by local permit granting authorities.

3.6 In the event the Zoning Bylaw Amendment is not adopted by a Special Town Meeting on May 13, 2019, then this Agreement, unless extended in writing by the Parties, shall terminate and the Parties shall have no further obligations to the other hereunder. If the Zoning Bylaw Amendment is adopted, in its current or substantially similar form, the Owner shall in good faith pursue governmental permitting and approvals necessary for the project as defined in exhibits B and C and shall not seek permits and approvals for any other development of the site for the duration of this Agreement.

3.7 The owner may terminate this agreement if and only if any of the approvals are (1) denied, (2) annulled, or (3) not exercised by the owner because either (a) the Permit is appealed by third party and neither the Owner nor the Town elects to defend the Permit in the appeal and allows the Permit to be annulled or lapse, or (b) the Permit is issued subject to conditions unacceptable to the Owner. The Owner shall notify the Town of said termination in

writing and shall record in the Registry of Deeds a notice of termination which shall be binding on all parties and their successors or assigns.

3.8 The Board and the Owner recognize that the Revised Project may undergo revision and modification in the usual course of the local approval process. This Agreement shall remain in full force and effect, so long as such revisions and modifications shall be satisfactory to the applicable regulatory board and shall not result in an increase in the number of dwelling units, bedrooms, or in the size or height of the buildings or any conditions specifically referred to or adopted in this Agreement.

4. TRAFFIC IMPROVEMENTS AND MITIGATION

4.1 The final site plans submitted in connection with the Revised Project shall be consistent with the 148 Weston Development Plan Exhibit B and include the following improvements (the "Roadway Improvements") to be undertaken by the Owner prior to the issuance of the first Certificate of Occupancy of the Revised Project:

- (a) Construction of a 5' wide concrete sidewalk and reinstallation of vertical granite curbing along the street frontage of the Property;
- (b) Installation of R1-1 Stop Sign and pavement markings at the entry driveway;
- (c) Contribution of \$ ____ to the Town for installation of 260' +/- bituminous concrete sidewalk on the southwest side of Weston Road to connect the Property to the existing asphalt sidewalk with meets the crosswalk at the Linden Street intersection.

5. MISCELLANEOUS

5.1 Forbearance from Suit

The Parties shall forego any actions at law or equity attempting to contest the validity or prevent the enforceability of any provision(s) of this Agreement. Such forbearance shall not preclude any Party from bringing any action for breach of contract on the part of the other Party or acts of intentional misconduct with respect to matters contemplated herein.

5.2 Cooperation

The Parties agree to work cooperatively, on a going-forward basis, to execute and deliver documents, and take such other actions, whether or not explicitly set forth herein, that may be necessary in connection with implementation of the goals and objectives of this Agreement.

5.3 Successors and Assigns

The Parties agree that the Owner may transfer all or any interest in the Property to another entity (each a "New Entity"), subject to the terms of this Agreement, provided that all obligations under this Agreement shall be joint and several among any parties with an interest in

the Property, and further provided that the obligations of this Agreement shall run with the Property. To that end, any transfer to a New Entity shall be subject to any New Entity's acknowledgement that:

i. This Agreement shall run with title to the Property and shall be binding upon the Owner insofar as it is the owner of the Site, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Property and/or their respective interest in the Property.

ii. Any predecessor-in-title shall be released from its obligations under this Agreement only upon procuring a written acknowledgment from its immediate successor, addressed to the Town, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Board of Selectmen with respect to such successor's subdivided portion(s) of the Site; and

iii. The obligations created hereunder shall not be treated as assumed by any New Entity until such notice is delivered to the Town.

iv. In accordance with the terms of this section, a notice of this Agreement in a form reasonably acceptable to the Owner may be recorded with the Norfolk Registry of Deeds. Said notice shall note that the Agreement may be terminated as provided in Section 3.6 hereof.

5.4 Notices

Notices, when required hereunder, shall be deemed sufficient if sent registered mail to the Parties at the following addresses:

Town: Board of Selectmen
Town of Wellesley
Wellesley Town Hall
525 Washington Street
Wellesley, MA 02482

with a copy to: Thomas J. Harrington, Town Counsel
Miyares and Harrington LLP
40 Grove Street Suite 190
Wellesley, MA 02482
tom@miyares-harrington.com

Owner: Wellesley Park, LLC
49 Coolidge Street
Brookline, MA 02446

with a copy to: Alan J. Schlesinger
Schlesinger and Buchbinder, LLP
1200 Walnut Street
Newton, MA 02461

5.5 Default; Opportunity to Cure

Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within fifteen (15) days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within thirty (30) days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such 30-day period, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default.

5.6 Limited Undertaking

Nothing in this Agreement shall be construed as an undertaking by the Owner to construct or complete the Revised Project, or any portion thereof, and the obligations hereunder being limited to compliance with the provisions hereof to the extent the Revised Project, or any portion thereof, is commenced, constructed or completed.

5.7 Limitations on Liability

The obligations of the Owner or any New Entity do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise

5.8 Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the objectives of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Norfolk.

5.9 Entire Agreement; Amendments

This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives. Amendments to the terms of this Agreement

may be agreed to on behalf of the Town by its Board of Selectmen. No representation, promise or other agreement with respect to the subject matter hereof shall be binding on any Party unless it is expressly set forth herein. The Parties expressly acknowledge and agree that this Agreement does not and shall not apply to any development by Owner, or any of its affiliates, other than the Project.

5.10 Interpretation

Capitalized terms used but not defined herein shall have the meanings assigned to them under the Town of Wellesley Zoning Bylaw.

5.11 Counterparts; Signatures

This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.

5.12 No Third-Party Beneficiaries

Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby, and no third party shall have any right to enforce any obligations or exercise any rights hereunder.

5.13 Headings.

Headings are inserted for convenience only and do not form part of this Agreement.

[Signatures on following page(s)]

EXECUTED under seal as of the date and year first above written,

WELLESLEY PARK LLC

By: 
Manager

TOWN OF WELLESLEY BOARD OF
SELECTMEN

By: 
Name: JACK HORAN
Its: Chair

LIST OF EXHIBITS

Exhibit A – Land Description

Exhibit B – Revised Plan

Exhibit C – Project Narrative

Exhibit D – Warrant Articles

Exhibit E – Weston Road Outline Specification

Exhibit F – Construction Management Plan

SECTION ~~XIVF~~14F. RESIDENTIAL INCENTIVE OVERLAY (RIO)

A. ~~_____~~ Purpose:

To provide a residential reuse incentive for a parcel or parcels where greater than one or more of acre located in close proximity to the
~~following conditions apply:~~

- ~~1. general site conditions and access constraints impede long term successful
Town's commercial or industrial use;~~
- ~~2. the parcels that border the residential districts and their residential re-use would
extend and complement the character and function of the existing surrounding
neighborhood;~~
- ~~3. the parcels border unique natural features, open space, or historic resources which
would be better preserved and enjoyed by the public over the long term
through transportation.~~

~~residential rather than commercial or industrial uses.~~

B. Applicability:

The RIO shall be considered as overlaying other zoning districts.
~~Specifically the RIO may be applied over any Business District, Business District A,
Industrial District, Industrial District A, Transportation District and the Lower Falls
Village Commercial District~~

C. Underlying Zoning Districts:

The RIO confers additional development options to be employed at the discretion of the property owner. The RIO does not in any manner remove or alter the zoning rights permitted by the underlying zoning district. However, use of one or more of the RIO development options requires consistency with all RIO requirements.

D. Permitted Uses:

Conventional multi-family dwelling units, assisted elderly living, independent elderly housing, nursing homes and skilled nursing facilities.

E. Minimum Lot or Building Site Area:

No building or group of buildings shall be constructed on a lot or development site containing less than ~~two acres~~45,000 square feet. No building conversion shall be approved on a lot or development site containing less than 25,000 square feet.

F. Minimum Open Space:

There shall be provided a minimum open space as defined ~~in Section~~ in Section ~~IX, 1B~~ of 30 percent of the lot or development site area one half of which shall be enhanced open space as defined in Section ~~IX, 9~~, provided, however, that the amount ~~of~~ open of open space required for conversion projects shall be determined by the Planning Board under ~~the project approval/special permit~~ O. Project Approval/Special Permit paragraph below.

G. Floor Area Ratio:

Building floor area devoted to residential uses including conventional market-rate housing, assisted elderly living, independent elderly housing, nursing home and/or skilled nursing facilities shall not be subject to floor area ratio requirements notwithstanding other provisions of this Zoning Bylaw to the contrary.

H. Maximum Development Density:

There shall be provided for each dwelling unit of assisted elderly living or independent elderly living a lot area of not less than fourteen hundred (1,400) square feet and the number of dwelling units on a lot or development site shall not exceed 150 units. There shall be provided for each dwelling unit of conventional multifamily housing a lot area of not less than eighteen hundred (1,800) square feet. A nursing home or skilled nursing facility on a lot or development site shall not exceed 250 beds.

I. Building Setbacks:

Yard definitions shall be as specified in Section ~~XIX~~ 19. RIO projects involving new construction shall provide the following:

Minimum Front Yard Depth: 25 feet

Minimum Side Yard Depth ~~40:~~ 10 feet

Minimum Rear Yard Depth ~~40 feet:~~ 10 feet

However, where the housing is not located in a residential zoning district but abuts a residential zoning district, the setback shall be 60 feet and a buffer of natural material and/or an earthen berm shall be installed to provide screening on a year-round basis.

J. Building Height:

Maximum building height as defined in Section ~~XX~~20 for new construction shall be 4 stories and 45 feet for buildings used for assisted elderly living, independent elderly housing, and conventional multi-family housing. located in Business, Business A, Industrial, Industrial A, or Lower Falls Village Commercial Districts; new construction shall be 36 feet for buildings located in Single Residence Districts and General Residence Districts. The maximum building height for nursing homes and skilled nursing facilities shall be three stories and 36 feet. See Building Conversion paragraph below for height restrictions for conversion of existing buildings to these uses.

K. Signs:

Signs shall comply with the sign requirements of Section 22A. For the purposes of Table 22A.1 of Section 22A, RIO projects shall comply with the signage allowances of Commercial Districts Fronting Streets Other Than Worcester Street, except that RIO projects located in underlying district, Single Residence or General Residence zoning districts shall comply with the following:

Number of Signs of Total Permanent Signage: 2 permanent signs per lot, consisting of no more than 1 wall sign or 1 standing sign
Maximum Total Area of Total Permanent Signage: 25 sq. ft.
Maximum Area of Standing Signs: 16 sq. ft.
Number of Signs of Wall Signs: 1 per lot
Maximum Area of Wall Signs: 9 sq.ft.
Window Signs shall not be permitted
Awning Signs shall not be permitted

L. Off-Street Parking:

Off-street parking shall be provided in accordance with Section ~~XXI~~21.

M. Building Conversion:

An existing building may be converted to uses allowed in the RIO subject to the terms of a special permit granted by the Planning Board. In no instance shall the building be expanded to exceed the height limitations specified below or the current height of the building if said height is greater than 45 feet. There shall be no maximum residential density. However, if the building proposed for conversion presently does not conform to the requirements of the underlying zoning district the provisions of Section ~~XVII~~17 shall apply to the conversion project. In this instance application shall not be made to the Zoning Board of Appeals under

Section ~~XVII.17~~ prior to the issuance of a special permit by the Planning Board under this Section.

N. Mixed Use Projects

Any combination of conventional housing types is permitted up to a maximum density of 24 units per acre. Further, up to 75 conventional units of any type of housing shall be permitted in conjunction with development of a facility providing at least 100 nursing home beds, 100 beds associated with a skilled nursing facility, or at least 80 assisted living or independent elderly housing units. A mix of residential units comprising independent elderly housing, assisted elderly living, skilled nursing, nursing homes, and any type of conventional housing shall also be allowed, consistent with the dimensional regulations of the RIO.

In RIO projects that provide at least 100 elderly dwelling units of any type, including skilled nursing facilities, or at least 50 conventional housing units of any type, up to 10,000 sq. ft. of retail space in a structure or structures separate from the residential units or nursing facility shall be permitted. All such developments shall be consistent with the dimensional and parking requirements ~~for retail business in the Lower Falls Commercial District.~~ of the underlying district as applicable.

O. Project Approval/Special Permits:

The provisions of Section ~~XVIA.16A~~ shall apply in all respects to projects in the RIO. Application shall not be made under Section ~~XVIA.16A~~ prior to prior to the issuance of a special use permit by the Planning Board under this section. A special use permit shall be required from the Planning Board in conjunction with all projects employing RIO development options for building conversion or new construction and the Planning Board may waive specific dimensional requirements in accordance with the following:

~~1. The Planning Board shall receive a~~ report ~~shall have been received~~ from the Design Review Board finding that

~~a.1. the proposed project is consistent with the Design Criteria listed in Section 22 and, for projects located in the Lower Falls RIO District, that~~ the proposed project is consistent with the Wellesley Lower Falls Plan, Zoning, Urban Design and Landscape Guidelines ~~("Lower Falls Guidelines")~~ adopted, and from time to time amended, by the Planning Board ~~which guidelines encourage retail activities at the street edge, pedestrian-oriented uses, improvement of building facades to enhance the pedestrian experience, improving the landscape and facilitating pedestrian access to and use of the river.~~

~~b. the proposed project is consistent with the design criteria listed in Section XXII;~~

2. The proposed project shall provide and/or contribute toward pedestrian and bicycle amenities and shall, as applicable, accommodate pedestrian and bicycle circulation and safety in accordance with ~~the Lower Falls Guidelines and~~ nationally recognized and accepted standards.
3. The proposed project shall provide and/or contribute toward the improvement of pedestrian or public transit, and access to a river, open space, public trails or other public amenities.
~~pedestrian access to the river; and~~
4. The proposed project shall provide and/or contribute toward the creation of a village center, town green, or mini-park within or adjacent to ~~further enhance the pedestrian experience in Lower Falls~~ RIO.

~~4.~~

SECTION 19. YARD REGULATIONS

A. Definitions

Front Yard - An area, on the same lot with the building, measured from the street line to the building extending across the entire front of the lot, and unoccupied above ground level except by uncovered steps, eaves projecting not more than 2 feet from the wall of the building, bay windows that do not have a foundation and do not extend more than two feet from the wall of the building and a covered or uncovered, enclosed or unenclosed, entrance porch on the first floor which neither exceeds a total area of 50 square feet nor projects more than five feet from the face of the building nor extends nearer than 25 feet to the street line.

Side Yard - An area, on the same lot with the building, measured from the side line of the lot to the building, extending from the front yard to the rear yard, and unoccupied above ground level except by covered basement entrances not over four feet in height and not over 35 square feet in area, bay windows that do not have a foundation and do not extend more than two feet from the wall of the building, uncovered steps, eaves projecting not more than 2 feet from the wall of the building, attached chimneys projecting not more than 2 feet from the wall of the building and unenclosed, covered or uncovered stair landings not over 25 square feet in area.

Rear Yard - An area, on the same lot with the building, measured from the rear line of the lot to the building, extending the full width of the lot, and unoccupied above ground level except by covered basement entrances not over four feet in height and not over 35 square feet in area, bay windows that do not have a foundation and do not extend more than two feet from the wall of the building, uncovered steps, eaves projecting not more than 2 feet from the wall of the building, covered or uncovered, enclosed or unenclosed, entrance porches on the first floor which do not exceed a total area of 50 square feet, attached chimneys projecting not more than 2 feet from the wall of the building and stair landings not over 25 square feet in area.

Frontage - A lot boundary line which abuts a public way; or

a way which the Town Clerk certifies is maintained and used as a public way; or

a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law; or

a way in existence when the Subdivision Control Law became effective in the Town of Wellesley having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon or served thereby, and for the installation of municipal services to serve the land and the buildings erected or to be erected thereon;

Certification of the adequacy of a way by the Planning Board shall be required prior to the issuance of a building permit for:

Construction of a new one or two-family dwelling;

Reconstruction of a one or two-family dwelling in conjunction with removal of 50% or more of the existing building coverage (footprint); or

Addition to a one or two-family dwelling where total building coverage (footprint) would be increased by 50% or more.

and across which line there is legal access.

Build Factor - A ratio of lot perimeter to lot area which limits the degree to which a lot may have an irregular shape according to the following formula:

$$\frac{\text{Lot Perimeter Squared}}{\text{Actual Lot Area}} \bigg/ \frac{\text{Actual Lot Area}}{\text{Required Lot Area}}$$

B. Requirements

There shall be provided for every building or structure hereafter erected or placed upon a lot at least the minimum frontage, minimum front yard width, minimum front yard depth (setback), minimum side yard width and minimum rear yard depth requirements hereinafter set forth; and there shall be not more than one dwelling erected on any lot. Such minimum front yard width shall be provided for the entire depth of the front yard.

Provided, however, in the 10,000 and 15,000 square foot Area Regulation Districts, when a rear yard of a lot abuts the side yard of the next lot the minimum rear yard depth shall be not less than the minimum side yard depth.

Heating, ventilation, air conditioning, swimming pool, electric generating, or other noise emitting equipment shall not be located in required setback areas. Plans and installation of sound reduction and/or visual screening may be required if, in the opinion of the Inspector of Buildings abutters may be affected.

Where the entrance of an attached or detached garage, built in conjunction with a one-family dwelling faces a property boundary line other than the street line there shall be a minimum distance of 30 feet from the garage entrance to that line. The intent of this requirement is to ensure adequate area for vehicles entering and exiting the garage.

Table 1 is applicable to lots recorded or endorsed on or before January 24, 1985 and to lots in the 10,000 square foot Area Regulation District recorded or endorsed after January 24, 1985 and prior to January 19, 1989.

Table 2 is applicable to lots recorded or endorsed after January 24, 1985 and to lots in the 10,000 square foot Area Regulation District, recorded or endorsed on or after January 19, 1989 and prior to April 9, 1997.

Table 3 is applicable to lots recorded or endorsed on or after April 8, 1997.

Lots recorded or endorsed after January 24, 1985 also shall be subject to a maximum Build Factor of 20.

TABLE 1

District	10,000 sq. ft.	15,000 sq. ft.	20,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.
Minimum Frontage	60 ft.	60 ft.	60 ft.	60 ft.	60 ft.
Minimum Front Yard Width	60 ft.	60 ft.	60 ft.	60 ft.	60 ft.
Minimum Front Yard Depth (Setback)	30 ft.*	30 ft.*	30 ft.*	30 ft.*	30 ft.*
Minimum Side Yard Width	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.
Minimum Rear Yard Depth	10 ft.	15 ft.	20 ft.	20 ft.	20 ft.

Provided however, that a lot having its only frontage on a curved street line having a sideline radius of less than 100 feet may have a reduced frontage upon the granting of a special permit in accordance with Section 25, and provided that:

- a. The minimum frontage shall be 50 ft.;
- b. The minimum front yard width is maintained at the street setback line (house line),
and
- c. All other dimensional zoning requirements are satisfied.

TABLE 2

Area Regulation District	10,000 sq. ft.	15,000 sq. ft.	20,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.
Minimum Frontage	75 ft.	80 ft.	100 ft.	120 ft.	140 ft.
Minimum Front Yard Width	75 ft.	80 ft.	100 ft.	120 ft.	140 ft.
Minimum Front Yard Depth (Street Setback)	30 ft.*	30 ft.*	30 ft.*	40 ft.*	40 ft.*
Minimum Side Yard Width (Side Line Setback)	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.
Minimum Rear Yard Depth (Rear Line Setback)	10 ft.	15 ft.	20 ft.	20 ft.	20 ft.

TABLE 3

Area Regulation District	10,000 sq. ft.	15,000 sq. ft.	20,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.
Minimum Frontage	90 ft.	100 ft.	110 ft.	175 ft.	200 ft.
Minimum Front Yard Width	90 ft.	100 ft.	110 ft.	175 ft.	200 ft.
Minimum Front Yard Depth (Street Setback)	30 ft.*	30 ft.*	35 ft.*	40 ft.*	40 ft.*
Minimum Side Yard Width (Side Line Setback)	20 ft.	20 ft.	20 ft.	30 ft.	40 ft.
Minimum Rear Yard Depth (Rear Line Setback)	18 ft.	20 ft.	20 ft.	30 ft.	40 ft.

Provided however, that a lot having its only frontage on the curved sideline of a cul-de-sac bulb having a sideline radius of less than 100 feet may have a reduced frontage provided that:

- a. The minimum frontage shall be 50 feet;
- b. The minimum front yard width is maintained at the street setback line (house line);
- c. The maximum number of lots with frontage exclusively on the bulb of any cul-de-sac shall be three;
- d. All other dimensional zoning requirements are satisfied.

*Where, on a frontage of 500 feet including the lot to be affected, or on a frontage between two intersecting or entering streets if such frontage is less than 500 feet, all existing buildings (if they are not less than three in number) have front yards of a depth greater than 30 feet, the minimum depth thereof shall be the depth required.

This Section shall not apply to lots in districts zoned as Lower Falls Village Commercial, Wellesley Square Commercial District, Business, Business A, Industrial, or Industrial A, except for the requirements for front yards. In the Lower Falls Village Commercial District and Wellesley Square Commercial District there shall be a minimum front yard depth of 5 feet. The frontage requirements of this Section shall not apply to lots located in a Residential Incentive Overlay district, regardless of whether or not the lot is developed under the provisions of Section 14F. There shall be no front yard depth requirement for property included in a Business District on April 1, 1939, and fronting on Washington Street, Church Street, Central Street, Grove Street, Spring Street, Cross Street, or that part of Weston Road between Central Street and Cross Street.

The requirements for side and rear yards shall apply to all accessory buildings over one hundred square feet in area. For purposes of this Section, an accessory building shall mean a detached subordinate building located on the same lot with the main building, the use of which is customarily incidental to that of the main building or to the use of the land. The requirements for front, side and rear yards shall not apply to the construction or enlargement of dormers on pre-existing non-conforming dwellings provided that the highest point of the existing roof is not exceeded and there is no further encroachment on the lot lines.

For exemptions for pre-existing non-conforming lots refer to Section 17 of this Zoning Bylaw.

C. General

No building or lot shall be so altered as to reduce the size of the then existing yard unless the resulting yard complies with the requirements of this Section, except by taking by eminent domain or by a conveyance for a public purpose.

No yard or other open space shall at any time be considered as appurtenant to more than one building in computing the requirement for yards under this Bylaw.

No building or structure shall hereafter be erected or placed nearer than ten (10) feet to any public land held or in use for a park, playground or recreational purpose and no existing building or structure shall be so altered as to result in the said building or structure being nearer than ten (10) feet to such public land.

APPENDIX C: Amendment to Establishment of Districts

SECTION 1A. ESTABLISHMENT OF DISTRICTS

- A. For the purpose of this Zoning Bylaw, the Town of Wellesley is hereby divided into classes of districts as shown on the "Zoning Map of the Town of Wellesley, Massachusetts", prepared under the direction of the Planning Board, Scale 1"=500', dated December 20, 2002 as amended, on file with the Town Clerk, which map together with all boundary lines and designations thereon, is hereby declared to be part of the Bylaw.

The classes of districts are respectively:

1. Single Residence Districts (Section 2)
2. Single Residence Districts A (Section 3)
3. Town House Districts (Section 3A)
4. General Residence Districts (Section 4)
5. General Residence Districts A (Section 5)
6. Multi-Family Residence Districts (Section 5A)
7. Limited Residence Districts (Section 6)
8. Limited Apartment Districts (Section 6A)
9. Educational Districts (Section 7)
10. Educational Districts A (Section 8)
11. Educational Districts B (Section 8A)
12. Administrative & Professional Districts (Section 9)
13. Planned Development Districts (Section 9A)
14. Lower Falls Village Commercial District (Section 9B)
15. Wellesley Square Commercial District (Section 9C)
16. Limited Business Districts (Section 10)
17. Business Districts (Section 11)
18. Business Districts A (Section 12)
19. Industrial Districts (Section 13)

20. Industrial Districts A (Section 14)
21. Transportation Districts (Section 14A)
22. Flood Plain or Watershed Protection Districts (overlay district - zoning map reference) (Section 14B)
23. Parks, Recreation, and Conservation Districts (Section 14C)
24. Historic Districts (overlay district) (Section 14D)
25. Water Supply Protection Districts (overlay district) (Section 14E)
26. Residential Incentive Overlay (RIO) District (Section 14F)
27. Linden Street Corridor Overlay District (Section 14G)
28. Commercial Recreation Overlay District (Section 14I)
29. Smart Growth Overlay Districts (Section 14J)
30. Wellesley Park Smart Growth Overlay District (Section 14J.1)

B. District Boundaries

The location on the land of the boundary lines shown upon the Zoning Map shall be determined as follows:

1. Where the boundary lines are shown upon the map within the street lines of public or private streets or ways, the center lines of such streets or ways shall be the boundary lines.
2. Where the boundary lines are shown upon the map outside of street lines and apparently parallel thereto, they shall be considered to be parallel to such street lines; and figures placed upon the map between such boundary lines and the street lines shall be the distances in feet of such boundary lines from the street lines, said distances being measured at right angles to the street lines unless otherwise indicated.
3. Where the boundary lines are shown apparently on the location of existing property or lot lines, and the exact location of the boundary lines is not indicated by means of figures, distances, or otherwise, then the property or lot lines shall be the boundary lines.

4. In all cases which are not covered by the provisions of paragraphs 1, 2 or 3, the locations of boundary lines shall be determined by the distances in feet, if given, from the other lines upon the map, or, if distances are not given, then by the scale of the map.
5. Wherever any uncertainty exists as to the exact location of a boundary line, the location of such a line shall be determined by the Inspector of Buildings.