COMMONWEALTH OF MASSACHUSETTS

HOUSING APPEALS COMMITTEE

RECEIVED
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Zoning Board of Appeals

PRENTICE PLACE, LLC, Appellant,	)	
v.	)	No. 2018-05
GRAFTON ZONING BOARD OF APPEALS, Appellee.	)	

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DECISION ON STIPULATION AND ENTRY OF JUDGMENT

On or about August 24, 2017, Prentice Place, LLC applied to the Grafton Zoning Board of Appeals for a comprehensive permit to create 48 rental units on a site of approximately 2.56 acres located at 23 Prentice Street in Grafton, Massachusetts. Twelve units, or 25%, were to be affordable units under Massachusetts Housing Partnership's Permanent Rental Financing Program.

The Board issued a written decision, the "Decision Upon Application of Prentice Place, LLC for a Comprehensive Permit Under Massachusetts General Laws Chapter 40B," (2018 Decision), which was filed with the Town Clerk on December 13, 2018. (2018 Decision). The decision granted a comprehensive permit with conditions that, *inter alia,* would reduce the project to 31 units.

On December 27, 2018, the developer filed this appeal requesting that the Committee modify the Board's decision. After the initial conference of counsel, the parties agreed to engage in mediation in an effort to resolve this matter. Thereafter, this matter was stayed to allow the parties to pursue settlement. The parties now report they have reached an agreement as a result of mediation.

In order to effectuate this agreement, on April 20, 2020, Prentice Place and the Board filed an Agreement and Stipulation for Entry of Judgment, enclosing as Exhibit A thereto the "Decision to Modify a Comprehensive Permit for Prentice Place LLC under Massachusetts General Laws Chapter 40B." (Modified Decision).

Prentice Place and the Board have stipulated that the Committee shall enter a Decision on Stipulation modifying the 2018 Decision by striking it in its entirety and replacing it with the Modified Decision. They further agree that:

> This Agreement and Stipulation shall be enforceable as a Decision, Order, and/or Judgment of the Housing Appeals Committee. The parties agree that they will not appeal said Decision, Order and/or Judgment of the Housing Appeals Committee, expressly waiving any right of appeal, whether statutory or otherwise, and acknowledge that they have been fully represented by counsel and informed of their rights, and that they have voluntarily entered into this Agreement and Stipulation for Entry of Judgment.

I have reviewed the parties' Agreement and Stipulation, as well as the Modified Decision attached thereto, and I find them satisfactory. I note that the Modified Decision provides for a project of 40 units. I hereby incorporate by reference the Agreement and Stipulation and the Modified Decision as part of this Decision on Stipulation, and attach them hereto.

The Board is directed forthwith to file the Decision on Stipulation and Entry of Judgment with the Grafton Town Clerk and, in accordance with 760 CMR 56.07(6), to take any further steps necessary to formalize the permit for recording or other purposes. If the Board fails to act within thirty days of this decision, this decision shall be deemed, pursuant to G.L. c. 40B, § 23 and 760 CMR 56.07(6)(a), to be the Comprehensive Permit issued by the Board.

HOUSING APPEALS COMMITTEE

Shelagh A. Ellman-Pearl, Chair

April 30, 2020

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

WORCESTER, SS	**HOUSING APPEALS COMMITTEE** **DOCKET NO. 18-05**
PRENTICE PLACE LLC **Appellant**	)
v.	)
ZONING BOARD OF APPEALS **OF THE TOWN OF GRAFTON,** **Appellee**	)

RECEIVED
04/20/2020
By: V. Barros, Clerk

AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

Now come Prentice Place LLC ("Prentice Place") and the Town of Grafton Zoning Board of Appeals ("the Board"), the parties in the above-entitled action, and hereby agree and stipulate that the Housing Appeals Committee shall enter a Decision on Stipulation serving to modify the "Decision Upon Application of Prentice Place, LLC for a Comprehensive Permit Under Massachusetts General Laws Chapter 40B" filed with the Grafton Town Clerk on December 13, 2018 (the "Decision") as follows:

A. The Decision is struck in its entirety and replaced with the "Decision to Modify a Comprehensive Permit for Prentice Place LLC under Massachusetts General Laws Chapter 40B" attached hereto as Exhibit A.

B. This Agreement and Stipulation shall be enforceable as a Decision, Order, and/or Judgment of the Housing Appeals Committee. The parties agree that they will not appeal said Decision, Order and/or Judgment of the Housing Appeals Committee, expressly waiving any right of appeal, whether statutory or otherwise, and acknowledge that they have been fully represented by counsel and informed of their

rights, and that they have voluntarily entered into this Agreement and Stipulation for Entry of Judgment.

Dated: April 20, 2020

GRAFTON ZONING BOARD OF APPEALS,

By its attorneys,

/s/ Daniel C. Hill

Daniel C. Hill (BBO #644885)
Kaitlyn Baptista (BBO #693392)
HILL LAW
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Boston, MA 02108 (617)
494-8300
dhill@danhilllaw.com

PRENTICE PLACE, LLC

By its attorney,

/s/ Peter L. Freeman

Peter L. Freeman (BBO# 179140)
Freeman Law Group LLC
86 Willow Street – Unit 6
Yarmouthport, MA. 02675
(508) 362-4700
pfreeman@freemanlawgroup.com

CERTIFICATE OF SERVICE

I certify that I served the foregoing on the parties by electronic mail, to the following counsel on this 20th day of April, 2020.

Peter Freeman, Esq.
Freeman Law Group, LLC
86 Willow Street, Unit 6
Yarmouthport, MA 02675

/s/ Daniel C. Hill

Daniel C. Hill

EXHIBIT A

TOWN OF GRAFTON ZONING BOARD OF APPEALS

DECISION TO MODIFY A COMPREHENSIVE PERMIT FOR PRENTICE PLACE, LLC UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 40B

I. THE APPLICATION, PUBLIC HEARING, AND APPEAL TO HOUSING APPEALS COMMITTEE

On August 24, 2017 the Applicant Prentice Place LLC (the "Applicant") filed an application with the Grafton Zoning Board of Appeals (the "ZBA" or "Board") for a comprehensive permit under Massachusetts General Laws Chapter 40B, §§ 20-23 ("Chapter 40B") and the Grafton Zoning By-Laws (the "By-Laws") to build low or moderate income housing consisting of 48 apartment units contained within 4 buildings on approximately 2.56 acres of land and wetlands located at 23 Prentice Street, further identified as Parcel 8 on Grafton Assessor's Map 10 (the "48-Unit Project" and the "Site").

The public hearing was opened on September 21, 2017. With the consent of the Applicant, continued sessions of the public hearing were held on October 19, 2017, November 30, 2017, January 4, 2018, January 31, 2018, March 15, 2018, April 2, 2018, May 10, 2018, June 13, 2018, June 28, 2018, August 15, 2018, August 23, 2018, September 6, 2018, October 10, 2018, and November 7, 2018. The hearing was closed on November 7, 2018. The ZBA deliberated on December 5, 2018 and December 12, 2018 voted, 5-0 in favor, to approve the comprehensive permit application subject to the conditions set forth in a written decision signed by the Board and filed with the Town Clerk on December 13, 2018 (the "Original Decision").

The Applicant timely appealed the Original Decision to the Commonwealth of Massachusetts Housing Appeals Committee ("HAC"), Docket No. 2018-05. The Board and the Applicant entered into Mediation under the Housing Appeals Committee rules, held a Mediation session on March 28, 2019, and subsequently held several additional Mediation sessions at the Grafton town offices. As a result of the Mediation process, the Board and the Applicant reached an agreement to modify the Project and the Original Decision.

This Modification Decision reflects the settlement reached in Mediation.

As part of the original public hearing process, the Board received peer review input from a civil engineer, Jeff Walsh of Graves Engineering, Inc., a traffic engineer, Gary Hebert of Stantec, and an architect, Cliff Boehmer of Davis Square Architects. The Board received comments from various town boards and officials, including the Conservation Commission, the Fire Department, the Water District, the Sewer Department, and the Town Planner. As part of the Mediation process, the Board received additional input from Jeff Walsh of Graves Engineering,

Inc., Cliff Boehmer of Davis Square Architects, and certain Town staff and departments. Their contributions are reflected in the conditions set forth in this Modification Decision.

The minutes and exhibits from the public hearing are available for public inspection in the office of the Town Clerk.

II. GOVERNING LAW

The law governing this decision is The Low and Moderate Income Housing Act, Massachusetts General Laws Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD") Housing Appeals Committee, 760 CMR 56.00, et seq. (the "Regulations").

The Act prohibits the use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. Board of Appeals of Hanover v. Housing Appeals Comm, 363 Mass. 339 (1973). The purposes of the Act are satisfied if (a) a town has low or moderate income housing (i) exceeding 10% of the housing units reported in the latest decennial census or (ii) on sites comprising 1.5% or more of the town's total land area zoned for residential, commercial or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year. See, *e.g.*, Arbor Hill Holdings Limited Partnership v. Weymouth Board of Appeals, Housing Appeals Committee No. 02-09 (9/24/03).

Grafton does not currently meet any of these criteria. Accordingly, the Zoning Bylaws and Grafton's other local bylaws and regulations that ordinarily govern development in the Town may be waived to extent necessary to make the construction of low or moderate income housing financially feasible. Board of Appeals of Hanover. The standards to be applied by local zoning boards in deciding whether to issue comprehensive permit for construction of low or moderate income housing are the same as those applied by the Housing Appeals Committee in reviewing the boards' decisions, namely, whether grant of permit is reasonable and "consistent with local needs" and whether any conditions imposed on the permit are uneconomic. Id. In determining whether the project is "consistent with local needs," the ZBA must balance the regional need for low and moderate income housing against any local objection to the proposed plan. Id. If the ZBA issues an approval with conditions, the Applicant may challenge the conditions as being "uneconomic." G.L. c. 40B, §22. If the Applicant can satisfy that evidentiary burden, the ZBA must then demonstrate that the conditions are "consistent with local needs" in order for the conditions to be preserved. Board of Appeals of Woburn v. Housing Appeals Comm, 451 Mass. 851 (2008). Conditions imposed on a comprehensive permit cannot be eliminated, however, unless the Applicant can first demonstrate that they render the project "uneconomic." Id.

III. JURISDICTIONAL ELEMENTS

Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:

1. The applicant must be a public agency, a non-profit organization, or a limited dividend organization;

2. The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and

3. The applicant must "control the site."

The ZBA finds that the Applicant has provided sufficient information to establish that it will qualify as a limited dividend organization, that the proposed project is fundable under a low and moderate income housing subsidy program (Mass Housing Partnership), and that it owns the Site.

SUMMARY OF DECISION

For the reasons stated below, the ZBA approves with the conditions set forth below the Application of Prentice Place LLC for a comprehensive permit under Chapter 40B, Sections 20-23 for the Project.

IV. FINDINGS OF FACT

1. Multifamily housing is only allowed in Grafton by right in the VMU zoning district, and by special permit in the RMF and FP districts. The Project Site is split between the R-20 and R-40 districts, where multifamily housing is not permitted.

2. Following almost a year of continued public hearings and intervening working sessions amongst peer reviewer and staff, the Applicant proposed changes to the Project in an attempt to address some of the concerns presented by the original application. Specifically, the set of plans dated August 9, 2018, which were the subject of the public hearing leading to the Original Decision in this matter, presented three buildings clustered on the east side of the Site, each containing 16 housing units (48 total units). Importantly, the massing of the three-story buildings was moved away from the most direct residential abutters on Matthew Circle, and the design of the parking lot was improved, with additional parking spaces provided.

3. A final conceptual plan during the initial public hearing process was presented on August 31, 2018, showing minor modifications to the layout of the buildings and infrastructure, most notably reducing the wetland encroachments on the north side of the Site that existed on the prior plan iterations.

A. The 48-Unit Project Approved in the Board's Original Decision

4. The Board determined that the Project proposed by the Applicant fell short of producing a plan that balances the need for affordable housing with public health, safety, environmental and planning concerns. Specifically, the Board observed in its Original Decision that the multi-family development provisions of the Zoning Bylaw call for site plans that avoid "major topographic changes," and "removal of existing trees." See, Section 5.2.2.2. The 48-Unit Project plans failed in this respect. Under the original plans, the Site would be significantly graded to accommodate the 89 proposed parking spaces and three apartment buildings.

5. In its 48-Unit Project plans, the Applicant proposed to manage its wastewater disposal through three individual pump stations that would force the wastewater into a new sewer connection on Prentice Street, to the existing main on Creeper Hill Road. The Sewer Department criticized this proposal, citing its policy of avoiding sewer pump stations due to maintenance and reliability considerations as well as potential health and environmental impacts if pump stations fail to operate as designed. The Board determined that a gravity sewer connection to the existing main on the corner of Shrewsbury Street and Elm Streets is superior from a public policy perspective, and required a gravity connection as a condition in its Original Decision.

6. Section 5.2.2.4 of the Zoning Bylaw requires 1,000 square feet of "useable open space" per dwelling unit, "primarily designed and intended for the active and passive recreation of the occupants of the dwellings." The Applicant originally requested a waiver to allow for 100 square feet per dwelling unit (total – 4,800 square feet). The Board rejected this waiver request in its Original Decision, but agreed to partially waive the requirement, so that at least 500 square feet of open space is provided per dwelling unit. Similarly, the Applicant requested a waiver from Section 5.2.2.9 of the Zoning Bylaw, which requires a minimum 30 feet of separation between residential buildings in a multi-family development. Section 3.3.3.1 of the Zoning Bylaw requires the separation to be at least the same dimension as the height of the tallest building, which in this case is 35 feet. These separation requirements serve to break up the massing of a project's buildings, and allows for safe access between buildings in the event of an emergency. The Applicant requested a waiver to allow 10 feet of separation, and the Board allowed a reduction down to 20 feet.

7. The Applicant also requested a waiver from the minimum off-street parking requirements. Section 4.4.2 of the Zoning Bylaw requires a minimum of 2.25 parking spaces per dwelling unit. The 48-Unit Project proposed 1.85 spaces per unit, which the ZBA considered inadequate given the lack of any public transportation options in the neighborhood, and the distance from the Project to the closest commercial and retail amenities. The Board required the Applicant to provide 2 spaces per unit plus 6 additional visitor spaces in its Original Decision.

8. Section 4.2.3.3 of the Zoning Bylaw mandates that parking areas serving multi-family residential structures must be set back from the property line by the same distance that is required for the side or rear yard, whichever is applicable. In the multi-family residential district, a minimum 30-foot side yard is required, and therefore the Board required a 30-foot buffer between the parking lot and the abutting residences on Matthew Circle, twice the distance proposed by the Applicant on its 48-Unit Project plans (15 feet).

9. Section 5.2.2.1 of the Zoning Bylaw requires that at least 5,500 square feet of land area be provided for each dwelling unit in a multi-family development project. This allows for a density that is more than seven (7) times what is allowed in the underlying R-40 zoning district (40,000 square feet per single-family house). The Site consists of 111,514 square feet (2.56 acres) of land, which would accommodate 20 dwelling units under Section 5.2.2.1 of the Zoning Bylaw. The Board found that the 48-Unit Project density is what drives the critical design, environmental and planning concerns that were raised during its public hearing, and that a balance which Chapter 40B implores could be achieved if the Applicant limited its density to one housing unit per 3,500 square feet of land (approximately 32 units on 2.56 acres).

B. Mediation and the 40-Unit Project

10. Through Mediation, the Board and the Applicant settled on a 40-Unit Project plan. While the 40-Unit Project does not achieve all of the Board's objectives in its Original Decision, the agreement with the Applicant avoids the cost and uncertainty of the HAC appeal. If the Board's decision is vacated by the HAC, the Applicant would be permitted to develop its 48-Unit Project, which the Board and many town officials had grave concerns with. As discussed below, the 40-Unit Project plan that was negotiated in Mediation substantially addresses the environmental, safety and planning concerns that the Board had with the original proposal.

11. Key features of the 40-Unit Project are as follows:

a. The Project will be limited to 40 housing units;

b. The Project must provide at least 84 parking spaces (2 per unit, plus 4 visitor spaces);

c. There will be a 30-foot vegetated buffer along the entire western property line (abutting Matthews Circle residences), which will include a solid fence and 6 – 8-foot tall evergreen trees; and

d. The Project's wastewater will be routed by gravity to the sewer main in Elm Street.

12. The 40-Unit Project approved by the Board through this Modification Decision is shown and described on the following plans:

a. Site Plan entitled "Settlement Site Plan in Grafton, Massachusetts," prepared by Hannigan Engineering, dated November 22, 2019, revised January 16, 2020 (2 sheets);

b. Architectural Plans entitled "Prentice Place," prepared by Joseph Tatone & Associates, dated July 22, 2019, and containing the following sheets:

i. 14-Unit Building (7 sheets: A-301 - A-304; A-102 - A-104); and

ii. 12-Unit Building (6 sheets: A-301 - A-304; A-102 - A-103).

It is understood that the Architectural Plans currently show a total of forty-two (42) units with fourteen (14) units in all three (3) buildings. The Applicant shall revise the plans for Building 1 by removing two (2) units from the first floor of Building 1 and may replace them with some combination of office space for the project, storage space, exercise room for the tenants of the Project and/or common area facility for the tenants of the Project.

(collectively, the "Revised Plans").

V. CONDITIONS ATTACHED TO COMPREHENSIVE PERMIT

For the foregoing reasons, the ZBA approves the modification of the comprehensive permit for Prentice Place, LLC, subject to each and every one of the following conditions:

A. General Conditions

A.1 Before the commencement of any construction or any site clearing activities, ("Construction Activities"), the Applicant shall submit to the ZBA a revised set of comprehensive permit site plans and the final engineered plans and calculations, which have been revised to conform to all of the conditions set forth under Section A through I below. The plans shall be reviewed by the ZBA and its technical peer review consultants for consistency and conformity with this Decision. The plans shall simultaneously be circulated to the Grafton Water District, Grafton Sewer Department, Department of Public Works, and the Grafton Planning Department for review and comment. Upon a finding by the ZBA that the plans are consistent and in conformity with this Decision, said plans shall be approved and endorsed by the ZBA, and shall be thereafter referred to as

the "Approved Plans". Construction and operation of the Project shall be in conformity with the Approved Plans and this Decision.

A.2 The Approved Plans shall incorporate the changes recommended by the ZBA's consulting engineer as follows:

(a) the plans must include the true, magnetic or grid bearings (GEI, #4);

(b) the plans must include the dimensions of each type of parking space (GEI, #6);

(c) the plans must include a construction phasing plan sheet, which shall address the issues set forth in Section 3.13.9.4 of the Comprehensive Permit Rules and Regulations (GEI #8);

(d) the plans shall be revised to reflect that vertical granite curb shall be installed (rather than bituminous curb) at the Project's driveway entrance radii at Prentice Street, bounding the new Prentice Street sidewalk, and around all off-site stormwater collection inlets (GEI #38);

(e) changes to address GEI comments #42 – 50 shall be reflected on the Approved Plans, as may be applicable to the Revised Site Plans.

A.3 This Decision shall be noted on the endorsed Approved Plans and both this Decision and the Approved Plan shall be recorded at the Worcester South District Registry of Deeds. Proof of recording shall be forwarded to the ZBA before issuance of a building permit.

A.4 The Applicant shall comply with all local bylaws, rules and regulations of the Town of Grafton and its boards and commissions in effect as of August 24, 2017 (the date of the filing of the application) unless expressly waived herein.

A.5 The Applicant shall pay all fees typically imposed by the Town of Grafton for residential construction projects unless otherwise expressly waived in this Decision.

A.6 The Applicant shall copy the ZBA on all correspondence between the Applicant and any federal, state or Town official, board or commission that concerns the design and/or conditions set forth in this Decision, including but not limited to all testing results, official filings and other permits issued for the Project.

A.7 The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Inspector. The Applicant shall pay all required

fees for all such building permits, including any fees customarily charged for inspections and permits.

A.8 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.

A.9 The Applicant shall obtain temporary easements, licenses or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting.

A.10 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns; provided, however, this condition does not prohibit the Applicant from seeking approval from the Board for modifications pursuant to 760 CMR 56.05(11). Reference to this Decision shall be incorporated in every instrument of title conveying a real property interest in all or a portion of the Project Site.

A.11 This Decision permits the construction, use, and occupancy of no more than forty (40) residential apartment units on the Site with a total of 84 bedrooms in three (3) buildings as shown on the Revised Plans.

Modifications to the site plans required by conditions and waiver decisions contained in this Decision shall be subject to the ZBA's review and approval, which shall be limited to determining conformity with the requirements of this Decision. No additional housing units or bedrooms or any other structures or infrastructure except that which is shown on the Approved Plans shall be created without further approval of the ZBA in the form of an amendment to this Decision pursuant to Section J.1 below.

A.12 No more than 10% of the apartment units in the Projects shall contain three or more bedrooms (rounded up), as the term "bedroom" is defined by Title 5 of the State Environmental Code.

A.13 If, at any time after the date of this Decision, the Applicant's subsidizing agency rescinds or revokes its project eligibility determination for the Project, this comprehensive permit shall be deemed null and void and have no further effect.

B. <u>Submission Requirements</u>

B.1 <u>Pre-Construction Submissions</u>: Before the Applicant begins any Construction Activities, it shall have:

a. Obtained the ZBA's approval of the "Approved Plans" pursuant to Section A.1 above;

b. Obtained any approvals from the Grafton Board of Health and DEP that may be required under any statute, code or regulation affecting public health not otherwise preempted by Chapter 40B or expressly waived under this Decision;

c. Obtained a Water Connection Permit and Sewer Connection Permit for the Project from the Grafton Water District and Grafton Sewer Department, which approvals will be subject only to technical review of compliance with non-waived regulations;

d. Obtained any approvals from the Grafton Conservation Commission or DEP that may be required under any statute, code or regulation under its jurisdiction not otherwise preempted by Chapter 40B, including a final Order of Conditions or Superseding Order of Conditions under the Wetlands Protection Act as to any portion of the Site subject to the Wetlands Protection Act;

e. Obtained a National Pollutant Discharge Elimination System ("NPDES") stormwater permit for the Project, if applicable;

f. Where an Environmental Notification Form (ENF) or Environmental Impact Report (EIR) under the Massachusetts Environmental Policy Act (MEPA) is required, obtained either confirmation that an EIR is not required or, if one is, a Certificate of the Secretary of Environmental Affairs of compliance pursuant to 301 CMR 11.08(8)(a);

g. Delivered to the ZBA final architectural drawings for the buildings/units to be constructed, providing a scaled depiction of the front, rear and side elevations with accompanying specification sheets for all exterior lighting fixtures, stamped and signed by a registered architect;

h. Received final approval from the Massachusetts Housing Partnership. Evidence of the execution and recording of a Regulatory Agreement to govern the affordability and profit limitation requirements set forth under Section G of this Decision, in a form approved by Town Counsel for consistency with this Decision, shall be forwarded to the ZBA.

i. Delivered to the ZBA with copies to the Building Inspector, Planning Department, Board of Health, Conservation Commission, Superintendent of the DPW, Fire Chief, and Police Chief, and obtained the ZBA's

approval of, a Construction Management Plan (CMP), which shall address the following topics and items:

i. Construction Administration
   Hours of construction

   [Construction and installation of the roadway and municipal services shall only occur Monday through Friday between the hours of 7:00 a.m. and 5:00 p.m., and Saturday 8:00 AM to 5:00 PM, and there shall be no construction activity on State or Federal holidays.]

   Truck routes
   Trash and debris removal

ii. Construction Phasing and Schedule (critical path)
   timing and phasing of construction
   site clearing; construction of roadways and utilities; buildings, etc.

iii. Communications
   (Emergency Contacts)

iv. Noise and Dust Control
   Tree removal (chipping. etc.)
   Public street cleaning and repair

v. Blasting
   Blasting Plan
   Identification of petitioner's blasting consultant
   Selection of independent blasting consultant
   Selection of blasting contractor
   Pre- and post-blast survey (scope and content)
   Insurance coverage
   Blasting limits
   Notification to abutters of blasting schedule
   Road closures (if necessary)
   School bus conflicts (limits on hours)

vii. Construction Staging
   Staging areas
   Site office trailers
   Storage trailers/containers
   Open storage areas

Delivery truck holding areas
Re-fueling areas.

viii. Traffic and Parking (during construction)
On-site locations
Off-site locations
Snow removal
Police details
Warning signs

The scope of the ZBA's review of the CMP shall be for completeness and for consistency with generally-accepted construction practices and for compliance with all the conditions of this Decision. The ZBA shall issue its decision on the CMP within 30 days after a complete submission from the Applicant and if no response is given by the ZBA within such period then the CMP shall be deemed to be approved.

j. Delivered to the Town Treasurer an initial deposit of $20,000 into an escrow account established pursuant to G.L. c. 44, §53G (the "Escrow Account") for the costs of the Town's inspectors, engineering consultants and attorneys performing the tasks set forth in this Decision. This condition shall not be interpreted as limiting the amount of such fees to $20,000 – this is merely a deposit. The Escrow Account shall be replenished upon request, and failure to do so shall be grounds for the Building Inspector to order all construction activities to cease until the Account is replenished.

C. **Site Development Construction Conditions**

C.1 Prior to the commencement of Construction Activities, a pre-construction meeting shall take place where the Applicant shall meet with representatives from the Planning Department, Building Department, Police Department, Fire Department, the ZBA's Consulting Engineer, Department of Public Works, Grafton Water Department, Conservation Department and the Chair of the ZBA or his representative at a mutually convenient time and place to review the CMP and coordinate the periodic inspections of the Project. The Town Planner will coordinate inspection and construction oversight of the roadway and infrastructure. The Building Inspector shall coordinate inspection and construction of residential structures within the Project.

C.2. Prior to the commencement of work, the ZBA shall be provided with the following:

a. Six (6) full size plan sets, 24" x 36", endorsed and recorded, one of which shall be sent directly to the Town's peer review consulting

engineer. Remaining plans shall be distributed to Building Department, Planning Department, Conservation Department, Fire Department, and Department of Public Works.

b. An electronic copy of the endorsed and recorded plan set. The electronic copy shall be in a "PDF" compatible format.

C.3 The Applicant shall ensure safe and convenient vehicular access to the Site during construction of the entire Project. Municipal representatives shall be permitted access to the Site to observe and inspect the site and construction progress until the Project has been completed.

C.4 The ZBA or its appointed agents may conduct periodic inspections during the construction of the Project, to ensure compliance with the terms of this Decision and for consistency with generally-accepted construction and engineering practices for the installation of roadways, stormwater management facilities, utilities, and other common development infrastructure. Inspections during the construction phase shall be conducted at the expense of the Applicant, from funds deposited in the Escrow Account.

C.5 The Applicant shall forward final architectural plans to the Building Inspector at the time of applying for building permits. All construction shall be inspected by the Building Inspector at the Applicant's expense and shall be in compliance with all State Building Code requirements.

C.6 The Applicant shall ensure that nuisance conditions do not exist in and around the site during construction. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. 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. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.

C.7 Hours – Site clearing or construction work shall not occur before 7:00 AM or after 5:00 PM Monday-Friday, and shall not occur at all on Sundays or federal and Massachusetts state holidays. On Saturdays, construction shall be limited to 8:00 AM -5:00 PM. The Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than thirty (30) months.

C.8 Dust – Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies. The applicant shall implement dust control measures as directed by the Town Planner. The Applicant shall take all necessary measures to minimize dust from rising and blowing across the site and onto roads and adjacent properties. Any sediment or dirt tracked onto public ways shall be swept prior to the end of the construction day

C.9 Noise and Vibrations – The Applicant shall implement measures to ensure that noise from project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies, and shall implement noise and vibration control measures as directed by the Building Inspector. The Applicant shall implement necessary controls to ensure that vibration does not create a nuisance or hazard beyond the subject Site.

C.10 Traffic – The Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the site. Any traffic problems that occur as a result of site operations and construction shall be mitigated immediately, at the expense of the Applicant.

C.11 Roads – The Applicant is responsible for the sweeping, removal of snow and sanding of the Project's driveways permitting access to residents, emergency vehicles, and others during construction and until the roadways have been formally accepted as public ways. The final coat of pavement on the roadways shall be installed after the base course has endured a full winter season. The Applicant shall promptly clean any debris or dirt deposited on Grafton streets as a result of the Project.

C.12 Burial of any stumps or solid debris onsite is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.

C.13 Gravel for roadways shall be tested at the expense of the Applicant by a geotechnical testing firm. Testing of said gravel shall be performed in conformance with standards and frequencies reasonably established by the ZBA's Consulting Engineer. Protocols for installing subsurface utilities in conventional subdivision shall be complied with, except as specifically waived herein.

C.14 Utilities, including but not limited to water, sewer, electric, cable and telephone, shall be located underground. A final utility plan approved by the applicable public utilities shall be submitted to the Building Inspector before the installation of the applicable utilities.

C.15 Stabilization Requirements - No disturbed areas shall be left in an open, unstabilized condition longer than 30 days or as may be governed by a NPDES

permit. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas in accordance with the landscaping plans reviewed during the course of the public hearing by the ZBA's Consulting Engineer.

C.16 Construction vehicles shall be parked on the Site, and off Prentice Street at all times.

C.17 Blasting - Any rock blasting shall be performed by a licensed blasting professional, who shall first obtain all required permits from the Grafton Fire Department. All blasting and removal of debris shall be performed in accordance with state regulations and local Fire Department requirements, and the Applicant shall provide evidence thereof to the Fire Chief.

a. Selection of the Blasting Contractor. A blasting contractor, acceptable to both the Applicant and the Grafton Fire Department, shall be selected after review of the qualifications of such contractor.

b. Independent Blasting Consultant. If required by the Fire Chief, an independent geotechnical-blasting consultant shall be selected and paid for by the Applicant, subject to the approval of the Grafton Fire Department. The consultant shall review the qualifications of the blasting contractor, and review the final blasting plan prepared by the blasting contractor, check the calibration of the seismograph monitors, approve the location and installation of the seismograph monitors, and, if required by the Grafton Fire Department, determine the blast limits throughout the blast period, and shall consult with the Grafton Fire Department as needed throughout the blasting period.

c. Pre-blast Survey. Where required by law, before any blasting on the Site, the Applicant shall conduct a pre-blasting survey that shall include video-recording of the foundations of all direct abutters to the Project, and shall provide copies of that survey to the ZBA, Fire Chief and each direct abutter (for his or her own house) upon request.

d. Insurance Coverage. The blasting contractor shall carry comprehensive public liability insurance in the amount of not less than $1,000,000 for property damage in respect of any one occurrence and $2,000,000 aggregate. A certificate shall be submitted to the Grafton Fire Department by the contractor documenting that the required coverage will be in force for the duration of the blasting at the site. If there is a general contractor or developer associated with the blasting, each shall carry a minimum of $1 million of comprehensive liability insurance.

e. Blasting Limits. The Commonwealth of Massachusetts blasting limits shall be observed. However, if, based upon the recommendation of the blasting contractor, the Grafton Fire Department feels that a lower limit is necessary to protect the site and the abutting residential neighbors, that lower limit shall be in effect.

f. Notification. Shall occur as required by law.

g. No perchlorate shall be used during blasting at any time.

C.18 As-Built Plans: Before the occupancy or use of the final dwelling unit constituting a part of the Project, the Applicant shall submit to the ZBA an "As-Built Plan" in paper and CAD format, showing all pavement, buildings, stormwater management structures and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The plans shall be signed by a registered land surveyor and civil engineer, certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit. The purpose of this provision is to facilitate the Consulting Engineer's review of the project for compliance with the comprehensive permit before the final occupancy permit is issued and to incorporate completed infrastructure into the Town's GIS system. CAD files shall be compatible with MassGIS standards.

C.19 The boundaries of the "limit of work" (Condition D.3) shall be flagged on the Site by the Applicant before any site development activities, including clearing. Before initiating any site development activities, the Applicant shall obtain the ZBA's Consulting Engineer's confirmation that the flags are properly located. Before commencing construction or any site clearing, the Applicant shall erect a physical barrier such as a plastic fence along the "limit of work" boundary parallel to the western property line, to ensure that any vegetation inside the "limit of work" boundary including trees shall not be touched during construction.

C.20 Driveway and Parking Lot Design

All proposed driveway, parking lot, and utility constructions, grading and appurtenant work shall be described in complete detail to readily enable peer review and construction. A note shall be placed on each pertinent sheet of the Plans stating that the Project is the subject of a comprehensive permit under G.L. c. 40B, § 20-23, that the driveways within the Project in some cases may, and in other cases may not, conform to the standards and requirements of the Planning Board's Subdivision Rules and Regulations. The Approved Plans shall, however, indicate that driveway construction materials and thicknesses conform to the standards set forth in the Subdivision Rules and Regulations.

As shown in the Site Plans, there shall be a bituminous sidewalk running along Prentice Street from the Project's entrance to the intersection of Shrewsbury Street in conformity with Subdivision Rules and Regulations Section 4.9.1, except as waived herein. Granite curb inlets shall be installed at all catch basins located along the roadway curbing.

C.21 The Applicant shall submit to the ZBA, the Building Inspector and the Fire Chief final and detailed scaled architectural drawings for all building as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required under the State Building Code for review for consistency with the conditions in this Decision. Any deviations from the preliminary architectural renderings shall be subject to the ZBA's approval and treated as a request for a modification of this comprehensive permit.

C.22 The Project shall conform to all requirements of the Grafton Water District and the Grafton Sewer Department for utility connections, including the payment of all connection and service fees, unless waived hereunder.

C.23 Fieldstone shall be used for all retaining walls that are visible from abutting properties or public or private ways. The Applicant may propose an alternative wall material in its landscape plan submission, for the Board's consideration.

D. <u>Open Space, Wetland Resources, Site Design, and Landscaping</u>

D.1 Wetland replication may occur within the areas as shown on the Revised Site Plans. Once wetland alteration has commenced, wetland replication as shown on the Approved Plans, as may be modified by the Conservation Commission, shall be completed within one year of the commencement of alteration. The Applicant shall post a bond or tri-party agreement in an amount to be determined by the Conservation Commission to secure the cost of installing the replication area in the event of a default of this condition by the Applicant. In the event of such a default, the Conservation Commission or its agents may, but is not required to, enter the Project Site to complete the replication at the Applicant's expense. The Applicant shall further deposit $5,000 with the Town's Section 53G account to cover the Town's expenses in monitoring compliance with this condition.

D.2 No clearing or other site development or construction activity shall occur inside the "wetland buffer line delineated on the Site Plans, except as shown on said plans, as may be modified by approval of the ZBA. If there are any changes to the delineation of the wetland resource areas as a result of the Conservation Commission's review of the Project under the state Wetlands Protection Act, the

Applicant shall request approval from the ZBA of a modification to the site plans, which request shall be governed by 760 CMR 56.05(11).

D.3 A "limit of work" line shall be maintained as shown on the Revised Site Plans, and all land disturbance shall be confined to within the "limit of work" area. The limit of work area shall be set back at least 15 feet from the western (Matthew Circle) and southern (Elm Street) property boundaries, except for utility installations as shown on the Revised Plans. Any tree that is destroyed beyond the limit of work area shall be replaced with new trees of a comparable species with a minimum height of nine feet at a ratio of 2 new trees for each destroyed tree. Such replanting shall be done by a qualified landscape professional. The Applicant may request relief from this restriction from the Building Inspector for dying or diseased trees, which condition shall be confirmed in writing by the Town Tree Warden.

D.4 There shall be an Open Space Buffer along the northern and western property boundaries of the Site, as shown on the Revised Plans. The Buffer on the western property boundary shall extend 30 feet from the property boundary, from end to end, and the Applicant shall add vegetation containing at least a row of evergreen trees, 6-8 feet tall, to provide a solid screen between the Project and the Matthew Circle abutters and 36 Elm Street. The Buffer along the northern property boundary shall be of variable width, with the southern line of the Buffer running along the "Erosion Control" dashed line on the Revised Plans.

D.5 The Applicant shall implement erosion and sedimentation controls for any areas where construction activities: (a) will occur within 25 feet of a wetland resource area or, (b) could potentially impact a wetland resource as determined by the Conservation Commission, or (c) will occur within 30 feet of the perimeter of the Project Site. This section shall not be interpreted as approving any structures or disturbance in areas under the jurisdiction of the Grafton Conservation Commission.

D.6 No construction activities shall occur within 100 feet of a wetland resource area, other than those shown on the Revised Plans, and only through the issuance of an Order of Conditions issued under the Wetlands Protection Act by the Grafton Conservation Commission or DEP.

D.7 There shall be a minimum width of 20 feet between all buildings, which shall be accessible for fire protection purposes.

D.8 Prior to the issuance of a Building Permit, the Applicant shall submit, as part of the submission of final revised plans provided in Condition A.1 above, final site and landscaping plans indicating: plant types and sizes at planting and location of

plants; location of and materials for fences, walls, and walkways; height of fences and elevation at top of walls in relation to grade; exterior lighting; location of utilities, mechanicals, parking spaces, and bicycle storage; and the location of trash, recycling, and snow storage, subject to the review and approval of the ZBA' consultant(s), such approval not to be unreasonably withheld or delayed. The landscape plan shall be reviewed by a peer review landscape architect selected by the ZBA, at the Applicant's expense. The landscape plan shall also include (a) an adequate plan for maintaining the landscaping improvements within the first two years of planting on the Site, (b) an adequate plan for replacing as necessary plantings on the Site, and (c) evidence of a performance bond in an amount sufficient to cover for costs for maintenance and restoration of the landscaping improvements as necessary during the first two years of planting including but not limited to plants, labor, watering, and fertilizing. The landscape plan shall include detail on the location of all accessory structures, as well as the proposed locations for dumpsters, mailboxes, and recreational amenities.

D.9 Before obtaining a certificate of occupancy for the third apartment building in the Project, the Applicant shall complete the landscaping improvements located on the Site as depicted on the Approved Plans; provided, however, if seasonal or other weather conditions prevent such landscaping improvements from being completed at the time said third apartment building is ready for occupancy, then the Building Commissioner shall issue a Temporary Certificate of Occupancy provided that all other requirements for a Certificate of Occupancy are met, and the Applicant shall provide financial surety to the Board to secure performance of this condition, in an amount determined sufficient by the Board's landscape architect.

D.10 The Approved Plans shall show snow storage areas, the adequacy of which shall be determined by the ZBA's Consulting Engineer and the ZBA.

E. <u>Legal Requirements and Project Management</u>

E.1 Lease and occupancy agreements for the apartment units in the Project shall be for a term of not less than six (6) months. Nightly rentals shall not be permitted. Airbnb and similar lodging services shall not be permitted. The Applicant, or its property manager, shall ensure that any written lease for any tenant, or tenants, of any dwelling unit, whether or not such unit is subject to the income limitations, prohibits the subsequent subletting of the dwelling unit for any period, or periods of time.

E.2 The Applicant shall reimburse the ZBA for its legal expenses in reviewing the Regulatory Agreement, Monitoring Services Agreement, Affordable Housing Restriction (Deed Rider), and Lottery Plan.

E.3 Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Decision. Transfers of this Comprehensive Permit shall be governed by 760 CMR 56.05(12).

E.4 The Applicant and subsequent owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit.

E.5 The Applicant and subsequent owner(s) shall forever maintain the driveway, utilities, drainage systems, and all other infrastructure shown on the Approved Plans as serving the Project, including but not limited to snow removal, maintenance of the stormwater management system, and landscape maintenance.

E.6 All landscaping, lighting, bike racks, fencing, sidewalks, and other amenities shall be maintained in good working order and shall be subject to replacement with like-kind materials if and when necessary for as long as this Decision remains in effect.

E.7 The Applicant shall impose and enforce, through written rules and regulations to be provided to all tenants, and through its management of the rental units, the following prohibitions or restrictions:

(a) No parking or storage of vehicles, including those containing trailers, boats, attachments, or the like which exceed the length of the defined parking space markings/stripes shall be permitted within the Project parking areas;

(b) The on-site parking or storage of boats or commercial-scale vehicles such as box trucks, flatbed trucks, trailers (open or enclosed), or equipment shall be prohibited;

(c) No abandoned, inoperable, or unregistered vehicles shall be permitted within the property;

(d) No exterior storage of any kind shall be permitted in the parking or lawn areas within the Project Site other than a maintenance shed, bicycle sheds and racks, and trash enclosures shown on the Approved Plan; and

(e) No tenant-owned satellite dishes, clothes drying lines, or other such equipment or materials shall be attached to or visible on the exterior of any buildings and / or windows within the Project except as expressly required by law.

E.8 The Applicant will manage parking access to the Project parking lot through the lease with each tenant, with at least one parking space per unit.

F. <u>Public Safety and Fire Protection</u>

F.1 The numbering system and the identification of the dwelling units shall be subject to the approval of the Assessing Department. Street names shall be subject to the approval of the Fire Chief and Police Chief.

F.2 The final design of all driveways and parking areas shall be submitted to the Fire Chief for confirmation that the paved width, shoulders and turning radii of all internal roadways are adequate to accommodate all public safety vehicles before the final Approved Plans are presented to the ZBA for approval pursuant to Condition A.1.

F.3 No vehicle longer than 18 feet shall be permitted to park on the Project Site. If the driveway and parking areas of the Project are redesigned to accommodate other conditions in this Decision, then any such redesign shall be subject to review and approval by the Grafton Fire Chief pursuant his authority under G.L. c. 148 § 28 and the state Fire Prevention Code. Hydrants shall be located as shown on the Approved Plan. Any deviation of hydrant location shall be subject to review and approval by the Grafton Fire Chief.

F.4 The driveway shall have a minimum width of 24 feet between parking stalls or curb, except a width of 20 feet where there is a one-way traffic direction adjacent to the angled parking area is acceptable.

F.5 No building permit for Buildings No. 2 and 3 in the Project shall be issued until the base and binder coat of pavement for the portion of the driveway serving that building has been installed. A building permit for Building No. 1 may issue before the base and binder coat of pavement is installed, provided that adequate emergency vehicle access is provided to Building No. 1 from Prentice Street during construction.

F.6 In accordance with NFPA §8.7.2.3, all underground water lines and hydrants shall be installed and operational prior to the issuance of any building permits for the construction of residential structures.

F.7 Prior to the application for a Building Permit, the Applicant shall (A) certify in writing to the Fire Chief and the Building Commissioner that: (i) the Project's building has enhanced NFPA-13 (or latest version of the NFPA code) designed sprinkler systems, and (ii) the Project's building has direct alarm notification to

the Fire Department designed in accordance with the latest version of Building and Fire Codes; (B) submit a construction site safety plan in compliance with NFPA 241 by a third-party fire safety professional who has been approved by the Fire Chief ("Construction Site Safety Plan") for the review and approval of the Building Commissioner and the Fire Chief with all costs thereunder borne by the Applicant; and (C) submit a fire safety and emergency procedures plan for the review and approval of the Fire Chief or his designee.

F.8 Prior to the issuance of the first occupancy permit for any unit in the Project the Applicant shall design, construct and complete the sidewalk improvements along Prentice Street and the crosswalks and ramps on Prentice Street and Shrewsbury Street as shown on the Revised Plans. Prior to commencing construction of the Sidewalk Improvements, the Applicant shall prepare and submit a sidewalk construction plan to the ZBA for review and approval by the Department of Public Works and the ZBA's consulting engineer, which review is solely for consistency with the plans previously filed and the conditions of this Decision. Specifically, the Sidewalk Improvements will include the construction of a 4-foot bituminous sidewalk from the Project's driveway entrance to the intersection of Prentice Street and Shrewsbury Street, along the southerly side of Prentice Street. Further, there will be a ramp and crosswalk across Prentice Street, a ramp, short sidewalk and crosswalk across Shrewsbury Street, and a ramp and short sidewalk to the Nelson Park ballfield. All improvements shall be ADA-compliant to ensure a continuous, accessible connection from the Project Site to the Nelson Park ballfield. The Improvements shall include MUTCD-compliant signage and pavement markings.

G. **Affordability Requirements**

G.1 At least 25% of the units within the Project shall be made available for rent by households whose aggregate income is no greater than 80% of the area median income, adjusted for household size, as published by the Department of Housing and Urban Development ("HUD") for the Primary Metropolitan Statistical Area as determined by HUD (the "Affordable Units").

G.2 Rent Prices: Except as otherwise approved by MHP as the Subsidizing Agency, the Affordable Units shall be leased at rents deemed affordable to households earning 70% of the area median income, adjusted for household size, utilizing cost assumptions established by MHP as the Subsidizing Agency.

G.3 Selection of Tenants for Affordable Units: The Applicant shall obtain the Subsidizing Agency's approval of a Tenant Selection Plan for the leasing of the Affordable Units prior to putting the Affordable Units on the market. Tenants shall be selected through a fair lottery process (the "Lottery"), acceptable to the Subsidizing Agency. The Planning Department shall be provided with contact

information for the Lottery Agent, be provided a copy of the tenant selection plan, and be notified of the scheduling of lotteries.

To the maximum extent permitted by law and the Subsidizing Agency, first preference for the initial leasing of 70% of the Affordable Units shall be given to households that meet one or more of the following "Grafton Connection" preference criteria:

(a) at least one member of the household is a legal resident of the Town of Grafton at the time of the Affordable Unit lottery application deadline. A person shall be deemed a "Resident" if that person has been registered as a Grafton resident with the Grafton Town Clerk pursuant to G.L. c. 51, §4 and would be considered a resident under the United States Census Bureau's residency guidelines; or

(b) at least one member of the household is either a son, daughter, sibling, or parent of a Grafton Resident; or Municipal Employees: Employees of the municipality such as teachers, janitors, firefighters, police officers, librarians and town hall employees.

(c) Employees of local businesses, employees or businesses located in the municipality.

The selection of tenants for the Affordable Units, including the administration of the Lottery, shall be administered by a consultant retained by the Applicant, subject to the Subsidizing Agency's approval. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Subsidizing Agency. If acceptable to the Subsidizing Agency, disputes concerning income qualification and Grafton Connection qualification shall be resolved in the first instance by the Monitoring Agent, if any, and a party aggrieved by qualification-related decision of the Monitoring Agent, if any, may appeal the decision to MHP for a final determination. The provisions of this section are intended to complement and not to supersede any applicable requirements of the Subsidizing Agency, fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

G.4 Phasing-in of Affordable Units: No more than three certificates of occupancy shall be issued by the Building Inspector for units designated for rent at fair market prices (the "Market Rate Units") until at least one certificate of occupancy is issued for an Affordable Unit. Likewise, no more than six occupancy

certificates for market-rate units shall issue until at least two occupancy permits for affordable units are issued, and this ratio shall endure for the entire Project. The Affordable Units shall be reasonably interspersed within the Project, subject to variations permitted by the Regulatory Agreement with Massachusetts Housing Partnership as the Subsidizing Agency. The Affordable Units shall be comparable to the Market Rate Units in size, bedroom counts and bathroom counts. If an individual with a physical disability is a member of a household that has been selected to purchase an affordable unit through the lottery, the Applicant shall ensure that that unit is fully accessible under the Americans with Disabilities Act standards, at the Applicant's cost.

G.5 Perpetual Affordability Restriction: Before the issuance of any building permits, a Regulatory Agreement, acceptable to the Subsidizing Agency, shall be executed and recorded. The Agreement shall restrict the rent of each such affordable unit pursuant to this Decision in perpetuity. In the event that the Subsidizing Agency declines to enter into a Regulatory Agreement that restricts the rent of the affordable units in perpetuity, a second Regulatory Agreement and a Monitoring Services Agreement shall be prepared prior to expiration of the initial Regulatory Agreement, approved by Town Counsel, and executed and recorded for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said Regulatory Agreement and Monitoring Services Agreement with the Town to continue such restrictions. The Applicant or its successor shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with the any applicable Regulatory Agreement during this period shall be borne by the Applicant or its successor. The second Regulatory Agreement shall not contain any limited dividend or "profit cap" provisions.

G.6 Consistent with the Subsidizing Agency's policies concerning the Profit Cap, and to ensure that the Applicant has accurately reported its development costs and profits, the Applicant shall deliver to the Subsidizing Agency all documents required as part of the cost certification consistent with the cost certification requirements promulgated by the Subsidizing Agency. The Applicant will submit a copy of that filing to the Zoning Board of Appeals.

H. Surety & Covenants

H.1 As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the binder coat of the driveway, sidewalks, parking areas and common areas, drainage facilities, utilities, landscaping, and any other specific infrastructure shown on the plans (the

"Infrastructure"), the release of occupancy permits for all housing units and the sale of all housing units in the Project shall be subject to the following restrictions:

a. No occupancy permit for a unit in any building shall be issued, until: (1) the base coat and all stormwater management infrastructure serving the entire Project has been installed; (2) the base and binder course for the Project's main driveway and parking areas shown on the Approved Plans associated with said building has been installed; and (3) all Infrastructure serving a building as shown on the Plan been constructed.

b. The final coat of pavement shall not be installed until after the base and binder coat has endured a full winter season.

c. If, in Applicant's reasonable judgment, weather circumstances preclude the installation of plantings to complete landscaping before the issuance of occupancy permits for the final building, the Applicant shall post a bond or a deposit with the ZBA an amount equivalent to 1.5 times the reasonably expected cost of the plantings to ensure completion by the Applicant as soon as weather allows, and in no event later than the first growing season following the issuance of the Certificate of Occupancy for the final building.

H.2 Prior to the commencement of Construction Activities (i.e., site clearing), and prior to the ZBA's review of the final plans, the Applicant shall post a bond or enter into a Tri-Party Agreement with its construction lender to provide surety to the Town in the event that the Project Site is disturbed, cleared, grubbed, etc. and abandoned in a state with insufficient erosion control, site stabilization or interim stormwater management. Said surety shall be in an amount determined by the ZBA's Consultant Engineer to cover the cost of permanently stabilizing the site with vegetative (grass) cover and ancillary work.

H.3 Prior to the issuance of the final certificate of occupancy, the Applicant shall submit to the Board an "As-Built Plan" in paper and CAD format, showing all pavement, building locations, stormwater management structures and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The plans shall be signed by a registered land surveyor and civil engineer, certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit. The purpose of this provision is to facilitate the Consulting Engineer's review of the Project for compliance with this Decision before the final occupancy permit is issued. The Applicant shall also submit to the Building Inspector as-built plans for all buildings in the Project.

I. Stormwater and Wastewater

I.1 The Project's stormwater management infrastructure shall be designed and constructed in compliance with the current Massachusetts Stormwater Management Standards and Handbook as incorporated by reference in the state Wetland Protection Act regulations, and Sections 6-8 of Grafton's Stormwater Regulations, except as waived. Nothing in this Decision shall supersede the Conservation Commission's and/or DEP's authority and jurisdiction over stormwater management systems under the state Wetlands Protection Act.

I.2 Before any site clearing or construction, the Applicant shall provide fully engineered stormwater management plans and calculations, prepared and stamped by a Registered Professional Engineer, for review and approval by the ZBA and its Consulting Engineer, to confirm consistency with this Decision, DEP and Grafton regulations and policies except as the same may be waived by this Decision, and with generally-accepted sound engineering practices. The stormwater management system shall be designed to provide, in the reasonable opinion of the Consulting Engineer, sufficient means of artificially recharging precipitation to the groundwater to compensate for the loss of pervious areas on the Site.

I.3 The ZBA's expenses in reviewing the stormwater management plans and subsequent reports shall be borne by the Applicant. If the Grafton Conservation Commission (or DEP) engages the services of someone other than the ZBA's Consulting Engineer to review the Project stormwater management system in connection with the review of a Notice of Intent under the State Wetlands Protection Act, the Applicant may arrange for such alternate consultant to perform the stormwater management review required by the ZBA under this Section in lieu of the ZBA's Consulting Engineer.

I.4 The Applicant shall prepare a stormwater management system operation and maintenance plan. Said plan shall be subject to the approval of the Consulting Engineer for consistency with this Decision and best management practices.

I.5 The Project's wastewater shall be discharged into the Town's municipal sewer system by a gravity sewer extension from the Project Site to the existing sewer main in Elm Street via a sewer line over the abutting property at 34 Elm Street controlled by the Applicant The design of the sewer connection and connection shall comply with the Grafton Sewer Department's rules and regulations.

J. Amendments

J.1 If, between the date this Decision is filed in the office of the Grafton Town Clerk and the completion of the Project, the Applicant desires to change in a material way or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 56.05(11).

J.2 No structure constructed under this Comprehensive Permit shall be altered, reconstructed, extended, or changed unless authorized by the ZBA as follows: Upon such an application for a modification, the ZBA shall determine, in the first instance, whether such alteration, reconstruction, extension or change is "substantial" or "insubstantial" pursuant to 760 CMR 56.05(11). An alteration to a residential structure shall generally be presumed to be an insubstantial change to this Comprehensive Permit.

J.3 The terms alteration, reconstruction, extension, and change shall have the same meaning under the Massachusetts Zoning Act, G.L. c. 40A, §6 as applied under the Grafton Zoning Bylaws.

K. **Expiration Date**

If construction of roadways authorized by this Comprehensive Permit has not begun within 36 months of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. Extensions may be issued by the ZBA upon written request by the Applicant, their heirs or assigns.

L. **Notice of Construction**

At least 14 days before the start of construction, the Applicant shall provide notice to the ZBA of the anticipated construction start date.

VI. APPLICANT'S REQUESTED WAIVERS

The Applicant has requested waivers from the By-Laws of the Town of Grafton, the Town of Grafton Zoning Bylaws, the Rules and Regulations Governing the Subdivision of Land, and other local rules and regulations. The Applicant's requested waivers are set forth in its Application, as supplemented through the public hearing process. The ZBA's grant of waivers shall be subject to the terms and conditions imposed by this Decision, and to the extent that any waiver is inconsistent with a term or condition set forth elsewhere in this Decision, such term or condition shall govern. No grant of any waiver shall be deemed to waive compliance with any condition of approval of this Decision.

Grafton Zoning By Law

#	Section	Description	Request	Action
1	3.2.3.1	Use Regulation Schedule	Waiver to allow the multi-family dwelling use within the R40 and R20 zoning districts.	**Allowed.**
2	3.3.3.1	Special Cases	Waiver to allow three (3) principal structures to be erected on the subject lot. (2.56 acres, 257 ft. frontage, and 270 ft. width provided).	Allowed.
3	3.3.3.1	Special Cases	Waiver to allow less than 35 feet between buildings, regardless of building height, with a minimum distance of 10 feet between building walls.	**Waiver allowed to reduce separation from 35 feet to 20 feet.**
4	4.2.2	Off-Street Parking Schedule (Multi-Family Dwelling → 2.25 spaces per unit)	Waiver to allow a total of 84 parking spaces provided (2.10 spaces per unit).	**Waiver allowed to reduce parking requirement to a total of 84 parking spaces as shown on the Revised Site Plans**
5	4.2.3.3	No parking area serving a multi-family dwelling shall be located nearer to any lot line than the distances specified as minimum yards in the Intensity of Use Schedule (Section 3.2.3.2), nor shall it be located in the area to the front of the building line.	Waiver to allow the parking areas to be located in the front of the building line specified as minimum yards in the Intensity of Use Schedule (Section 3.2.3.2), and to allow the parking to be located to the front of the building line.	**Granted for parking located as shown on the Revised Site Plans**
6	4.2.4.5	Parking areas containing more than five (5) spaces shall include or be bordered within five feet of the spaces by at least one tree of 2" caliper for each 5 spaces.	Waiver to allow the required trees (17) to be planted as depicted on the Landscape Plan and to allow the parking spaces to be bordered by a concrete sidewalk of 5 feet in width where access to the building is required.	**Granted.**
7	4.4.3.3.5	During construction of a subdivision or multifamily dwelling development, one (1) freestanding sign no	Waiver to allow a construction sign of thirty-two (32) square feet for the project during construction.	**This Waiver Request was withdrawn by the Applicant.**

		greater than twelve (12) square feet in size may be erected on the premises at the entrance of said development.		
8	5.2.2.1	There shall be at least 5,500 square feet of land area for each dwelling unit proposed to be placed on a lot.	Waiver to allow the construction of 40 units on 2.56 acres of land.	**Waiver allowed to construct the project as shown on the Revised Site Plans**
9	5.2.2.2	The site plan shall be so designed that parking areas are screened from streets by building location, grading, or screening; lighting on parking areas avoids glare on adjoining property; major topographic changes or removal of existing trees are avoided whenever possible; and water, wetlands, or other scenic views from the street are preserved.	Waiver to allow the parking areas to be constructed as depicted on the plans without additional screening; allow the site to be constructed with topographic changes as depicted on the site plans; to allow the removal of existing trees throughout the construction area on the project and include the removal of unsafe, damaged, diseased, and or dead trees.	**Allowed, subject to the conditions in this Decision.**
10	5.2.2.3	Adjacent to, and for the length of each side and rear lot line, there shall be a fifteen (15) foot wide area of landscaping.	Waiver to allow the area of landscaping in the area of the detention basin be less than 15 feet wide.	**Allowed as to the areas of landscaping in the area along the detention basin and extending to the western rear corner of 34 Elm Street.**
11	5.2.2.4	There shall be one thousand (1000) square feet of usable common open space per dwelling unit.	Waiver to allow the project to be constructed as shown on the Revised Site Plans	**Granted to allow the project to be constructed as shown on the Revised Site Plans**
12	5.2.2.9	If there is more than one (1) such structure on a lot of record, there shall be at least thirty (30) feet between each structure.	Waiver to allow less than 30 feet between buildings with a minimum distance of 10 feet between building walls.	**Allowed to reduce the separation between structures from 30 feet to 20 feet.**

Rules & Regulations Governing Comprehensive Permits

#	Section	Description	Request	Action
1	3.13.3.7	Location of affordable housing lots and units.	Waiver to labeling the affordable housing unit these are multistory	**Allowed.**

			buildings with vertical unit separations.	
2	3.13.6.1	Design and layout of streets and ways at a horizontal scale of 1"=40' and vertical scale of 1"=4'.	Waiver to allow the vertical scale of the Plan and Profile Sheet to be 1"=8'.	**Allowed.**
3	3.13.8.5	The limits of work…in the vicinity of trees, the limits of work shall follow the drip line of the trees.	Waiver to allow the limits of work to be the limits of land disturbance on the project.	**Allowed, to allow for the project to be constructed as shown on the Revised Site Plans.**

Rules & Regulations for the Administration of the Wetland Bylaw

#	Section	Description	Request	Action
1	1.C.	Fee Schedule	Waiver to all local wetland filing fees. Fees are to be paid according to MA WPA Regulations.	**Denied.**
2	V.B.5.(h).1	The maximum slope of the embankment on both the inside and the outside of the basin shall be no steeper than 3 horizontal to 1 vertical.	Waiver to allow maximum interior basin slopes of 2 horizontal to 1 vertical in locations as depicted on the site plan. Provision for access to be maintained.	**Allowed.**
3	V.B.5.(h).9	The soil structure and composition at the bottom of a wet basin shall be capable of supporting wetlands vegetation within two years following the completion of the storm drainage system.	Waiver to allow for detention basins with a sub-drain system, enabling the basin to drain completely between storm events, thereby providing maximum storage capacity for subsequent storms.	**Allowed.**
4	V.C.1.(b)	Once wetland alteration has commenced, no other work is to be commenced on site	Waiver to allow construction of the proposed development concurrent with the	**Allowed, but once replication is commenced it must be completed without**

		until replication area is complete.	proposed wetland replication area.	**delay.**
5	V.C.5.(a)	…alteration and disturbance is prohibited within the first 25 feet… of any freshwater wetland…	Waiver to allow the alteration and disturbance of the area within 25 feet of the wetland including the wetland with replication at a minimum ration of 1:1.	**Allowed.**
6	XI	Performance Guarantee	Waiver to allow the project without Bond, Covenant, or Surety requirements, subject to conditions.	**Allowed, subject to the surety provisions and conditions in this Decision.**

Stormwater Management Bylaw and Regulations

#	Section	Description	Request	Action
1	5:D.	Fees	Waiver to all local stormwater filing fees. Fees paid as part of the filings under the MA WPA Regulations will be provided.	**Denied.**
2	6	Stormwater Management Performance Standards	Waiver to local Stormwater Standards with the Stormwater standards per MA DEP Stormwater Management to be adhered to, as applicable.	**Denied, except that the provision of Section 6(B)(3) requiring the use of the NRCC Cornell Atlas for the precipitation assumptions in the hydrologic modeling of the stormwater system is waived. The Applicant may use Technical Paper 40, consistent with the state Wetland Protection Act regulations.**
3	7.B.1.h.	The site's existing and proposed topography	Waiver to allow the existing and proposed	**Allowed.**

		with contours at 1-foot intervals.	topography with contours at a 2-foot interval.	
4	8	Surety	Waiver to allow the project without Bond, Covenant, or Surety requirements, subject to conditions.	**Allowed, subject to the conditions set forth in this Decision.**

Grafton Planning Board Subdivision Rules & Regulations

#	Section	Description	Request	Action
1	4.1.3.2	Minimum centerline radii – Minor Streets; one hundred feet (100')	Waiver to allow minimum centerline radii less than one hundred feet (100') along the internal driveway of the project. (32' centerline radius at 90° turn).	**Allowed.**
2	4.1.4.2	Pavement Width, Minor Street "B" shall be twenty-six (26) feet.	Waiver to allow pavement width of twenty-four (24) feet except the pavement width can be twenty (20) feet where there is a one-way traffic direction adjacent to the angled parking area.	**Allowed, for a pavement width of twenty-four (24) feet except the pavement width can be twenty (20) feet where there is a one-way traffic direction adjacent to the angled parking area**
3	4.2.1.2	Granite curbing shall be required (a) At intersections curves plus a straight section of eight (8) feet at the end of arcs. (b) Along roadways exceeding two (2) percent. (c) Along roadways with a radius less than two hundred and fifty	Waiver to allow Type-2 Hot Mix Asphalt curbs (MADOT E 106.2.0) in lieu of granite curbing at all locations within the development.	**Allowed, subject to the conditions in this Decision.**

		(250) feet.		
4	4.3.5	Driveways or other curb cut openings shall be designed so that surface runoff can neither enter nor leave the road right of way.	Waiver to allow the last portion of the site driveway to drain onto Prentice Street (~15 feet).	**Allowed.**
5	4.7.8.1	The drainage system shall be designed by methods based on the Rational Formula and methods contained in the United States Soil Conservation Service URBAN HYDROLOGY FOR SMALL WATERSHEDS, Technical Release Number 55.	Waiver to allow the drainage system to be designed based upon methods outlined in Technical Release Number 20 (TR20) and Technical Release Number 55 (TR55).	**Allowed.**
6	6.5	Building Permit	Waiver to allow the roadway and buildings to be constructed simultaneously.	**Allowed, subject to Condition F.5**

Misc. Regulations and Policies

	Requirement	Request	Action
1	Grafton Sewer Pump Station Policy	Waiver to the local sewer regulations relative pump stations to allow the sewer system for the project to be constructed with private pump systems as depicted on the plans, or equal pump station policy.	**Withdrawn, as the project will not be using a pump station but rather will connect via a gravity system over the adjacent property at 34 Elm Street.**
2	Water Connection Fees	Waiver is hereby requested for water connection fees on a per building basis.	**Withdrawn**
3	Sewer Connection Fees	Waiver is hereby requested for sewer connection fees on a per building basis.	**Allowed subject to Condition I.6; the fee for the 14-unit buildings shall be**

			$37,500.00 per building, and the fee for the 12 unit building shall be $32,500.00
4	Building Permit Fees	Waiver is hereby requested for permit fees for all affordable units relative to building permit fees.	**Denied.**

By granting the waivers from local bylaws and regulations specifically listed in this Comprehensive Permit, it is the intention of this Comprehensive Permit to permit construction of the Project as shown on the final Approved Plans. If, in reviewing the Applicant's building permit application(s), the Building Inspector determines that any additional waiver from local zoning, wetlands, health regulations is necessary to permit construction to proceed as shown on the Approved Plans, the Building Inspector shall proceed as follows: (a) any matter of a *de minimis* nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature shall be reported back to the ZBA for disposition of the Applicant's request for a waiver therefrom.

VII. CONCLUSION

For all the reasons stated above, the Application for a comprehensive permit for the Project is approved with the foregoing conditions.

GRAFTON ZONING BOARD OF APPEALS

William McCusker, Chairman

Marianne Desrosiers, Vice Chairman

Kay Reed, Clerk

William Yeomans

Brian Waller