

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482

2022 APR 21 AM 11:27

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN
ROBERT W. LEVY, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208

WALTER B. ADAMS
DEREK B. REDGATE
RICHARD L. SEESEL

ZBA 2019-61
Revocation of Comprehensive
Permit Issued to SEB Wellesley
LLC
136-140 Worcester Street

Pursuant to due notice, the Zoning Board of Appeals held a Public Hearing on Thursday, April 7, 2022, at 7:00 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, to consider whether the Comprehensive Permit issued to SEB Wellesley LLC pursuant to the provisions of MGL Chapter 40B, Sections 20-23 should be revoked. Grounds for revocation include the letter from MassHousing dated December 10, 2021 revoking the Project Eligibility Letter for this project.

On January 6, 2022, the Zoning Board of Appeals held a business meeting to discuss reopening the public hearing to consider taking action relative to Comprehensive Permit, ZBA 2019-61, that was stamped in the Town Clerk's office on November 30, 2020. The Board voted unanimously to convene a public hearing for the purpose of discussion and resolution of whether the Board should take action with respect to facts that came to light after the public hearing, and to give the Petitioner a chance to say why the Comprehensive Permit should not be revoked.

Notice of the public hearing was given by mailing and publication.

Present on behalf of the Town of Wellesley was Christopher Heep, Town Counsel. There was no one present at the hearing representing SEB Wellesley LLC.

The Chairman said that the matter is before the Board at its own request. He said that the Board voted at a business meeting to hold a public hearing for the purpose of determining whether the Board should revoke the special permit that was granted for this project, based upon a letter and findings by MassHousing, which is the agency that regulates 40B projects in the Commonwealth. He said that a letter from MassHousing, dated December 10, 2021 was submitted as part of the Board's record. He said that MassHousing made a determination that there were some misrepresentations made by the Applicant with regard to seeking their site approval eligibility letter. He said that, as a result of those misrepresentations, MassHousing revoked the eligibility letter.

The Chairman said that there are three pre-requisites for applications for 40B projects, a letter of eligibility, site control and being a limited dividend company. He said that with revocation of the letter of eligibility, the applicant fails to meet one of the thresholds.

The Chairman said that public records indicate that a parcel that was included in the application as being part of the project has since been sold and is not under the control of the applicant. He said that as a result of that, the applicant does not have site control for the project.

Mr. Heep said that a project eligibility letter from a subsidizing agency is a jurisdictional pre-requisite to filing an application for a comprehensive permit with the Zoning Board of Appeals. He said that where the project eligibility letter has been revoked after the fact by MassHousing, and further that MassHousing went on to say that it would not issue final approval of this project if it ever were to be applied for, the jurisdictional foundation for the permit has been removed.

There was no one present at the Public Hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 130 Worcester Street, 136 Worcester Street, 140 Worcester Street, 140R Worcester Street and 142 Worcester Street, in a 15,000 square foot Single Residence District.

The Zoning Board of Appeals held a public hearing to consider whether the Comprehensive Permit issued to SEB Wellesley, LLC pursuant to the provisions of MGL Chapter 40B, Sections 20-23 should be revoked. Grounds for revocation include the letter from MassHousing dated December 10, 2021 revoking the Project Eligibility Letter (PEL) for this project.

Letter from Colin McNiece, General Counsel, MassHousing, dated December 10, 2021, to Geoffrey Engler, SEB Wellesley, LLC, re: 136-140 Worcester Street, Wellesley, Project Eligibility/Site Approval, MassHousing ID No. 1025, was submitted into the record.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

On the basis of the MassHousing letter dated December 10, 2021, it is the opinion of this Authority that the jurisdictional basis for the comprehensive permit has been removed, and Comprehensive Permit ZBA 2019-61, is hereby revoked.

RECEIVED
APR 21 AM 11:27
2022
CLERK'S OFFICE
WELLESLEY MA 02482

ZBA 2019-61 - Revoke
Petition of SEB Wellesley, LLC
136-140 Worcester Street

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Robert W. Levy
Robert W. Levy, Acting Chairman

David G. Sheffield
David G. Sheffield

Derek B. Redgate
Derek B. Redgate

ZBA 2019-61 - Revoke
Applicant SEB Wellesley, LLC
Address 136-140 Worcester Street

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Inspector of Buildings
lrm

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2022 APR 21 AM 11:27

DECISION
136-140 Worcester Street Wellesley, Massachusetts
Comprehensive Permit

Decision Number: ZBA 2019-61

Date Application Filed: May 24, 2019

Applicant: SEB Wellesley LLC

Premises Affected:
130 Worcester Street (Assessor Parcel 7-39)
136 Worcester Street (Assessor Parcel 10-2)
140 Worcester Street (Assessor Parcel 10-3)
140R Worcester Street (Assessor Parcel 10-4)
142 Worcester Street (Assessor Parcel 10-66)

Relief Requested: Comprehensive Permit, G.L. c. 40B, §§ 20-23

Public Notice: June 6, 2019 and June 13, 2019

Public Hearing held: June 18, September 10, October 15, November 12, and December 10, 2019 (continuance only), and January 9, February 4 and March 31, 2020.

**Decision of the Zoning
Board of Appeals:**

Approved with Conditions

Members participating: Robert W. Levy, David G. Sheffield, Derek B. Redgate

Date of Decision: November 27, 2020.

1
2020 NOV 30 P 12:55
WELLESLEY MA 02482
TOWN CLERK'S OFFICE
RECEIVED

The Project

SEB Wellesley, LLC (the “Applicant”) has requested from the Zoning Board of Appeals (the “ZBA” or the “Board”) the issuance of a comprehensive permit subject to General Laws Chapter 40B, §§20-23, authorizing the Applicant to construct 40 rental units in a single building located at 130-142 Worcester Street and containing in the aggregate 37,511 sf (0.86 acres) of land (the “Site”) lying in a Single Residence 15 zoning district (the “Project”).

The Project consists of the redevelopment of the lot with a proposed five story, 40-unit multi-family, mixed-income residential housing project. The proposed building includes a base story for parking, and four residential floors above. Each residential floor will contain either nine or 11 rental apartment units. Of the 40 units, ten will be restricted to households earning less than 80 percent of the area median income. The development of rental affordable housing in a neighborhood along Worcester Street/Route 9 in the general vicinity of the Project is consistent with the Town’s goals of smart growth and provides a diversity of housing option alluded to in the *Wellesley Unified Plan* (the “Unified Plan”), adopted in March 2019, and the Town’s *Housing Production Plan* (the “HPP”), adopted September 24, 2018.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
1220 NOV 30 P 12:55

Governing Law

1. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the “Act”), and the regulations promulgated by the Department of Housing and Community Development (“DHCD”), 760 CMR 56.00 et seq. (the “Regulations”).

2. The Act promotes regional distribution of low- or moderate-income housing by preventing individual cities and towns from using exclusionary zoning to block construction of such housing. Toward these ends, the purposes of the Act are satisfied if: (a) a town has low or moderate income housing in excess of 10 percent of the total number of year-round housing units reported in the latest decennial census; (b) on sites comprising 1 ½ percent or more of the town’s total land area zoned for residential, commercial, or industrial use; or (c) the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3 percent of such total area or 10 acres, whichever is larger, in one year.

3. DHCD’s Regulations expand the definition of what constitutes satisfaction of the statute to include such methods as “recent progress” toward the statutory minima or compliance with a DHCD-approved housing production plan, all as described in 760 CMR 56.03(1).

4. At the time of the filing of this comprehensive permit application, the Town did not meet the statutory minima set forth in G.L. c. 40B, §20 or the “safe harbor” provisions of 760 CMR 56.03(3). Specifically:

- a. At the time of the filing of the application, the number of low- or moderate-income housing units in Wellesley constituted 6.77% percent of the total year-round units in the Town, based on the most recent decennial census. Thus, the Town did not meet the 10 percent statutory minimum for purposes of its consideration of this application.¹
- b. Existing affordable housing units are on sites which comprise less than one and one half percent of the total land area of the Town which is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof).
- c. Granting the Applicant’s request for a comprehensive permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.²
- d. DHCD approved the Town’s Housing Production Plan (the “HPP”) on September

¹ The ZBA notes that after this application was filed, the Town approved several unrelated affordable developments that have caused the number of SHI-eligible units within Town to exceed the 10 percent statutory minimum.

² The ZBA further notes that after this application was filed, and during calendar year 2020, two recently approved affordable developments commenced construction in Town on a combined area of over 25 acres: Hanover Wellesley (12.05 acres) and Fieldstone Way (13.19 acres).

27, 2018. However, at the date of the filing of the application, the Town had not achieved sufficient recent progress under the HPP to invoke this particular form of safe harbor.

- e. The Town had not made “recent progress” as that term is defined in 760 CMR 56.03(5).
- f. The proposed development does not constitute a “large project” as defined in 760 CMR 56.03(6).
- g. The Site is not subject to any “related applications” as that term is defined in 760 CMR 56.03(7).

5. Given the foregoing, the ZBA’s decision on this comprehensive permit application must balance the regional need for low- or moderate-income housing against the Town’s long-range planning goals, local requirements and regulations to the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the Town as a whole, the protection of the natural environment, the promotion of better site and building design in relation to the surroundings and municipal and regional planning, or the preservation of open space.

6. The Applicant submitted to the ZBA a Project Eligibility Letter from Mass Housing dated May 17, 2019. Pursuant to 760 CMR 56.04, the issuance of this letter establishes that the Applicant is a limited dividend organization, that the Project is fundable by a Subsidizing Agency under a low or moderate income housing program, and that the Applicant has control of the Site.³ The issuance of this letter by Mass Housing allowed the Applicant to file its comprehensive permit application with the ZBA. Notwithstanding the presumptive site control established by the Project Eligibility Letter, the evidence presented during the public hearing disclosed that the Applicant does not currently possess the right to access a portion of the Site—specifically 130 Worcester Street (Assessor Parcel 7-39) and 136 Worcester Street (Assessor Parcel 10-2)—over part of the private unconstructed way identified on the plans as Alpine Street that it intends to improve and use for access to the Project. This issue is discussed in more detail below.

³ 760 CMR 56.04(1) states as follows:

Project Eligibility. To be eligible to submit an application to a Board for a Comprehensive Permit or to file or maintain an appeal before the Committee, the Applicant and the Project shall fulfill, at a minimum, the following project eligibility requirements:

- (a) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization;
- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and
- (c) The Applicant shall control the site.

Compliance with these project eligibility requirements shall be established by issuance of a written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4), based upon its initial review of the Project and the Applicant’s qualifications in accordance with 760 CMR 56.04.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MASS.
2020 NOV 30 PM 12:55

7. In addition, the ZBA notes that in a letter addressed to Mr. Dean Behrend/Riverview Crossing, LLC and dated December 14, 2018, Mass Housing had previously denied an Application for Chapter 40B Project Eligibility/Site Approval for this same site. Mass Housing found this applicant to be disqualified on several grounds outlined in the letter. In addition to denying the Application, the letter stated: "MassHousing is also suspending you immediately from further participation in MassHousing's Chapter 40B site approval process."

1120 NOV 30 P 12:55
EXECUTIVE
OFFICE OF
THE
GOVERNOR
WELLESLEY MA 02481

Procedural History

The Applicant submitted its application for a comprehensive permit to the ZBA on May 24, 2019. The ZBA published notice on June 6 and June 13, 2019, and sent notice to all parties in interest, that is, abutters, owners of land directly opposite the site on any public or private street, and abutters to abutters within three hundred feet of the property line of the petitioner consistent with the requirements of M.G.L. c.40A, §11.

The ZBA opened the public hearing on this application on June 18, 2019 and held continued sessions of the hearing on September 10, October 15, November 12, December 10 (continuance only), January 9, 2020, February 4, 2020 and March 31, 2020. The Applicant agreed several times in writing to extend the time for the ZBA to conduct the public hearing on this application, most recently through April 1, 2020. The ZBA voted to close the public hearing on March 31, 2020. The time for filing this decision with the Town Clerk was then tolled pursuant to Chapter 53 of the Acts of 2020, and time for filing the decision was subsequently changed to December 1, 2020 pursuant to Chapter 201 of the Acts of 2020.

During the public hearing, the ZBA heard and considered extensive testimony from the Applicant and its consultants. The ZBA also retained expert peer review of the Applicant's submittals from the following:

Civil Engineering: George J. Saraceno, PE Town of Wellesley Senior Civil Engineer and David J. Hickey, PE Town Engineer for the Town of Wellesley

Traffic and Transportation: Robert L. Nagi, PE of VHB

Architecture and Design: Clifford J. Boehmer, AIA of Davis Square Architects

As is its normal practice, the ZBA considered all public comment received during the hearing, and notes that the eight months of the hearing did not elicit significant neighborhood comment or participation, with the exceptions of the first session of the public hearing held on June 18, 2019, and the final session of the public hearing that was held on March 31, 2020.

At a meeting held on November 27, 2020 the ZBA voted 3-0 to approve the Project subject to the findings, the action on the requested waivers, and the conditions set forth herein.

Findings of Fact

THE SITE AND SURROUNDS

The Site is the aggregate of the following five component lots: 130 Worcester Street (Assessor Parcel 7-39), 136 Worcester Street (Assessor Parcel 10-2), 140 Worcester Street (Assessor Parcel 10-3), 140R Worcester Street (Assessor Parcel 10-4) and 142 Worcester Street (Assessor Parcel 10-66). These lots collectively comprise 37,511 (0.86 acres) and are hereinafter collectively referred to as the "Site."

The Site is located on the southern-most side of Worcester Street (also known as Route 9) approximately 1,600 ft east of the Cedar Street exit from limited access Route 9, and 2,600 ft west of the intersection of Route 9 and Route I-95. As of the date of this decision the Site is occupied by two (2) single-family homes and associated outbuildings and appurtenances that will be removed to accommodate the Project.

The Site is bounded on the north by Worcester Street, and on the remaining three sides by land owned by the Town. At the eastern side, the Site abuts Echo Road, an unconstructed private paper street, and on the western side, between 140 and 142 Worcester Street, the Site abuts Alpine Street, also an unconstructed private paper street. On the western and southern boundaries, the Town land is preserved undeveloped, as conservation land, though the southern boundary of the Site abuts a third unconstructed paper street, Warren Street.

Topographically, the Site is relatively flat. The high point at about elevation 74 ft is found generally along the Worcester Street side of the property, with slopes to the south and east grading down to elevation 72 ft. The principal topographic feature is a hillock near the center of the parcel at 130 Worcester Street that rises from elevation 72 ft to elevation 76 ft.

Six deep observation holes were performed at the Site to assess the subsurface conditions and indicate loamy glaciofluvial deposits varying in depths from 20 inches to 96 inches below ground surface. Seasonal high groundwater levels varied across the Site from 5.0-7.0 ft below ground surface.

THE PROJECT

The Project consists of the redevelopment of the lot with a proposed five story, 40-unit multi-family, mixed income residential housing project. The proposed building includes an at-grade pedestal story for parking, and four residential floors above.

The first residential floor contains three 1-bedroom units, five 2-bedroom units, one 3-bedroom unit, as well as the club amenity area. The second and third residential floors each contain four 1-bedroom units, six 2-bedroom units and one 3-bedroom unit. The fourth residential floor contains three 1-bedroom units, four 2-bedroom units and two 3-bedroom units. The sizes of the market units and the affordable units are comparable, as shown in Table 1.

RECEIVED
W.H. CLERK'S OFFICE
W. LESLIE, MA 52482
NOV 30 1992
56

Table 1 – Unit Analysis

	Market Units		Affordable Units		Total Units	
	Number	Average SF	Number	Average SF	Number	Average SF
One Bed	10	771	4	772	14	771
Two Bed	16	1192	5	1191	21	1191
Three Bed	4	1356	1	1370	5	1359

Vertical access throughout the building is provided via an elevator that extends from the garage to the fourth residential floor, and via a stairway extending from the garage level to the fourth residential level. Horizontal access at each floor is provided via a central corridor connecting the apartments to the elevator and the stair tower.

The building form is faceted to create shadows at the façade to break up mass, and to present a series of dormers in order to blend a multi-unit building into a single-family neighborhood. The building features complementary color shading, using different materials to minimize the visual impact.

Architecture

The ZBA reviewed the Project's density, height, bulk and architectural details during the public hearing.

Density

Based on the Assessor's "FY20 Residential" list, the median lot size in the single residence districts is 19,439 sf. Since the Zoning ByLaw allows only a single dwelling on a lot, this implies that the median residential density in the residential districts is only 2.2 units/acre. Based on information from the Planning Board staff, Wellesley has listed in its SHI 15 completed rental developments and eight completed ownership developments, for an overall total of 23 developments. The density of these developments ranges from a low of 0.4 units/acre at Wellesley Place (978 Worcester Rd) to a high of 39.9 units/acre at List House (315 Weston Rd). The median affordable housing development in Wellesley has a density of 23.8 units/acre.

Since the Project has 40 units on 0.86 acres, the density of the Project is 46.5 units/acre. Hence, in comparison to the density of the median residential neighborhood, the Project represents a significant increase in density, and in comparison to other existing affordable housing projects in Wellesley, the Project density would be the highest.

Height and Bulk

Under the terms of the Zoning ByLaw, the height of a building is measured from the average grade to the peak of the roof. For the Project, that height is approximately 58 ft, approximately 13 ft higher than the height allowed in the SR-15 district. As noted above, the building is sited such that the garage level is at grade and the Site is relatively flat.

In an analogous way, the shape of the building and its location in the rear corner of the relatively flat lot mean that the length of the building is seen in full view from Worcester Street. When viewed from Worcester Street the apparent width of the building is approximately 175 ft. While this dimension is proportional to the frontage of the Site, this distance is perhaps three to four times wider than the neighboring homes to the west.

RECEIVED
JUN 11 2020
CLERK'S OFFICE
WELLESLEY MA 02451
P 12:00 PM 30 JUN 2020

Overall the height and bulk of the building is significant when compared to the other single-family residential structures in the neighborhood beyond the conservation land or across Route 9 from the Site.

Architectural Details

The building stretches along most of the northern site frontage along Route 9 and is four residential levels above one level of at-grade parking. There are no nearby structures of a similar architectural language to the proposed building. The building is clearly residential in nature given the apparent choice of materials, window sizes, and incorporation of a mansard roof element. Early comments from the ZBA's architectural peer reviewer Clifford J. Boehmer, AIA noted the design was "boxy" and suggested the need to decrease the monumentality of the building.

The Board, and its architectural peer reviewer recognize that the Applicant has taken positive steps to mask and mitigate the bulk of the building through site planning, through the use of mansard roofs and other residential features, and through architectural materials, colors and textures. The proposed architectural elements will not eliminate the mass of the building but these should help to mitigate its visual impact.

Zoning

The Zoning ByLaw provides, for each zoning district, requirements for the use of land and structures, as well as dimensional requirements for the land and structures erected upon the land.

Use Requirements

The Project is located in an SR-15 zoning district. Among the uses allowed in the SR-15 district are: (1) one-family dwellings; (2) educational uses; (3) child care facility; (4) clubs; (5) agriculture; (6) certain home occupations; (7) accessory uses customary to the allowed uses; and (8) certain other specialized uses upon the granting of a special permit.

As a multi-unit, multi-family, mixed income residential building, the use of the Project is not allowed in an SR-15 district, and this gives rise to the first principal waiver request under the comprehensive permit requested under G.L. c.40B §§ 20-23.

Dimensional Requirements

The Zoning ByLaw provides for each zoning district dimensional requirements for the lot, for the placement of buildings and structures on the land, and for the structures themselves. The dimensional requirements for the SR-15 district, and the corresponding dimensional information from the Project are summarized in Table 2.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02481
2020 NOV 30 PM 12:56

Table 2 – SR-15 Dimensional Comparison

Category	Required	Project
Lot Area	15,000 sf	37,511 sf
Frontage	60 ft	>200 ft
Minimum Front Yard Width	60 ft	>200 ft
Minimum Front Yard Depth	30 ft	30.1 ft
Minimum Side Yard Width	20 ft	10.4 ft
Minimum Rear Yard Depth	10 ft	14.9 ft
Maximum Building Coverage	6,000 sf	13,854 sf
Maximum Building Height	45 ft	58 ft

With respect to the dimensional requirements for the lot, the Project meets the SR-15 requirements for both lot area and lot frontage. With respect to those requirements for the placement of the structure on the lot, the Project meets the front yard width and depth requirements for the SR-15 district, but not the side yard width or rear yard depth requirements. For the dimensional requirements for the structures themselves, the Project fails to meet the SR-15 requirements for maximum building coverage and maximum building height. Because multi-family buildings are larger and a more dense use of the land, it is not unexpected that the Project does not meet the dimensional building requirements for lot coverage or height.

Land Use and Planning

As noted above, under the Zoning ByLaw, multi-family residential use is not allowed in the single residential districts that comprise the bulk of the residential land in Town. All the commercial zoning districts allow multi-family residential uses and there are four residential zones that allow more than single-family houses. Three of those zones cover relatively small areas and were tailored for specific projects that are not expected to change. The General Residence zone, however, covers 73 acres but allows only two-family buildings and town houses in addition to single-family houses.

Participants in the Unified Plan public meetings saw the commercial, office and industrial districts as the most acceptable locations to construct new housing that is not single-family housing. A mixed-use approach, combining housing with retail stores, was often mentioned. The Zoning ByLaw requirements for the administrative and professional districts that the Unified Plan envisions would be the location of the multi-family housing, currently do not allow such uses. The recently enacted Smart Growth Overlay District allows multi-family housing, as well as mixed use retail establishments, though currently only in the Wellesley Office Park. The best that can be said is that neither the Unified Plan nor the HPP anticipates developments like the Project in SR-15 districts, though they do anticipate similar developments along Worcester Street/Route 9.

Transportation and Access

Public Transportation

Public transportation services are not provided within the immediate vicinity of the Site. However, public transportation services are provided to the Town by the Massachusetts Bay Transportation Authority via the Wellesley Farms Station on the Framingham/Worcester Line of the commuter rail system and the Metro-West Regional Transit Authority (MWRTA) bus Route 8 which provides three service stops through downtown Wellesley along

Washington Street. To the east of the Project site in the City of Newton, the MBTA provides light rail service on the D Branch of the Green Line from Elliot Station, which is located off Lincoln Street and within an approximate 6-minute driving distance of the Site. In addition, the MWRTA also operates Paratransit Services for passengers who meet ADA requirements and provides transportation services for seniors and the disabled through the Wellesley Council on Aging. In an effort to encourage the use of alternative modes of transportation to single-occupant vehicles, the Project includes the collection and distribution of educational materials to make new residents aware of the public transportation opportunities available to them as new residents.

Site Access

Access to the Project will be provided by way of two driveways that will intersect the south side of Worcester Street at Alpine Street on the west boundary and near Echo Road at the east boundary, with the east driveway serving as a one-way exit driveway and the west driveway accommodating both entering and exiting traffic. All movements at the Project site driveways are restricted to right turn only to/from Worcester Street due to the concrete median barrier along Worcester Street opposite the driveways.

The Site access has been reviewed by both the Applicant's traffic engineer and the Board's traffic peer reviewer, who concur safe and efficient vehicular, pedestrian and bicycle access will be provided to the Project site and the Project can be accommodated within the confines of the existing and improved transportation system.

A portion of the Site does not have the legal right to use Alpine Street for access without the consent of the abutting owner. As noted above, the Site is made up of several component lots as a matter of record, as shown on the "Survey Plan #136 & #140 Worcester Street Wellesley, Mass.", Sheet C1, dated April 26, 2019 as most recently revised 1-20-2020, a copy of which is attached to this Decision as Exhibit A. These component lots are:

- 130 Worcester Street (Assessor Parcel 7-39)
- 136 Worcester Street (Assessor Parcel 10-2)
- 140 Worcester Street (Assessor Parcel 10-3)
- 140R Worcester Street (Assessor Parcel 10-4)
- 142 Worcester Street (Assessor Parcel 10-66)

The Site is bisected on the west by Alpine Street, a private unconstructed paper street that runs between 142 Worcester Street (Assessor Parcel 10-66) and 140 Worcester Street (Assessor Parcel 10-3) and 140R Worcester Street (Assessor Parcel 10-4), and that isolates 142 Worcester Street from the remaining parcels. See Exhibit A. The Site is bound by Warren Street on the south and by Echo Road on the east, both of which are also private unconstructed paper streets.

The Applicant proposes to improve a portion of Alpine Street with a site driveway, curbing and landscaping. The purpose of the driveway is to provide access from Worcester Street to the driveway in front of the proposed building and to the grade-level parking below the residential floors of the proposed building (as shown on Sheet C6 dated April 26, 2019 and most recently revised on 2-24-2020).

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02481
APR 30 2020 P 12:52 PM

Pursuant to M.G.L. c.183, §58, the so-called *Derelict Fee Statute*, the Applicant owns the fee interest to the centerline of Alpine Street along the frontage of 142 Worcester Street (Assessor Parcel 10-66), 140 Worcester Street (Assessor Parcel 10-3) and 140R Worcester Street (Assessor Parcel 10-4). The portion of Alpine Street that the Applicant owns in fee is subject to the rights of the Town as the owner of 150 Wellesley Street (Assessor Parcel 10-69), which abuts Alpine Street to the west and to the east. See Exhibit A.

The Applicant is proposing to improve and use as access more of the paper street than it owns in fee. A portion of the paper street that the Applicant proposes to improve with its site driveway, curbing and landscaping, and use as access to the Project, is owned in fee by the Town of Wellesley by virtue of its ownership of 150 Worcester Street (Assessor Parcel 10-69) which abuts Alpine Street to the west and to the east. See M.G.L. c.183, §58; see Exhibit A.

Two of the lots contained within the Site—specifically 136 Worcester Street (Assessor Parcel 10-2) and 130 Worcester Street (Assessor Parcel 7-39)—do not abut Alpine Street. As a result, it appeared to the ZBA upon its initial review of the application that these two lots did not possess any legal right to use Alpine Street for access, absent some express grant or some prior express permission of the owner(s) of that portion of the private road. Based on this concern, the ZBA asked the Applicant throughout the public hearing (including during the June 18, 2019, September 10, 2019, October 15, 2019, November 12, 2019, and January 9, 2020 sessions of the public hearing) to provide evidence and/or legal argument in support of its claim that it could use Alpine Street to provide access to those lots within the Site that do not abut Alpine Street, and which have alternative means of access by way of Worcester Street and/or Echo Road.

The Applicant submitted a one-page legal memorandum from Peter L. Freeman, Esq. and Ilana M. Quirk, Esq. dated November 5, 2019 addressing this question. In the hearing session on November 12, 2019, the ZBA specifically noted that this legal memorandum did not adequately demonstrate that 136 Worcester Street (Assessor Parcel 10-2) and 130 Worcester Street (Assessor Parcel 7-39) possess the right to use private Alpine Street for access. The ZBA raised this concern again on January 9, 2020. The Applicant did not provide additional substantive response.

Based on the foregoing, the ZBA concludes that 130 Worcester Street (Assessor Parcel 7-39) and 136 Worcester Street (Assessor Parcel 10-2) are not benefitted by any easement rights over Alpine Street. Accordingly, using Alpine Street to access either of these two lots overburdens the Applicant's easement rights in Alpine Street (that is, the rights appurtenant to 140 Worcester Street/Assessor Parcel 10-3, 140R Worcester Street/Assessor Parcel 10-4 and 142 Worcester Street/Assessor Parcel 10-66, which do abut Alpine Street). This legal rule is described by the Supreme Judicial Court in *McLaughlin v. Bd. of Selectmen of Amherst*, 422 Mass. 359, 364 (1996) as follows:

After-acquired property can benefit from an easement such as this one only if the easement is an easement in gross, a personal interest in or right to use land of another, or the owner of the after-acquired property receives the consent of the owner of the servient estate. A.L. Eno & W.V. Hovey, Real Estate Law § 8.2 (3d ed.1995). As the Appeals Court properly stated, "It also is the long-established rule in the Commonwealth, as elsewhere, that after-acquired property, such as the locus,

may not be added to the dominant estate...without the express consent of the owner of the servient estate...[and] absent such consent, the use of an easement to benefit property located beyond the dominant estate constitutes an overburdening of the easement."

Therefore, the Applicant will be required to obtain the written consent of the property owner of 150 Worcester Street (the Town of Wellesley) to improve Alpine Street with its site driveway, curbing and landscaping and use it to provide access to the Project, including 130 Worcester Street (Assessor Parcel 7-39) and 136 Worcester Street (Assessor Parcel 10-2).

Traffic and Parking

To assess the traffic impacts of the Project, the Applicant commissioned the "Transportation Impact Assessment" prepared by Vanasse & Associates, Inc. dated April 2019 (the "TIA"). The TIA was prepared in consultation with the Massachusetts Department of Transportation (MassDOT) and the Town; was performed in accordance with MassDOT's Transportation Impact Assessment Guidelines and the traffic review standards for a Project of Significant Impact as defined in the Zoning Bylaw; and was conducted pursuant to the standards of the traffic engineering and transportation planning professions for the preparation of such reports.

The TIA evaluated i) access requirements; ii) potential off-site improvements; and iii) safety considerations; under existing and future conditions, both with and without the Project. The Board engaged VHB/Vanasse Hangen Brustlin, Inc. to perform a peer review of the TIA, and VHB concluded that the information contained in the TIA is both technically accurate and portrays the likely impacts of the Project on the surrounding roadway system. This section presents the findings of the TIA for vehicular traffic, including both roadways and intersections, and pedestrian traffic.

Vehicular Traffic

Since Worcester Street provides the only access to the Project, the only roadway assessed in the TIA is Worcester Street, and the intersections assessed include (1) Worcester Street/Dearborn Street just east of the Site; and (2) Worcester Street/Sunlife Park/Wellesley Gateway just east of the first intersection.

Using trip-generation statistics published by the ITE, the TIA forecasts that the Project will generate approximately 216 vehicle trips on an average weekday (two-way, 24-hour volumes), with 14 vehicle trips expected during the weekday morning peak-hour and 18 vehicle trips expected during the weekday evening peak-hour. While these volumes of traffic are not unusual for most residential streets, the increase for Worcester Street, the most heavily traveled roadway in Town after Route I-95, is not likely material.

The TIA forecasts that the addition of Project-related traffic to the study area intersections will not result in a change in LOS or a significant increase in vehicle queuing over existing or anticipated future conditions without the Project (no-build conditions), with the majority of the movements at the study intersections shown to operate at LOS D or better under all analysis conditions where an LOS of "D" or better is defined as "acceptable" operating conditions. All movements at the two Project driveways, the primary access for the Project, are expected to operate at LOS C or better with negligible vehicle queuing predicted.

No apparent safety deficiencies were noted with respect to the motor vehicle crash history at the study intersections, with all of the study intersections found to have a motor vehicle crash rate that was below the MassDOT District 6 average crash rate.

Finally, lines of sight to and from the Project driveways were found to exceed or could be made to exceed the required minimum distance for the intersection to function in a safe manner; clear line of sight is provided to and from the Project driveways along Worcester Street.

In consideration of the above, the TIA concluded that the Project can be accommodated within the confines of the existing transportation infrastructure in a safe manner with implementation of the recommendations provided in the TIA.

Pedestrian and Bicycle Facilities

A comprehensive field inventory of pedestrian and bicycle facilities within the study area was undertaken in October 2017, consisting of a review of the location of sidewalks and pedestrian crossing locations along the study roadways and at the study intersections, as well as the location of existing and planned future bicycle facilities.

The TIA reports that sidewalks are provided along the north side of Worcester Street and along the south side of Worcester Street east of Dearborn Street and west of Willow Street; along the east side of Dearborn Street; along the east side of Sunlife Park; and along the west side of Wellesley Gateway. Marked crosswalks are provided for crossing Dearborn Street, Sunlife Parkway, Wellesley Gateway and the Worcester Street west leg of the Worcester Street/Sunlife Park/Wellesley Gateway intersection. The traffic signal system at the Worcester Street/Sunlife Park/Wellesley Gateway intersection includes pedestrian traffic signal equipment and phasing. A sidewalk is not provided along the south side of Worcester Street between Willow Street and Dearborn Street, a distance of approximately 1,200 ft which includes the Project frontage.

Formal bicycle facilities were not identified within the study area and neither the segment of Worcester Street in the vicinity of the Project nor Dearborn Street provide sufficient width (paved shoulder or combined travel lane and paved shoulder) to support bicycle travel in a shared traveled-way configuration. The TIA noted that the traffic signal system at the Worcester Street/Sunlife Park/Wellesley Gateway intersection includes bicycle detection.

On-site Parking

On-site parking will be provided for 63 vehicles consisting of 29 surface parking spaces and 34 parking spaces in a parking facility located beneath the proposed building, or a parking ratio of 1.58 spaces per dwelling unit. This parking ratio is within the range of acceptable values documented by the Institute of Transportation Engineers for an apartment community in a suburban setting.

The garage parking includes 29 standard spaces, three compact spaces and two accessible spaces. The surface parking includes eight standard spaces, 19 compact spaces, one accessible space and one drop-off space.

RECEIVED
12/20/2019 30
JOHN CLERK OF COURT
WELLESLEY MASS.
12/20/2019

Stormwater Management

The proposed drainage system consists of a closed stormwater collection system in the parking lot which flows through a treatment unit before being infiltrated on site using subsurface chambers. The roof runoff from the building also discharges to a second set of subsurface chambers for infiltration on site.

Consistent with accepted engineering practice, the Applicant prepared and submitted the "Mitigative Drainage Study - #136 & #140 Worcester Street" dated April 29, 2019 (the "Stormwater Report") that compared the runoff from the existing lot to the runoff from the Project. In addition, the Stormwater Report analyzed the stormwater management system to determine compliance with MassDEP Stormwater Management Policy and standard engineering practice.

The DPW, as the Board's stormwater peer reviewer, did not raise any major concerns in its memorandum regarding the proposed stormwater management plan. The memorandum indicates that in general the Project will improve water quality and reduce peak runoff rates, and is in compliance with the Massachusetts DEP Stormwater Management Policy and standard engineering practice.

Utilities

Within Worcester Street, the Site is served by a variety of public utilities including water, sewer, natural gas, stormwater, electric, telephone and cable.

Water and Sewer

The Applicant has estimated that the Project will consume about 8,590 gallons of water and produce 7,810 gallons of sewerage per day. The initial assessment of the DPW is that the existing infrastructure in Worcester Street is sufficient to meet those estimated needs.

Solid Waste

All residents of the Project be held accountable to collect their waste and dispose of in the designated trash/recycling area located in the garage level of the building. Waste will be collected from the garage-level storage area by a private removal company engaged by the Applicant through the building management company. The collection will be scheduled at off peak hours so as not to impede any entering or exiting traffic from tenants/guests. Therefore, the Project will not adversely affect the Town's Recycling and Disposal Facility.

Private Utilities

Natural gas, electric service, telephone service, and cable service can be provided on the same basis as to other residences in the Town.

Environmental Considerations

Initial site investigations determined that there was a perennial stream located about 145 ft south and east of the Site, and there were potentially other wetland resource areas both off-site and on the southeastern reaches of the Site, that required mitigation work within the buffer zone to a bordering vegetated wetland and the outer riparian zone of the riverfront area. As a result, the Applicant filed a notice of intent ("NOI") with the Town's Wetland Protection Committee and MassDEP.

As presented in the NOI application, the following wetland resource areas are present at or near the Site: (1) inland bank along a perennial stream, (2) bordering vegetated wetland located south and west of the Site, (3) waterfront area extending 200 ft from the perennial stream onto the southeast portion of the Site, and (4) an isolated vegetated wetland located along the eastern portion of the Site. The Site contains 3,734 square feet of existing impervious area (i.e., 42 percent of the 8,900 square feet of waterfront area on the Site). The Project design includes 557 sq ft of direct impacts (fill) to the isolated vegetated wetland and 3,682 square feet of impervious area within the outer waterfront area, which is a slight reduction from the existing 3,734 square feet of impervious area. Additionally, the Project proposes impacts to the 100-foot buffer zone and local 25-foot no disturbance zone. As mitigation, the Project proposes on-site replication of 558 square feet of isolated vegetated wetlands, restoration of 3,428 square feet of isolated vegetated wetlands, primarily off-site, and restoration of 1,055 square feet of waterfront area on site.

Other than customary snow and ice control chemicals and fuel stored in the automobiles parked in the garage, storage of chemicals that would threaten groundwater or surface water is not part of the Project. The Site is not in a water supply protection district. Exterior lighting is planned to be dark-sky compliant, and the submitted photometric plan demonstrates that light spill-over to adjacent properties is prevented.

Public Safety/Life Safety

The Applicant submitted a fire vehicle access plan showing “autoturn” simulations of pumper truck and ladder truck turning movements demonstrating that the vehicles could safely access and egress the Site. Hence, fire vehicles and fire fighters will be able to access the building from the central drive parallel to Worcester Street or from the garage drive. Similar vehicle access drawings show that police and fire emergency vehicles can also access the building whether at the main entrance or via the garage.

The Fire Department has not raised any concerns with the Project, but will review the final plans prior to the issuance of any building permit.

Signage

The submitted perspective showing the western façade of the building indicates a sign located to the west of the main entrance drive adjacent to the new sidewalk in that location. No further details have been provided, so it is not yet known whether the sign complies with the other Zoning By-Law requirements with respect to the area, height, illumination, and lettering of the sign.

The submitted drawings indicate that signage related to traffic and parking control on the Site will comply with the applicable standards of the Manual of Uniform Traffic Controls.

RECEIVED
DANIEL CLERK'S OFFICE
WELLESLEY, MA 02482
NOV 30 P 12:56

Disposition of Major Local Concerns

1. Health

The concerns expressed about health issues related principally to impacts of the Worcester Street traffic on the building and its inhabitants. The architectural peer review raised the health and cleanliness issues that are associated with the building being near a major roadway. Under those circumstances the review recommended fresh air systems must be designed to deal with intake air heavy with particulates and other pollutants, windows being designed with triple glazing or acoustical storm windows, extra sheet rock layers at exterior walls for additional sound mitigation, windows that are easily washable (tilt-in with removable screens, and non-staining exterior finishes that will hold up to regular cleaning.

In considering this local concern, the ZBA finds that residents should be provided with at least acoustical storm windows, and additional sound mitigation at exterior walls. Hence this local concern outweighs the regional need for low- and moderate-income housing.

2. Safety

a. Vehicular Traffic Safety

The concern expressed for vehicular traffic was that the proposed access will challenge already limited vehicular capacity to the Site, which can only be accessed from Route 9 eastbound. In particular, the 50 mph speed limit and limited turn radius into the Site creates a challenging ingress. Further concern was raised for vehicular circulation in the neighborhood overall, due to Site's eastbound limitations.

Access to the Project will be provided by way of two driveways that will intersect the south side of Worcester Street adjacent to the east and west property lines, with the east driveway serving as a one-way exit driveway and the west driveway accommodating both entering and exiting traffic. The west driveway is angled similar to a highway exit ramp to facilitate the change in speed from Worcester Street into the parking lot.

During the morning peak hour traffic generated by the Project is forecast to be ten vehicles. Six are forecast to proceed east past the Sunlife Office Park and four to make a u-turn at that intersection to travel westbound on Worcester Street. If that turning traffic elected to turn right on Dearborn Street and transit the neighborhoods, that would add, on average, one car every 15 minutes to the existing traffic during the peak hour.

In considering this local concern, the ZBA agrees with the conclusions of its traffic peer reviewer that the Project in and of itself will not likely result in a significant impact (increase) on motorist delays or vehicle queuing along area roadways.

b. Pedestrian Traffic Safety

The concern about pedestrian access and safety on the Site, centers on the fact that there are no sidewalks along this section of Worcester Street 9 and no connections with surrounding neighborhood streets such as Dearborn Street.

In reviewing this local concern, the ZBA considered the comments of its traffic peer

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02481
2019 0 P 12:51

reviewer who suggested it appears that internal sidewalks and a crosswalk provide a connection to a proposed sidewalk along the Site frontage, however, the sidewalk does not extend beyond the limits of the Project frontage. In order to make this Project less focused on the automobile and provide a connection beyond just the frontage of the Site, the Applicant should extend the proposed sidewalk approximately 300 feet so that it connects with the existing Worcester Street sidewalk, located to the east. The Applicant responded that subject to receipt of all necessary rights, permits and approvals, the Applicant will design and construct the requested sidewalk segment along Worcester Street. The Applicant would anticipate this request to be a condition of the Comprehensive Permit.

3. Environment

The concerns expressed about environmental issues related principally to the proposed Project's impact on wetlands resource areas, noting that it is built out to the edge of a bordering vegetated wetland, and its location within both the 100' buffer and a riverfront area. In addition, while the ZBA's public hearing on this application was pending, there was a wetlands enforcement action involving the Site brought by the Town's Wetlands Protection Committee concerning the placement of illegal fill within a resource area.

The ZBA notes that the owner of the Site has now resolved the wetlands enforcement action to the Wetland Protection Committee's satisfaction. In addition, the Wetlands Protection Committee has issued an Order of Conditions to the Applicant under the Massachusetts *Wetlands Protection Act*.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
12/20 NOV 30 P 12:56

Waivers

The Applicant submitted a list of requested waivers from the Town's bylaws, rules and regulations with its initial Application. On December 3, 2019, the Applicant filed with the ZBA an amended list of requested waivers. The ZBA acted on the Applicant's amended list of requested waivers as follows:

ZONING BYLAW

1. Section 2(A): SINGLE FAMILY RESIDENCE DISTRICT (SR15).

The Applicant seeks a waiver of the use requirements of the Single Residence District to allow for the construction of a multi-family use that is not allowed in the district. The ZBA balanced the regional need for low- or moderate-income housing against the local concern for limiting the housing in this zoning district to single family residences and finds that the regional need for low- or moderate-income housing outweighs that local concern. Therefore, the ZBA grants the requested waiver to allow for a multi-family rental development consisting of 40 units (30 market rate and 10 affordable) in one building with parking and appurtenances as shown on the Approved Plans (as defined below in Condition 2) and subject to all of the conditions set forth herein.

2. Section 16: RESTRICTIONS AFFECTING ALL DISTRICTS.

The Applicant seeks a waiver of Section 16(D)(4), which prohibits the parking, keeping or storing of one or more commercial trailers for an aggregate total of more than thirty (30) days in any one year unless the trailer is parked pursuant to an office or storage trailer permit issued by the Building Inspector in conjunction with construction and/or demolition of the premises. The ZBA grants this waiver request to allow for the parking, keeping or storing of a commercial trailer during the construction period. The ZBA notes that the considerations normally addressed in the office or storage permit proceeding were reviewed as part of the ZBA's public hearing on the comprehensive permit application.

The Applicant also seeks a waiver of Section 16(E) to allow for the construction of multi-family buildings without the applicability of the project review procedures in Sections 16A PROJECT APPROVAL and Section 25 SPECIAL PERMIT GRANTING AUTHORITY. The ZBA grants the procedural waiver request to allow for a multi-family rental development consisting of 40 units (30 market rate and 10 affordable) in one building with parking and appurtenances as shown on the Approved Plans, on the basis that the Comprehensive Permit review procedure has effectively replaced the project approval process specified in Section 16A and the special permit process specified in Section 25 for this particular project. The ZBA notes that the subjects normally addressed in these reviews were reviewed as part of the ZBA's public hearing on the comprehensive permit application.

3. Section 16A: PROJECT APPROVAL.

The ZBA grants a waiver of the requirement that the Project obtain design review, site plan review, and a Project of Significant Impact Special Permit, on the ground that the subjects normally addressed in connection with design review, site plan review and PSI review were addressed as part of the ZBA's public hearing on the comprehensive permit application and in the conditions included in this Decision.

4. Section 16C: DRAINAGE REVIEW.

The ZBA grants a waiver of the requirement that the Project undergo separate drainage review pursuant to this section of the Zoning Bylaw. Notwithstanding the foregoing, the ZBA notes that the drainage was reviewed as part of the ZBA's public hearing on the comprehensive permit application.

5. Section 16E: TREE PROTECTION & PRESERVATION.

The ZBA waives the requirements of this section of the Zoning Bylaw, except to the extent that Section 16E(F)(4) requires maintenance of replanted or new trees. The requested waiver of Section 16E(F)(4) is denied.

6. Section 18(B): AREA REGULATIONS/RATIO OF BUILDING TO LOT AREA.

For lots containing more than 20,000 square feet but less than 40,000 square feet, Section 18(B) limits the building coverage to the greater of 18 percent or 4,000, up to a maximum of 6,000 square feet. The ZBA grants a waiver to allow for a building coverage (excluding garage outside of the building foundation and entrance canopy) of 13,854 square feet as shown on the Approved Plans.

7. Section 19: YARD REGULATIONS

Pursuant to Section 19 of the Zoning Bylaw, the minimum front yard depth applicable to this lot is 30 feet, and the minimum side and rear yard depths are 20 feet. The Project satisfies the required front yard depth requirement but does not conform to the required side and rear yard depth requirements at several points. The ZBA finds that the regional need for low- or moderate income housing outweighs the local concern for the 20 foot minimum rear and side yard depth, and grants a waiver of the requirements of Section 19.B to allow for the construction of the Project with the setbacks shown on the Approved Plans.

8. Section 20: HEIGHTS OF BUILDINGS

Pursuant to Section 20 of the Zoning Bylaw, the maximum height of a building is 45 feet or three stories. The ZBA finds that the regional need for low- or moderate income housing outweighs the local concern for the building height, and grants a waiver of Section 20 so as to allow for a building height of 58.6 feet and five stories (exclusive of the elevator penthouse) as shown on the Approved Plans.

9. Section 21: OFF STREET PARKING.

The ZBA grants a waiver of the requirements of Section 21 so as to allow for the construction of resident parking spaces, guest parking spaces, and maneuvering aisles as shown on the Approved Plans, which the ZBA finds is consistent with accept industry practice for residential buildings in suburban areas and which outweighs the local concern for off-street parking.

10. Section 22: DESIGN REVIEW.

The ZBA grants a waiver of the requirement for separate review by the Design Review Board for this Project. The ZBA notes that subjects normally addressed during Design Review were reviewed as part of the ZBA's public hearing on the comprehensive permit application.

11. Section 22A: SIGNS.

The Applicant initially sought a waiver of the sign bylaw; however, no project-related signs (other than internal directional signs) were presented to the ZBA, and the Applicant ultimately withdrew this waiver request.

DEPARTMENT OF PUBLIC WORKS

12. DPW Municipal Stormwater Drainage System Rules and Regulations, Sewer Rules and Regulations and Water Rules and Regulations.

The ZBA grants a waiver of the need for the Applicant to obtain separate review and approval from the DPW for its stormwater drainage system, sewer infrastructure, and water infrastructure as shown on the Approved Plans. The ZBA notes that the DPW reviewed the Applicant's plans during the public hearing on this application and, as conditioned below, will review final construction plans prior to issuance of a building permit.

WETLANDS

13. Town of Wellesley Wetlands Protection Regulations

The ZBA grants a waiver of the Town of Wellesley Wetlands Protection Bylaw and Regulations to the extent necessary to allow the Applicant to construct the Project in accordance with the Approved Plans. The ZBA notes that the Applicant has obtained an Order of Conditions from the Wetlands Protection Committee under the Massachusetts *Wetlands Protection Act*.

The ZBA grants only the specific waivers itemized above. If it appears after issuance of this Comprehensive Permit that any additional waiver is needed, the Applicant shall be required to seek the approval of the ZBA.

MCCLIVEU
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2020 NOV 09 12:51

Conditions to the Comprehensive Permit

The ZBA's approval of the Comprehensive Permit for the Project is subject to the Applicant's and the Project's compliance with the following conditions. All requirements imposed by these conditions or this Comprehensive Permit shall be applicable to the Applicant, its successors and assigns, and all tenants and residents of the Project, regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

General

1. This Permit authorizes the construction, use and occupancy of a project comprised of one residential building containing forty (40) dwelling units, along with associated parking and infrastructure as shown on the Approved Plans (listed and defined in Condition 2) below.
2. The Project shall be constructed in accordance with the following plans and written materials, subject to modifications required below:

Plan Number	Drawing Title	Date of Issue	Prepared By	Date of Revision
C1	Survey	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/26/19, 1/20/20
C1	Site Plan	4/1/19	Hayes Engineering	
C2	Existing Conditions Plan	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C3	Grading Plan	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C4	Utility Plan	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C5	Erosion Control Plan	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C6	Layout Plan	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19,

RECEIVED
CLERK'S OFFICE
DOWNINGTOWN
ELLESLEY MARIA
20 NOV 30 PM 2019
L-251

				1/20/20, 2/24/20
C7	Photometrics Plan	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C8	Fire Access Plan	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C8A	Garage Access Plan	6/26/19	Hayes Engineering	7/22/19, 9/26/19, 10/17/19, 1/20/20
C8B	Moving Van Access Plan	4/26/19	William Bergeron, P.E.	7/22/19, /17/19, 9/26/19, 10/17/19, 1/20/20
C9	Detail Sheet	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C10	Detail Sheet	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C11	Erosion Detail Sheet	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
C12	Erosion Detail Sheet	4/26/19	William Bergeron, P.E.	7/22/19, 9/26/19, 10/17/19, 1/20/20
A-000	Cover Sheet	5/30/19	Cube3	
A-002	Building Summary and Unit Mix	5/30/19	Cube3	
A-003	Affordable Unit Summary	5/30/19	Cube3	
A-100	Site Plan	5/30/19	Cube3	
A-101	First Floor Plan	5/30/19	Cube3	
A-102	Second Floor Plan	5/30/19	Cube3	
A-103	Third Floor Plan	5/30/19	Cube3	
A-104	Fourth Floor Plan	5/30/19	Cube3	
A-105	Fifth Floor Plan	5/30/19	Cube3	
A-106	Roof Plan	5/30/19	Cube3	11/8/19
A-200	Exterior Elevations	5/30/19	Cube3	11/7/19

1400 NOV 30 P 12:55 PM 2019
RECEIVED
WILLIAMS OFFICE
WELLESLEY MA 02482

A-201	Exterior Elevations	5/30/19	Cube3	11/7/19
A-300	Building Section	5/30/19	Cube3	
A-600	Typical Unit Plans	5/30/19	Cube3	
L-1	Elevation Cross Section	11/27/19	Hayes Engineering	RECEIVED 2020 NOV 30 P 12:51 JOHN CLERK'S OFFICE WELLESLEY MA 02482
	Image Board: Perspective 1	8/13/19	Bohler Engineering	
	Image Board: Perspective 2	8/13/19	Bohler Engineering	
	Image Board: Proposed Landscape Palette	8/13/19	Bohler Engineering	
L-1	Proposed Landscape Map	11/1/19	Hayes Engineering	
L-1	Proposed Landscape Map	11/13/19	Hayes Engineering	12/30/19, 1/23/20, 1/30/20
	Existing Riverfront Disturbance	5/1/19	Hayes Engineering	12/6/19, 12/17/19, 12/19/19, 1/17/20, 1/21/20
	Proposed Riverfront Disturbance	4/1/19	Hayes Engineering	12/17/19, 12/19/19, 1/17/20, 1/20/20
L-2	Proposed Landscape Map	11/13/19	Hayes Engineering	12/30/19, 1/23/20

Mitigative Drainage Study, dated April 29, 2019, prepared by Hayes Engineering

(collectively, the “Approved Plans”).

3. The Applicant shall obtain the written consent of the Town of Wellesley, in its capacity as the fee owner of a portion of private, unconstructed Alpine Street that the Applicant proposes to improve with paving, curbing and landscaping and use for access, and as the holder of easement rights in and to the remainder of Alpine Street, to permanently use that land for access to the Project, including to 130 Worcester Street (Assessor Parcel 7-39) and 136 Worcester Street (Assessor Parcel 10-2). See Exhibit A. The Applicant shall provide a written copy of such consent to the ZBA and to the Building Inspector. Alternatively, the Applicant shall revise the Approved Plans to eliminate all access over the Town-owned portion of Alpine Street to 130 Worcester Street (Assessor Parcel 7-39) and 136 Worcester Street (Assessor Parcel 10-2), with any such revisions being subject to the provisions of 760 CMR 56.05(11).⁴

⁴ Given the importance of access from Route 9 and the internal vehicular circulation within the Site, the ZBA presumes that any revisions to site plans in response to this condition would constitute a substantial change for purposes of 760 CMR 56.05(11).

4. All dwelling units approved under this Comprehensive Permit shall be rental units.
5. Of the forty (40) dwelling units authorized herein, thirty (30) shall be market rate units and ten (10) shall be affordable units.
6. At least twenty-five percent (25%) of the dwelling units in the Project shall be reserved in perpetuity as Low or Moderate Income Housing restricted for lease and occupancy by Income Eligible Households as these terms are defined in 760 CMR 56.02. There shall be four (4) one bedroom affordable units, five (5) two bedroom affordable units, and one (1) three bedroom affordable unit. The initial rents of the Affordable Units shall be established by the Subsidizing Agency.
7. The Project shall contain a total of sixty-three (63) parking spaces, with thirty-four (34) garage parking spaces and twenty-nine (29) surface parking spaces, as shown on the Approved Plans. The Applicant shall assign at least one parking space for each dwelling unit at all times. The Applicant may assign the remaining parking spaces at its discretion; provided, however, that (1) the Applicant shall not charge tenants for use of an additional parking space, (2) the Applicant shall not treat the tenants of the market rate units differently from the tenants of the affordable rate units in allocating the remaining spaces, and (3) the Applicant shall set aside sufficient spaces for visitor parking.
8. There shall be no parking on the internal Site driveways, outside of designated parking areas shown on the Approved Plans, and there shall be no parking on Worcester Street. Residents shall be informed of the parking restrictions prior to the execution of their lease and this restriction shall be included in the terms of the tenants' leases.
9. Except for construction related signs, as provided for below, and directional signs shown on the Approved Plans, no other signs are approved in this Comprehensive Permit.
10. There shall be no pavement added to the Project beyond that which is depicted on the Approved Plans and there shall be no additional accessory structures added to the Project or to the Site other than what is shown on the Approved Plans.
11. All utilities to serve the Site shall be installed underground (with the exception of junction boxes, transformers and similar appurtenances) by the Applicant using methods standard to those installations. Utilities shall include electric service lines, gas service, telephone lines, water service lines, CATV lines, municipal conduit, and the like.
12. The water, wastewater, drainage, and stormwater management systems servicing the buildings shall be installed and tested in accordance with applicable Town standard requirements and protocols.
13. The stormwater management system design shall function consistent with the Approved Plans, as revised, and with the Mitigative Drainage Study, prepared by Hayes Engineering, Inc. dated April 29, 2019, and shall be maintained by the Applicant in

accordance with the Operation and Maintenance Plan and Long-Term Pollution Prevention Plan dated April 11, 2019.

14. Subject to receipt of all necessary permits and approvals, which the Applicant shall timely apply for and diligently pursue, the Applicant will repair the crosswalk markings across the Dearborn Street approach to Route 9.

15. Subject to receipt of all necessary permits and approvals, which the Applicant shall timely apply for and diligently pursue, the Applicant will design and construct a sidewalk connecting the frontage of the Site to the existing Worcester Street sidewalk, located approximately 300 feet to the east of the Site.

16. The Applicant shall install windows with triple glazing or acoustical storms for sound mitigation from the traffic on Worcester Street, and shall use extra sheet rock layers at exterior walls for additional sound mitigation.

Submission Requirements—Prior to Commencement of Any Construction Activity

17. No construction activities for the Project shall commence on the Site until the Applicant has submitted to the Building Inspector evidence that it is in good standing with the Corporations Division of the Secretary of the Commonwealth's Office.

18. No construction activities for the Project shall commence on the Site until the Applicant has obtained Final Approval of its Subsidizing Agency and presented evidence of same to the Building Inspector.

19. No construction activities for the Project shall commence on the Site until the Applicant has recorded at the Norfolk Registry of Deeds copies of this Comprehensive Permit and the Regulatory Agreement for the Project and delivered certified recorded copies of the Regulatory Agreement and Monitoring Services Agreement to the Building Inspector and the ZBA.

20. No construction activities for the Project shall commence on the Site until the Applicant has properly marked the limits of disturbance around the Site. The Building Inspector shall inspect the Site after such marking prior to any disturbance.

21. No construction activities for the Project shall commence on the Site until the Applicant has provided the Wellesley DPW with a copy of the recorded Order of Conditions.

22. No construction activities for the Project shall commence on the Site until the Applicant has obtained from MassDOT a curb cut permit consistent with the Approved Plans, and has provided a written copy of same to the Wellesley DPW, the Building Inspector, and the ZBA.

23. No construction activities for the Project shall commence on the Site until the Applicant has recorded or registered, as applicable, a plan combining all of the contiguous component lots that make up the Site (that is, all except 142 Worcester

RECEIVED
NOV 20 2019
DPW
WELLESLEY, MA 02482
CITY CLERK'S OFFICE
WELLESLEY, MA 02482

Street/Assessor Parcel 10-66) into one lot as a matter of record, and has provided evidence of same to the Wellesley DPW, the Building Inspector, and the ZBA.

24. No construction activities for the Project shall commence on the Site until the Applicant has submitted to the Building Inspector, for review and approval, a revised Construction Management Plan and Construction Management Schedule (CMP) as necessary to conform to accepted industry practice and to address all construction-related conditions specifically set forth below in this Comprehensive Permit. The intent of this revised CMP is to require the Applicant to provide an additional level of detail in those areas where the undated CMP presented in the public hearing is less than fully comprehensive, and to capture any changes that may occur between the issuance of this decision and the time for actual construction. Without limiting the foregoing, the revised CMP shall include:

- a. Critical path method construction schedule (or other such construction schedule as the Applicant may use to manage the construction) in order to provide guidance and facilitate inspections.
- b. Trucking plan, which shall specify planned truck routes, estimated volumes of any imported and exported materials, estimated truck trips and construction period mitigations measures consistent with the conditions set forth herein, including without limitation details and locations of crushed stone entrance pads, street sweeping protocols and dust control measures.
- c. Construction administration (hours of construction, deliveries, trash and debris removal).
- d. Communication (designated contacts on site).
- e. Controlled blasting (if required).
- f. Noise and dust control.
- g. Erosion control.
- h. Groundwater management, surface water management, and, if required, dewatering.
- i. Identification of existing underground utilities.
- j. Construction staging (staging areas, trailer locations, open storage areas, deliveries, truck holding locations), which shall be sufficient to ensure that there is no vehicle queuing, idling, parking or staging on Route 9 or any other streets under any circumstances.
- k. Construction phase parking plan.
- l. Location of trailers, dumpsters, and restrooms.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02481
NOV 30 2012

25. The final CMP shall be included or incorporated by reference in the general construction contract and all sub-contracts, and compliance with its terms shall be a contract condition for all contractors working at the Site.

Submission Requirements—Prior to Issuance of a Building Permit

26. No building permit shall issue until the Applicant has prepared subsequent detailed design development and construction drawings (including without limitation civil, structural, mechanical, electrical, landscaping and architectural plans) that have been revised in accordance with the terms of the Conditions of Approval, and said construction drawings have been reviewed and approved by the Building Inspector and others as specifically provided for below, solely for consistency with this Comprehensive Permit:

- a. If revised after issuance of this comprehensive permit, stormwater plans shall be submitted to the Town Engineer for review to confirm consistency of such plans with the Approved Plans;
- b. Detailed plans of the following municipal utilities and services shall be prepared in accordance with all applicable regulations and requirements and shall be submitted for review and approval by the listed authorities prior to endorsement of the final plans:
 1. Water mains - Wellesley DPW;
 2. Sewer connections – Wellesley DPW;
 3. Fire hydrant locations - Wellesley Fire Chief;
 4. Primary and secondary electrical cables including distributions boxes and transformers – Wellesley Municipal Light Plant and Wiring Inspector; and
 5. Telephone cables and street lighting located on the Site - Wiring Inspector.

200 NOV 300 DP 1251
RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02482

The Applicant shall submit with the subsequent detailed design development and construction drawings provided for herein an itemization of all revisions to the Approved Plans and a certification from the Engineers of Record that these plans fully incorporate all requirements of these conditions as set forth herein.

27. The Applicant shall submit to the Building Inspector written confirmation that it has complied with Condition 3, above.

28. The Fire Chief may require the construction plans to be reviewed, and for the construction to be inspected, by an outside consultant for compliance with 527 CMR 1.00 *et seq.*, at the Applicant's expense.

Conditions on Construction

29. Site work and construction shall be restricted to the hours between 7:00 am and 5:00 pm, Monday through Friday. In the event that the Applicant determines that construction work is required to be performed on Saturday, such work may be performed between the hours of 8:00 a.m. and 4:00p.m., provided that the Applicant notifies the Building Inspector at least three days prior to such work, and the Building Inspector, in consultation with the Wellesley Police Department, consents to such work. If, after completion of the building envelope, the Applicant determines that interior construction work is required to be completed outside the above stated hours, such work may be performed after three day prior notice to the Building Inspector and the Wellesley Police Department, provided that no such work will exceed the allowed noise levels specified below. There shall be no construction on Sundays, or on state or federal holidays. Additionally, construction vehicles and/or equipment shall not be started or operated prior to, or after the times stated herein. For this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; demolition and renovation of existing structures; and the erection of new structures.

30. There shall be no queuing, idling, parking or staging of construction vehicles, construction worker vehicles, or delivery vehicles on Worcester Street or any other street, under any circumstance. All construction vehicles shall park on the Site. At such time as parking capacity on site is exceeded, the Applicant shall arrange for a private off-site parking location and shall arrange for shuttling of construction workers to and from the Site.

31. Insofar as practical, deliveries to the Site by tractor trailer (WB-50 or larger) shall be prohibited during the morning peak (7:00 am -9:00 am) and evening peak (4:00 pm-6:00 pm) traffic hours without the consent of the Wellesley Police Department.

32. Erosion control shall be employed on the Site to stop erosion during construction and prevent sedimentation from entering the abutting public ways and adjacent wetland areas.

33. During construction, the stakes installed pursuant to Condition 20 shall remain in place at all times.

34. During construction, the Site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner.

35. The Applicant shall regularly remove construction trash and debris from the Site in accordance with good construction practice.

36. All potential safety hazards that may exist on the Site from time to time during the period of construction shall be adequately secured prior to the end of each workday.

37. The Applicant shall implement measures to ensure that noise from Project construction activities does not exceed permissible regulatory levels, including without limitation, DEP's noise regulations at 310 CMR 7.10 and noise pollution policy interpretation.

38. During construction the Applicant shall ensure that any dewatering activity required does not create (a) offsite issues or (b) problems for the proposed stormwater recharge system.

39. The Applicant shall be permitted to remove and/or replace earth from the Site incidental to the construction of the residential buildings, the construction of the drainage and underground infiltration system and the construction of the roadway and utility infrastructure as shown on the Approved Plans. Hours of operation for earth removal shall be 7:00 am - 5:00 pm, Monday through Friday; there shall be no hauling on Saturday or Sunday.

40. The Applicant may locate trailers on the Site during construction activity only. During construction all trailers, dumpsters, and portable restrooms shall be placed within the Site so as to not adversely impact the residential abutters.

41. The Applicant shall maintain all portions of any road used for construction access free of soil, mud or debris due to use by construction vehicles associated with the Project. Any material tracked onto a public way shall be swept up and removed by the Applicant on a daily basis.

42. A temporary construction sign no greater than twenty (20) square feet in size may be erected on the Site at the time of issuance of a building permit. This sign shall list the Applicant's contact information, as well as information on how to sign up for text and email alerts from the Applicant regarding Project updates.

43. Any idling of vehicles on the Site shall be limited to five minutes or less in accordance with M.G.L. c.90, §16A, and the Applicant shall post clearly visible signage on the Site, to be maintained for the duration of the construction period, noting this requirement. As stated in Condition 30, there shall be no idling whatsoever on Worcester Street or any other street.

44. Construction shall conform to all applicable local, state and federal laws and regulations regarding noise, vibration, dust and sedimentation, use and interference with Town roads.

45. The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation DEP's dust regulations at 310 CMR 7.09, as amended, as directed by the Building Inspector. Methods of controlling dust shall meet all applicable air pollutant standards as set forth by Federal and State regulatory agencies.

46. The Applicant shall, upon advance notice, permit Town and ZBA members, agents, and representatives to observe and inspect the Site and construction progress until such time as the Project has been completed.

47. The Applicant shall notify the relevant Town departments of installation of utilities and infrastructure for inspections prior to backfilling.

48. Upon completion of the Project, soil material used as backfill for pipes, access drives, infiltration beds, and other underground drainage structures shall be certified by the Engineer of Record to the Building Inspector as meeting design specifications.

49. For the abatement of any asbestos containing material found on the Site, the Applicant shall comply with the 453 CMR 6.00, Removal, Containment or Encapsulation of Asbestos as promulgated by the Department of Labor and Workforce Development.

50. The Project shall conform to all pertinent requirements of the Americans with Disabilities Act and the Architectural Access Board Regulations (521 CMR 1.0 et. seq), except as may be waived, in accordance with applicable law and regulation.

51. Prior to issuance of the final certificate of occupancy, the Applicant shall:

- a. Submit to the Department of Public Works (DPW), in hard copy stamped and signed by a registered professional engineer and in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all utilities, roadway, sidewalk and associated construction, and stormwater management systems. The file format shall be in accordance with the DPW's requirements. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered to the specifications of the DPW and shall use the Town of Wellesley benchmark elevation system.
- b. Submit to the Building Inspector as-built site plans for the Project with the Town of Wellesley benchmark elevation system, as opposed to the North American Vertical Datum of 1988, and adding a note to the at effect.
- c. Submit a parking management plan and have established compliance with the measures noted in the Traffic Demand Management Program included in the Applicant's Traffic Study dated April 2019.
- d. Complete all items on the Department of Public Works' site construction punch list.

1 2020 NOV 30 P 12:58
INCLUDES
TOWN CLERK'S OFFICE
WELLESLEY MA 02482

Operational Requirements

52. The Applicant shall not plow snow onto, or store snow on, any area within the limits of Worcester Street, Alpine Street, Warren Street or Echo Road as shown on the Approved Plans.

Legal Requirements

53. The Applicant has proposed, and the ZBA hereby requires, that the following common facilities and services of the Project, to the extent located on the Site, shall be and shall remain forever private, and that with the exception of any land within Alpine Street the Town shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- a. All internal site drives, walkways and parking areas;
- b. Stormwater management system, including the maintenance of catch basins, infiltrator units, bio-swales, underground infiltration structures and the like;
- c. Snow removal, including those areas where students wait for the bus, if located on the Site;
- d. Landscaping and landscape maintenance;
- e. Trash removal;
- f. Water system within the Site for both domestic use and fire protection, including hydrants; and
- h. Wastewater infrastructure within the Site.

REC'D BY CLERK
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2020 NOV 30 PM 12:58

The common facilities referred to above shall be maintained in perpetuity by the Applicant. The Applicant shall either arrange itself, or contract with a qualified management company, for the maintenance and repair all common areas and facilities, including the stormwater management system, wastewater disposal systems, landscaping, and other improvements within the Site.

54. The Applicant shall assure that the proper conditions are included in the unit leases to address the following:

- a. To the extent permitted by law, there shall be no conversion of interior space into additional bedrooms;
- b. Trash and recycling receptacles shall be stored inside the designated area shown on the Approved Plans except during collection;
- c. All Town bylaws and regulations concerning home-based businesses shall be applicable to the units;

- d. Pet waste shall be picked up on the Site and disposed of in the toilet or trash receptacle;
- e. The storage, use and disposal of any household hazardous wastes shall be properly and safely conducted; and
- f. There shall be no rentals of the market rate dwelling units for terms shorter than thirty (30) consecutive days; any rentals of affordable units shall comply with the terms of the Regulatory Agreement and Deed Rider.

55. All easements necessary for installation and operation of municipal services to the Site shall be granted by the Applicant where required by public utility companies or the Town.

56. All landscaping on the Site shall be as depicted in the landscaping plans dated November 1, 2019, and incorporated into the Approved Plans. The Applicant shall be responsible for replacing dead, dying and/or diseased plantings.

57. This Comprehensive Permit and the Regulatory Agreement for the Project shall be recorded at the Norfolk Registry of Deeds senior to all other liens or encumbrances other than pre-existing easements of record and existing mortgages.

58. If at any time during construction, the Building Inspector, Town Engineer or the ZBA determines that a violation of the Approved Plans or this Comprehensive Permit has occurred, the Town, through the Building Inspector or the ZBA, shall notify the Applicant and the Applicant shall be given thirty (30) days (or lesser time period if in the sole opinion of the Town that said violation creates an emergency condition) to rectify said violation or construction activities shall be ordered to cease until the violation is corrected.

Affordability Requirements

59. Twenty five percent (25%) of the total units in this development shall be available in perpetuity for rent and occupancy by low and moderate income household as defined in DHCD's regulation (the "Affordable Units").

60. A Massachusetts Housing Finance Agency Regulatory Agreement for either Comprehensive Permits Projects in Which Funding is Provided Through a Non-Governmental Entity, or for the Housing Starts Program or a regulatory agreement with another qualifying subsidizing agency, shall be executed prior to the issuance of the Building Permit for the Project. This Regulatory Agreement shall set forth the terms and agreements relative to the rental of the Affordable Units in the Project. The Regulatory Agreement and Monitoring Services Agreement shall be submitted to the Building Inspector prior to its recording.

61. In fulfillment of Condition 59, it is further a requirement that the Project shall always be subject to a suitable regulatory agreement. Therefore prior to the expiration of the initial Regulatory Agreement with the Subsidizing Agency, the Applicant shall execute and record a successor Regulatory Agreement and Monitoring Services Agreement, to be approved by Town Counsel, for the period after the expiration of the term of the

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY
NOV 30 2020
12:58 PM
02482

affordability restrictions imposed by the Subsidizing Agency, provided, however, that any successor Regulatory Agreement shall not extend the limited dividend period established in the initial Regulatory Agreement with the Subsidizing Agency. The Applicant shall enter into this second Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent, which shall continue the affordability restrictions imposed by the Subsidizing Agency and this Comprehensive Permit. Such agreement shall be consistent with the terms of this Comprehensive Permit. The Applicant shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period after the expiration of the term of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.

62. Upon the effectiveness of the successor regulatory agreement referred to above, rents for the Affordable Units shall continue to be restricted in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency (or its successor agency) that existed prior to the expiration or termination of the previously effective regulatory agreement, as if it were still in force and effect. To the extent that the Subsidizing Agency (or its successor agency) has ceased to promulgate such applicable rules, regulations, and policies, then the rent for the Affordable Units shall be determined based on substitute regulations of a federal or state governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by the Applicant and the Town, in order to ensure the continued availability of the Affordable Units for the purposes set forth herein and in the Comprehensive Permit for the entire term of the agreement. Further, if M.G.L. c.40B (or its successor statute) still provides a mandate for municipalities to provide low or moderate income housing, the Applicant shall continue to operate and manage the Project as would permit the Project to be credited toward the Town's Subsidized Housing Inventory for purpose of Chapter 40B.

63. To the maximum extent permitted by law and applicable regulation, local preference for the occupancy of seventy percent (70%) of the Affordable Units shall be given to residents of the Town satisfying all applicable eligibility requirements. For the purpose of this condition, and subject to any legal requirements, "residents of the Town" shall, to the extent not otherwise prohibited or limited by the provisions of relevant governing regulations or requirements, include, but not be limited to, the following: current Wellesley residents; employees of the Town, Wellesley Public Schools; and members of the household of children attending the Wellesley Public Schools. This Condition shall be enforceable only to the extent the local preference requirement set forth herein is approved by the Subsidizing Agency based on information that the Town shall be responsible to provide in accordance with the requirements of DHCD set forth in its Chapter 40B Guidelines.

64. The Affordable Units shall have similar amenities as the market-rate units and the distribution of the Affordable Units throughout the Project shall be as approved by the Subsidizing Agency.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2020 NOV 30 P 12:58

Miscellaneous

65. Enforcement of the conditions of this decision shall be by the Building Inspector or the ZBA to the extent permitted pursuant to the terms of M.G.L. c.40B, §§20-23 and 760 CMR 56.

66. The Applicant shall pay all permit application fees normally charged by the Town.

67. This Permit is granted to the Applicant and, prior to substantial completion of the Project, this Comprehensive Permit may not be transferred or assigned to any party without approval of the Subsidizing Agency and notice to the ZBA, as required by 760 CMR 56.05(12)(b). The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the Applicant and the successors and assigns of the Applicant, and the obligations contained herein shall run with the land. In the event that the Applicant sells, transfers, or assigns a portion or all of its interest in the Project, this Comprehensive Permit shall be binding upon the purchaser(s), transferee(s), or assignee(s) and any successor purchasers, transferees or assignees.

68. Consistent with the Mass Housing letter dated December 14, 2018 denying the initial Application for Chapter 40B Project Eligibility/Site Approval for this Site, Dean Behrend/Riverview Crossing, LLC is prohibited from owning and/or having any other financial interest in the Site or the Project, in whole or in part, in any capacity whatsoever including without limitation as an individual, shareholder, partner, trustee, beneficiary, officer, manager, agent or employee.

69. Any and all references to the "Applicant" herein shall include any authorized successors or assigns of the Applicant, including, but not limited to, all individual unit tenants. The terms, provisions and conditions of this Permit shall burden and benefit the successors and assigns of the Applicant with the same effect as if mentioned in each instance where the Applicant is named or referred to.

70. Any changes to the Project after the date of the Comprehensive Permit must be reviewed by the ZBA in accordance with the procedure set forth in 760 CMR 56.05(11).

71. The Applicant shall comply with all local regulations and bylaws as of the date of this Permit, except for those which are specifically waived in accordance with the Exceptions granted in "Waivers" section above or as otherwise expressly set forth in this Decision.

72. This Permit shall become void if the Applicant does not commence with development of the Project as approved herein within three (3) years of the date this Permit becomes final, in accordance with 760 CMR 56.05(12). Commencement of development shall mean that the Applicant obtains a building permit for the construction of the Project and commences substantive construction work under that permit. The ZBA may grant extensions for good cause.

73. All construction of the Project (including without limitation the residential building and all associated infrastructure, site improvements and landscaping shown on the Approved Plans) shall be completed within four (4) years from the date of issuance of the building permit unless a request is filed with, and approved by, the ZBA extending such time.

74. If any provision of this Comprehensive Permit or portion of such provision or the application thereof to any person or circumstances is for any reason held invalid or unenforceable, the remainder of this Comprehensive Permit (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

ZBA 2019-61
Petition of SEB Wellesley LLC
136-140 Worcester Street, Wellesley

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
NOV 30 P 12:58

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE
PURSUANT
TO GENERAL LAWS, CHAPTER
40A,
SECTION 17, AND SHALL BE
FILED
WITHIN 20 DAYS AFTER THE
DATE
OF FILING OF THIS DECISION IN
THE
OFFICE OF THE TOWN CLERK.

Robert W. Levy (cm.)
Robert W. Levy, Chairman

David G. Sheffield (cm.)
David G. Sheffield

Derek B. Redgate (cm.)
Derek B. Redgate

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Building Inspector

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
1720 NOV 30 P 12: 58

Exhibit A

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482

2020 NOV 30 P 12:58

