

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS
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DECISION
135 Great Plain Avenue, Wellesley, Massachusetts
Comprehensive Permit

Decision Number: 2018-25
Date Application Filed: March 12, 2018
Applicant: Wellesley Residential, LLC
Premises Affected: 135 Great Plain Avenue, Assessor's Map 68, Lot 68-1 (the "Site")
Relief Requested: Comprehensive Permit, G.L. c. 40B, §§ 20-23
Public Notice: November 10 and November 17, 2017
Public Hearing(s) held: April 5, 2018; April 26, 2018; May 31, 2018; June 28, 2018; July 17, 2018; September 13, 2018
Decision of the Board: Approved with Conditions
Members participating: Robert W. Levy, Walter B. Adams, David G. Sheffield
Date of Decision: November 1, 2018

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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 or (b) which is on sites comprising 1 ½ percent or more of the town's total land area zoned for residential, commercial, or industrial use, or (c) if the application results in the commencement of low and moderate income housing construction on sites comprising more than .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. The Zoning Board of Appeals' (the "Board" or "ZBA") decision on a comprehensive permit 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. A board of appeals may approve a project subject to reasonable conditions to mitigate its impacts or properly deny a comprehensive permit application where the proposed project is inconsistent with the Town's long-range and bona fide planning efforts.

Findings

At present, the Town of Wellesley does not meet the does not meet the statutory minima set forth in G.L. c. 40B § 20 or the "safe harbor" provisions of 760 CMR 56.03(3):

1. At the time of the filing of the application, the number of low- or moderate-income housing units in Wellesley constituted 6.3 percent of the total year-round units in the Town, based on the most recent decennial census. Thus, the Town does not meet the 10 percent statutory minimum.
2. 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).
3. 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 of

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Wellesley 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.

4. At the time of the filing of the application, the Town of Wellesley did not have a Chapter 40B Housing Production Plan approved by DHCD under 760 CMR 56.03(4).
5. The Town of Wellesley has not made “recent progress” as that term is defined in 760 CMR 56.03(5).
6. The proposed development does not constitute a “large project” as defined in 760 CMR 56.03(6).
7. The Site is not subject to any “related applications” as that term is defined in 760 CMR 56.03(7).
8. Subject to the conditions imposed by this decision, the Project is “Consistent with Local Needs” within the meaning of G.L. c. 40B, § 20, and Section 56.02 of DHCD’s Chapter 40B Regulations (760 CMR 56.02).

Waivers

The ZBA hereby grants the following waivers from the Town’s bylaws, rules and regulations:

A. Zoning Bylaws:

1. Section II. Single Residence Districts—Waiver of the use requirements of the Single Residence District to allow for the construction of townhouses, two-family dwellings and multi-family residential uses, as shown on the Approved Plans, which are not otherwise allowed in the zoning district.
2. Section XVIA. Project Approval—Waiver of the requirement that the Project obtain design review, site plan review, and a Project of Significant Impact Special Permit.
3. Section XVIC. Drainage Review—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.
4. Section XVIE. Tree Protection & Preservation—Waiver of the requirements of this section of the Zoning Bylaw.
5. Section XVIII. Area Regulations—Waiver of the requirement in the SR-20 Zoning District that there shall be provided for each dwelling constructed a lot containing not less than 20,000 square feet. This waiver is granted to allow construction of 44 dwellings on the Site as shown on the Approved Plans.
6. Section XIX.B. Front Yard Depth—Waiver of the 30’ Minimum Front Yard Depth to allow for a Minimum Front Yard Depth of 13’ as shown on the Approved Plans.

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7. Section XIX.C. General—Waiver of the requirement that no yard shall be considered as appurtenant to more than one building, to the extent necessary to allow for the construction of 44 dwellings on one lot as shown on the Approved Plans.
 8. Section XIX.B. Requirements—Waiver of the requirement that heating, ventilation, air conditioning, electric generating or other noise emitting equipment shall not be located in required setback areas, to the extent necessary to allow transformers and air conditioning units to be located as they are shown on the Approved Plans.
 9. Section XX. Heights of Buildings or Structures –Waiver of the requirement that dwellings shall not exceed 36 feet in height, to the extent necessary to allow construction of the 44 dwellings as shown on the Approved Plans and elevations.
 10. Section XXI. Off Street Parking—Waiver of the requirements of Section XXI so as to allow for the construction of resident parking spaces, guest parking spaces, and maneuvering aisles as shown on the Approved Plans.
 11. Section XXII. Design Review—Waiver of the requirement of separate design review for this Project.
 12. Section XXIIA. Signs—Waiver of the requirements of Section XXIIA to allow for the construction and maintenance of the signs as shown on the Approved Plans.
 13. Section XXIID. Retaining Walls—Waiver of the requirements of Section XXIID to allow for construction of retaining walls as shown on the Approved Plans.
- B. General Bylaws:
14. Article 29. Board of Public Works – Waiver of the requirements of Section 29.3.f to the extent necessary to allow for trenching and work within the public right-of-way in connection with construction of the Project as shown on the Approved Plans.
 15. Article 44. Wetlands Protection Bylaws and Regulations—Waiver of this bylaw to the extent necessary to allow the alteration, as shown on the Approved Plans, of area within 200 feet of Rivers without separate review under this Bylaw by the Town’s Wetlands Protection Committee.
 16. *Subdivision Regulations* Section II.D. One Dwelling Per Lot—Waiver of the requirement that no more than one building designed or available for use for dwelling purposes may be constructed on one lot, so as to allow for the Project to include 44 dwelling units on one lot as shown on the Approved Plans.

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The ZBA grants only those specific waivers discussed 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.

Conditions to the Comprehensive Permit

The Board'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, organization of unit owners (the "Association"), and unit owners, regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

General

1. The Project shall be constructed in accordance with the following plans, subject to all revisions specifically provided for in the conditions of approval set forth herein:

Site Plans Issued for Comprehensive Permit Application Fieldstone Way 135
Great Plain Avenue Wellesley, Massachusetts Date Issued February 16, 2018
Latest Issue August 30, 2018:

Sheet C-1	Legend and General Notes
Sheet C-2	Layout and Materials Plan
Sheet C-3	Grading and Drainage Plan
Sheet C-4	Utility Plan
Sheet C-5	Erosion and Sediment Control Plan
Sheet C-6.1-6.3	Site Details

Landscape Site Plan prepared by Ryan Associates dated 02-16-18 and last revised 09-06-18.

135 Great Plain Ave, Wellesley Concept Architecture Plan Set Prepared by Union Studio and dated August 30, 2018.

Lighting Plan dated May 23, 2018.

(collectively, the "Approved Plans").

2. This Permit authorizes the construction, use and occupancy of forty-four (44) dwelling units located in twenty (20) duplex and four (4) carriage house structures, along with associated accessory structures, facilities, infrastructure and landscaping, all as shown on the Approved Plans, as modified by this Permit. There will be 4 one bedroom units, 10 two bedroom, and 30 three bedroom units. Building size and unit mix, including the number and location of bedrooms and garages, shall be as shown on the Approved Plans.

3. Eleven (11) units shall be reserved in perpetuity for purchase and occupancy by low or moderate-income households earning no more than eighty (80) percent of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA (HUD Metro

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Fair Market Rent Area), as determined by the U.S. Department of Housing and Urban Development (HUD) and as adjusted for household size (the "Affordable Units"). Three (3) of the Affordable Units shall be one (1) bedroom units, five (5) of the Affordable Units shall be two (2) bedroom units, and three (3) of the Affordable Units shall be three (3) bedroom units, or as otherwise may be required by the subsidizing agency. The initial sales prices of the Affordable Units shall be established in accordance with the requirements established by the Department of Housing and Community Development in its Comprehensive Permit Guidelines.

4. All dwelling units approved under this Comprehensive Permit shall be ownership units.
5. The Project shall contain twenty-eight (28) guest parking spaces, as shown on the Approved Plans.
6. There shall be no parking on the internal site driveways, outside of designated parking areas shown on the Approved Plans.
7. Signs identifying the development shall be limited to those two signs on the stone pillars at the entrance, as shown on Sheet L-3.0 of the Landscape Site Plan included among the Approved Plans.
8. Addresses for the Project, and for individual dwelling units within the Project, shall be issued by the Board of Selectmen or its designee. All mailboxes shall be located within the development in the approximate location shown on the Approved Plans. Unit numbers shall be clearly marked on the exterior of all dwelling units.
9. 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 associated with the residential dwellings added within the Project other than what is shown on the Approved Plans.
10. There shall be no additional construction beyond the limits of construction shown on the Approved Plans, aside from potential additional utility connections as contemplated in this Permit.
11. The final plans for the Project shall reflect architectural detailing of the dwellings revised as described in the letter from Union Studio to the Zoning Board of Appeals dated September 19, 2018.
12. A supplemental planting plan for the Great Plain Avenue right-of-way directly in front of the Project shall be submitted for the review and approval by the Planning Director in consultation with the Town's Park and Tree Division and Natural Resources Commission Director, with the goal of providing screening and replacement planting for any trees removed.

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13. The Applicant shall revise the Lighting Plan to correspond to the revised layout of the Project, and the lighting and fixtures on such revised plans shall be consistent with those submitted to the ZBA during the public hearing.

14. The Applicant shall design and construct a play area for the Project. The location and final design of the play area shall be subject to the administrative review and approval of the Planning Director.

15. The Applicant shall relocate the existing stone accessory structure that exists on the Site to the location shown on the Approved Plans and shall maintain the structure in that location. In the event that the Applicant concludes that the structure cannot feasibly be moved, it shall submit to the Planning Director a supporting report from a qualified structural engineer. In this scenario, the Applicant will construct a new structure in the same location that is shown on the Approved Plans, the new structure shall be architecturally consistent with the existing structure (i.e., of similar architectural design and materials), and the design of the new structure shall be subject to the review and approval of the Planning Director. Notwithstanding anything contained in Condition 9, above, the Planning Director may approve *de minimis* additional paving associated with the relocation or reconstruction of the stone structure.

16. The Applicant shall install a bench(s) at the intersection of the sidewalk and walking path connection to the Sudbury Aqueduct path (closest to duplex 20) and shall revise the final plans for the Project to reflect the bench(s). The specific location of the bench(s) shall be subject to the administrative review and approval of the Planning Director.

17. All utilities 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 be defined as electric service lines, gas service, telephone lines, water service lines, CATV lines, municipal conduit, stormwater management systems, and the like.

18. The water, wastewater, drainage, and stormwater management systems servicing the buildings shall be installed and tested in accordance with applicable Town of Wellesley standard requirements and protocols.

19. The stormwater design shall function consistent with the Approved Plans, as revised, and with the Stormwater Report, prepared for Northland Residential, LLC by VHB, Inc., dated February 2018.

Submission Requirements

20. No construction activities for the Project shall commence on the Site until:

- a. The Applicant has obtained Final Approval of its Subsidizing Agency and presented evidence of same to the Building Inspector.

- b. The Applicant has delivered to the Building Inspector certified recorded copies of the Regulatory Agreement for the Project and has recorded said Regulatory Agreement with the Registry of Deeds.
- c. The Applicant has properly marked the limits of disturbance around the Site. The Planning Director shall be called to inspect the Site prior to disturbance.
- d. The Applicant shall submit plans and all relevant materials and studies for a gravity fed site sewerage to the Department of Public Works for final approval by the Town Engineer, in consultation with the Director of the Department of Health. The on-site sewerage system shall not preclude connections as may be authorized by the Applicant of abutting property owners, but the Applicant is not responsible for such costs; if the Applicant allows such connections to be made, appropriate maintenance obligations for the system shall be established to accommodate the interests and responsibilities of relevant abutting owners.
- e. The Applicant has submitted to the Planning Director, and is incorporated herein by reference, a revised Construction Management Plan and Construction Management Schedule (CMP) as necessary to conform to industry standard practice and addresses all construction-related conditions specifically set forth in this Permit. The CMP shall include:
- i. Construction phasing plan, which shall include a construction schedule in order to provide guidance and facilitate inspections. Such construction schedule shall be revised every six months to reflect work completed and changes in construction timing.
 - ii. 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.
 - iii. Construction administration (hours of construction, deliveries, trash and debris removal).
 - iv. Communication (designated contacts on site).
 - v. Noise and dust control.
 - vi. Blasting.
 - vii. Erosion control.
 - viii. Identification of existing underground utilities.
 - ix. Construction staging (staging areas, trailer locations, open

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- storage areas, truck holding locations).
- x. Traffic and parking during construction.

- f. The Applicant has prepared a final set of plans (including without limitation civil, landscaping and architectural plans) revised in accordance with the terms of the conditions of approval, and said plans have been reviewed and approved by the Planning Director and others as specifically provided for below, solely for consistency with this Decision:
 - i. Final stormwater plans shall be submitted to the DPW Director for review to confirm consistency of such plans with the Approved Plans;
 - ii. Detailed plans of the following 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 - Town of Wellesley DPW;
 - 2. Fire hydrant locations -Town of Wellesley Fire Chief;
 - 3. Primary and secondary electrical cables including distributions boxes and transformers – Wellesley Municipal Light Plant & Wiring Inspector;
 - 4. Telephone cables and Street lighting - Wiring Inspector.

The Applicant shall submit with the final revised plans provided for herein an itemization of all revisions to the Approved Plans and a certification from the Engineer of Record that the final plans fully incorporate all requirements of the Conditions of Approval as set forth herein.

Construction

21. Exterior construction activities shall be restricted to the hours between 7:00 am and 5:00 pm, Monday through Friday and between the hours of 8:00 am and 4:00 pm on Saturday. 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; and the erection of new structures.

22. 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.

23. During construction, the Site shall be secured against unauthorized entry or

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vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner.

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

25. 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.

26. 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.

27. The Applicant may locate trailers on the Site for no more than four (4) years from the date of this approval for construction and/or sales needs. No further approval shall be necessary.

28. 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 Saturday or Sunday hauling.

29. The Applicant shall maintain all portions of any public 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.

30. The Applicant shall repair in a timely manner any damage to public roads or sidewalks adjacent to the Project that results from the construction and/or maintenance of the Project.

31. 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.

32. There shall be no construction parking on any public way. All construction parking shall be within the Site, or if necessary, at off-site locations where such use is permitted and from which workers shall be shuttled to the Site. The Applicant shall post clearly visible signage on the site, to be maintained for the duration of the construction period, limiting idling by construction vehicles to five minutes or less in accordance with applicable state and federal anti-idling regulations.

33. The construction process shall reasonably conform to the construction phasing plan, the construction schedule and all applicable local, state and federal laws and regulations regarding noise, vibration, dust and sedimentation, use and interference

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with town roads. Deviations from any phasing plan, particularly regarding delivery of any affordable unit, shall be noted in writing to the Board which shall include an explanation as to the need for deviation from the original schedule.

34. 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.

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

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

37. 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.

38. Along the limit of work line designated on the Approved Plans that is proximate to the 200' Riverfront Area as defined under the Massachusetts Wetlands Protection Act Regulations, and/or the 100' Wetland Buffer as depicted on the Approved Plans, if any existing trees within twenty (20) feet of the limit of work fail to survive due to nearby construction activities, the Applicant shall plant a replacement tree for each tree over 4" DBH that failed to survive. Each replacement tree shall have a minimum DBH of 1.0" and shall be a tree species native to New England. Each replacement tree shall be guaranteed to survive for a period of eighteen (18) months after installation. This condition will expire twenty-four (24) months after the date the final certificate of occupancy for the Project is issued.

Legal Requirements

39. The Applicant has proposed, and the Board 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 the Town of Wellesley shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- a. All internal roadways, 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;
- d. Landscaping and landscape maintenance;
- e. Trash removal;

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- f. Street lighting;
- g. Water system for both domestic use and fire protection, including hydrants; and
- h. Wastewater infrastructure.

The common facilities referred to above shall be maintained in perpetuity by the Association to be established as provided for herein.

40. The Applicant shall establish an Association to maintain and repair all common areas and facilities, including the stormwater management system, wastewater disposal systems, landscaping, and other improvements within the Site and each owner shall be a member thereof. Such documents shall set forth the obligations of the Association for the operation and maintenance of all such common areas and improvements and shall reference the affordability requirements upon which the Comprehensive Permit is conditioned. Prior to the issuance of any certificate of occupancy, the Applicant shall provide documents establishing such Association to the Board for approval by Town Counsel as to form and for verification that such documents are in conformance with this Permit and shall certify to Town Counsel that same comply with M.G.L. c.183A. The Association shall adopt rules and regulations and a copy shall be provided to the Board.

41. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities and services until the transfer of the Site to the Association, as set forth in the condominium documents, to the extent that such installation, operation and maintenance is a condition required in this Permit. Upon the recording of the Master Deed, the installation, operation and maintenance obligations shall be joint and several with the Applicant and the Association until the transfer of the last dwelling unit. Thereafter, such operation and maintenance shall be the responsibility of the Association. The provisions of this paragraph shall not modify the obligation of the original Applicant and the Association.

42. The initial Condominium Operating budget and the initial Condominium Capital Reserve budget shall be subject to the review of the Planning Director. The Applicant shall submit copies of this document for review by the Planning Director or its representative at least thirty (30) days prior to the issuance of the first occupancy permit.

23. The Affordable Units shall constitute a percentage (beneficial) interest in the Association that shall be in proportion to the initial price of the Affordable Units to the sum of the projected initial prices of the affordable and market-rate units.

44. The Association and purchasers of all units shall be forever bound by all conditions and restrictions contained in this Comprehensive Permit.

45. The condominium documents for the Project shall provide that:

- a. There shall be no amendments to provisions regarding or relating to the Affordable Units or conditions set forth in this Permit without Board

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- approval.
- b. Conditions set forth in the Permit concerning condominium governance must be set forth in the documents; in the event of any conflict between the condominium document and the Permit, the terms of the Permit shall control.
- c. The Master Deed of the Affordable Units shall reference the Deed Rider and the Regulatory Agreement.

46. The Applicant shall assure that the proper covenants are included in the Association's documents to address the following:

- a. To the extent permitted by law, there shall be no conversion of interior space into additional bedrooms.
- b. Disposal of yard and landscaping waste inconsistent with sound land management and composting practices shall not be permitted in the surrounding wooded areas on the Site.
- c. The removal of trees outside the limitation of disturbance shown on the Approved Plans shall be limited to the removal of invasive species, fallen or dead trees, and trees that in the opinion of a licensed arborist pose a threat to nearby structures.
- d. Trash barrels and recycling totes shall be stored inside the garages except on collection day.
- e. Sheds and other accessory structures, other than the maintenance shed not shown on the Approved Plans but intended to be located along the access path to the lower underground storage area and the fieldstone outbuilding shown on the Approved Plans, are prohibited without prior approval of the Board.
- f. Resident parking in the designated guest spaces in the development shall be for temporary use only.
- g. All Town bylaws and regulations concerning home-based businesses shall be applicable to the units.
- h. Vegetation and plantings shown on the Landscape Plan along the perimeter of the Site shall be retained and maintained to preserve a buffer to adjoining properties except as outlined in item (c) above.
- i. There shall be a provision prohibiting the installation of light fixtures other than those shown on the Site Lighting Plan.
- j. Operation and maintenance of the stormwater management system and the sewage disposal system shall be the responsibility of the Association.
- k. Unit owners shall submit to the Association copies of all applications for building permits.
- l. Lawn fertilizers and/or pesticides and deicing chemicals shall be stored under cover.
- m. Fertilizers and pesticides shall be applied sparingly to prevent wash off;
- n. Only slow release nitrogen and low phosphorus fertilizers shall be applied to the lawns and planting beds.

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- o. No fertilization or pesticide applications shall be applied in, or near any wetland resource area.
- p. No hazardous materials or liquid petroleum products shall be used near any catch basins to ensure they do not enter the infiltration system.
- q. Pet waste shall be picked up on the Site and disposed of in the toilet or trash receptacle.
- r. The storage, use and disposal of any household hazardous wastes shall be properly and safely conducted.
- s. Only calcium-based deicer substances shall be used.
- t. All catch basins shall be fitted with oil and grease traps.
- u. No new plantings shall include any invasive species.
- v. There shall be no short-term rentals of the dwelling units.

47. All necessary easements shall be granted by the Applicant where required by public utility companies or the Town of Wellesley. The aforementioned easements shall be recorded in a timely manner and shall be submitted to the Planning Director prior to occupancy.

48. A performance bond shall be required by the Board to ensure completion and proper functioning of the roadway and drainage system; and compliance with all other conditions required by this Permit that are not fully completed prior to issuance of the first occupancy permit for the Project. A cost estimate for the bond shall be determined by the Director of Public Works at the then current bonding rates established by the Town. The performance bond shall be submitted to the Board prior to the issuance of Certificates of Occupancy for any unit in the development. The type and form of such performance bond shall be submitted for review by Town Counsel prior to being accepted by the Board. The performance bond shall not be released below Twenty-Five Thousand Dollars (\$25,000) until the development is complete, all conditions of this Permit have been fulfilled, and an as-built plan indicating conformance with the approved Plan and prepared in accordance with Town requirements is submitted to the Board and approved.

49. All landscaping required by this Permit shall be guaranteed for a period of twelve (12) months by the Applicant. The Applicant shall be responsible for replacing dead, dying and/or diseased plantings within this time period. Verification of the dates of planting must be submitted to the Planning Director.

50. If the Applicant decides to drill an irrigation well to irrigate portions of the Site, it shall be constructed and operated in conformance with applicable law and regulation.

51. Trees numbered 24, 838, 858 and 872 on the Existing Conditions Plan, dated 1/5/15 as part of the Approved Plans shall be preserved and protected during construction. If any of these four trees fail to survive for a period extending for twenty-four (24) months beyond the date the final Certificate of Occupancy is issued, the Applicant shall install replacement trees equal to 50% of the diameter at 4.5 feet above the ground (the "DBH") of the aforementioned trees as indicated on the Approved Plans. Each replacement tree shall have a minimum DBH of 2" and shall be a tree species native to New England.

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52. This Permit shall be recorded at the Norfolk Registry of Deeds senior to all other liens or encumbrances other than pre-existing easements of records and existing mortgages. Recording information shall be submitted to the Board prior to the issuance of building permits.

53. If at any time during construction, the Planning Director, Building Inspector, Director of Public Works or the Board determines that a violation of the Approved Plans or this Permit has occurred, the Town, through the Building Inspector or the Board, shall notify the Applicant by certified mail 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

54. Twenty five percent (25%) of the total units in this development (or eleven (11) units) shall be available in perpetuity for purchase and occupancy by households whose income is no more than 80% of the Median Family Income for the Boston-Cambridge-Quincy, MA- NH HMFA, adjusted for household size and as determined by the United States Department of Housing and Urban Development (the "Affordable Units"). Applicants must satisfy all other applicable eligibility requirements including, but not limited to First Time Home Buyer status and maximum asset level requirements. Before any Affordable Unit is sold, the Applicant shall submit to the Planning Director the proposed form of Deed Rider to be attached to and recorded with the Deed for each and every affordable unit in the project at the time of each sale and resale, which Deed Rider shall restrict each such unit in accordance with this requirement in perpetuity in accordance with the requirements of M.G.L. Chapter 184, sections 31-33. Each Deed Rider for the Affordable Units in the Project shall set forth the period of affordability to be in perpetuity.

55. 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 initial Building Permit for the Project. This Regulatory Agreement shall set forth the terms and agreements relative to the sale and resale of the Affordable Units in the development. The Regulatory Agreement shall be submitted to the Planning Director prior to its recording.

56. 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 of Wellesley satisfying all applicable eligibility requirements. For the purpose of this condition, and subject to any legal requirements, "residents of the Town of Wellesley" 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 of Wellesley, Wellesley Public

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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.

57. The affordability requirement of this Comprehensive Permit shall be senior to any mortgage liens on the affordable units. The Applicant shall be required to use a Deed Rider consistent with this requirement.

58. The eleven (11) Affordable Units shall have similar amenities, exterior design and finishes as the market-rate units; the subsidizing agency shall approve the distribution of the Affordable Units throughout the Project, as shown on Sheet C-2 of the Approved Plans.

59. At least three (3) Affordable Units must be fully constructed prior to the issuance of an Occupancy Permit for the ninth (9th) market unit; the fourth, fifth and sixth (6) Affordable Units must be fully constructed prior to the issuance of an Occupancy Permit for the eighteenth (18th) market unit; and the remaining five (5) Affordable Units must be fully constructed prior to the issuance of an Occupancy Permit for the thirty-third (33rd) market unit.

60. The Affordable Units shall be owner-occupied, except for bona fide temporary absences not to exceed twelve (12) months, during which rental may be permitted to qualified households upon approval of the Monitoring Agent and subject to the affordability restrictions set forth in the Regulatory Agreement.

61. To the extent required by law, if a household or households requiring handicap access modifications is selected in the lottery for the initial sales of the Affordable Units (other than the one (1) bedroom "carriage house" units), the Applicant shall make reasonable modifications to the interior of the Affordable Unit(s) provided such modifications do not include structural changes to the building and do not exceed five (5) percent of the initial sales price of the Affordable Unit, at the Applicant's expense to accommodate such household. The Applicant shall not be held responsible for such modifications if the construction of the Affordable Unit has progressed beyond the construction stage that undertaking such changes will cause delays to the construction schedule.

Miscellaneous

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

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

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63. The Applicant and, thereafter, the Association created for the Project, shall be responsible for maintaining the stormwater management structures and drainage system in the development in accordance with the Operation and Maintenance Plan submitted for the Project.

64. Snow removal, maintenance of roads and sidewalks, storm drainage, lighting, utilities, irrigation and fire protection shall be maintained by the Applicant and the Association created for the Project. The Town of Wellesley does not accept responsibility for any infrastructure improvements or maintenance in this Project.

65. In the event of any failure to comply with the requirement to maintain the stormwater management and wastewater disposal systems in the development in accordance with engineering or manufacturing guidelines for operation and maintenance, or in any manner which fails to safeguard public health and safety, or in the event the Applicant, its successors, or agent fails to properly maintain the Project roadway for safe and adequate emergency vehicle access/egress as determined by the Wellesley Fire Department, Police Department or Department of Public Works, the Town of Wellesley, acting through its Department of Public Works, may, but is not required to, notify the Applicant or the Association, as appropriate, of the need to remedy said violation and specifying the work which needs to be done and providing for a thirty (30) day time period in which to complete the work. In the event said work is not completed in a satisfactory manner within thirty (30) days, or such reasonable time period as is necessary to complete such work, the Town may enter upon the property and remedy said defect as set forth in this notice. The Association shall be responsible to the Town for the cost of effecting the required repairs. If not paid within thirty (30) days of billing by the town, said costs shall constitute a lien upon the common area of the premises and shall incur interest at the rate of eighteen percent (18%) per annum, plus the costs of collection including reasonable attorney's fees. Notice of this lien shall be recorded by the Town in the Norfolk County Registry of Deeds, which notice shall indicate the amount of the unpaid assessments, the property burdened and a reference to the Book and Page in the Norfolk County Registry of Deeds where the Declaration is recorded and simultaneously a copy shall be delivered to President of the Association or functional equivalent. These restrictions are intended to maintain the environmental stability of the development and shall run with the land upon which they are imposed and shall, pursuant to the provisions of General Laws Chapter 184, Section 32, not expire hereunder. The Master Deed shall include a provision for the placement of municipal liens on the Site to secure payment should the Town of Wellesley be required to maintain or repair any portion of the stormwater management or wastewater disposal system.

66. Prior to issuance of the final certificate of occupancy, the Applicant shall:
- a. Submit to the Department of Public Works (DPW), 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 in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet [or Meters, as required by the Town).
 - b. Submit to the Building Inspector as-built plans for all buildings in the Project.
 - c. Complete all items on the Department of Public Works' site construction punch list.

67. The Applicant shall make a payment of \$75,000 to the Town of Wellesley for the purpose of funding traffic and pedestrian safety improvements on Great Plain Avenue as recommended by the Board's traffic consultant and reviewed in the course of the hearing. The Applicant shall make this payment to the Town prior to the issuance of the Certificate of Occupancy for the 20th unit within the Project.

68. The Applicant shall comply with the provisions of the Public Shade Tree Act.

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

70. This Permit is granted to the Applicant and, prior to substantial completion of the Project, while individual condominium units within the Project may be sold, this Permit may not be transferred or assigned to any party without approval of the Subsidizing Agency and notice to the Board, 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 development, this Comprehensive Permit shall be binding upon the purchaser(s), transferee(s), or assignee(s) and any successor purchasers, transferees or assignees.

71. Any and all references to the "Applicant" herein shall include any authorized successors or assigns of the Applicant, including, but not limited to, the Association created relative to the Project and all individual unit owners. The terms, provisions and conditions of this Permit shall burden and benefit the successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance

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where the Town or the Applicant is named or referred to.

72. Any changes to the Project must be reviewed by the Board in accordance with the procedure set forth in 760 CMR 56.05(11).

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

74. This Permit shall become void if the Applicant does not commence with development of the Project as approved herein within the later of 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 Board may grant extensions for good cause.

75. All construction of the Project 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 Board extending such time.

76. If any provision of this 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 Permit (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

77. The Applicant, its successors and assigns shall allow the public to pass and repass over a route upon the streets, sidewalks and paths to access the Sudbury Aqueduct Trail. Such access shall be limited to the time between dawn and dusk and may be subject to further reasonable regulation by the Association.

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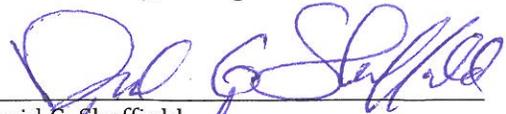
ZBA 2018-25
Petition of Wellesley Residential, LLC
135 Great Plain Avenue

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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, Acting Chairman



David G. Sheffield



Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

A Board member said that he recalled the discussions during the hearing and it seems clear that had the Developer and VHB known about the big chunk of rock, they may have suggested putting the permeable surface in the area that is currently proposed. He said that it seems like a reasonable idea because that is where all of the water is flowing anyway. He said that there is a pond there that is almost always a pond and not a dry bed. He said that the proposed change is a reasonable solution and will not change the nature of the site in a negative way.

The Chairman said that in the initial civil engineering of the site, the Developer's engineers did not suggest permeable material in the alleys. He said that was a suggestion from the Planning Director. He said that it became an extra to the overall civil design of permeability on the site. He said that it exceeds what the engineers originally recommended for the water retention system.

A Board member said that there is additional expense for permeable paving because it has to be maintained in a slightly different way than solid paving. He asked about the square footage of the permeable paving at the walkway loop. Mr. Crabtree said that it may not be quite as large but will collect more water coming to it. The Board member confirmed that the Developer is not concerned about creating problems for the houses at the last stage of construction. Mr. Crabtree discussed the slope and said water flow.

Upon motion duly made and seconded, the Board voted unanimously to make a determination that the proposed change is a minor modification that does not require a public hearing and to approve the proposed change to relocate the permeable paving area.