

## **LIST OF WAIVERS**

### **0 Main Street (Assessors Map 202, Parcel 108), Upton, MA (Now Identified as 47 Main Street)**

As required under 760 CMR 56.05(2)(h), the following is a list of Waivers to “Local Requirements and Regulations,” including waivers from the Town of Upton General By-laws, with amendments through the May 4, 2023 Annual Town Meeting, as amended (“General Bylaw”) , the Town of Upton, Massachusetts Zoning By-laws, with amendments through the November 1, 2022 Special Town Meeting, as amended, (“Zoning Bylaws”), the Rules and Regulations Governing the Subdivision of Land in Upton, Massachusetts, as most recently amended through October 24, 2017, as amended, and other Local Requirements and Regulations as defined under Section 56.02 of the Chapter 40B Regulations, including all local legislative, regulatory, or other actions which are more restrictive than state requirements, if any, including local zoning and wetlands ordinances, subdivision and board of health rules, and other local bylaws, codes, and regulations, in each case which are in effect on the date of the Project’s application to the Board. In addition to the following list of requested Waivers listed below, the Applicant requests an exception from each and every provision or requirement of all Local Requirements and Regulations issued by a “Local Board” (defined under the Chapter 40B Regulations as meaning any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; board of selectmen, as well as all boards, regardless of their geographical jurisdiction or their source of authority [that is, including boards created by special acts of the legislature or by other legislative action] if such local board perform functions usually performed by locally created boards) with which any aspect of its Comprehensive Permit Application, including but not limited to its proposed site development plans and any other information hereinafter submitted to the Board, is inconsistent. Note that pursuant to 760 CMR 56.00 and as specifically described under 760 CMR 56.05(7), “zoning waivers are required solely from the “as-of-right” requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district.” Accordingly, any waivers that reference special permit requirements are included only for illustration purposes.

<b>A. TOWN OF UPTON GENERAL BY-LAWS, AS AMENDED THROUGH MAY 4, 2023 ANNUAL TOWN MEETING, AS AMENDED (GENERAL BYLAWS)</b>				
<b><u>BY-LAW/ REG.</u></b>	<b><u>TITLE</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>REQUIRED</u></b>	<b><u>WAIVER ACTION</u></b>
Chapter 147	Chapter 1, Earth Removal	Earth Removal Requirements	The removal of soil, loam, sand or gravel from any parcel of land not in public use in the Town of Upton, except as hereinafter provided, shall be allowed only after a written permit therefor is obtained from the Board of Selectmen after a public hearing of which due notice is given. Notwithstanding the provisions of the above, the Board may issue a permit for the removal of soil or loam from any parcel of land in the Town where such removal is incidental to and in connection with the construction of a road or other facility involving a permanent change in the use of the land. The Board shall issue no such permit unless it is reasonably satisfied that the construction will be completed and evidence thereof shall be made a part of the records of the Board. Permit required for removal of soil, loam, sand, or gravel within 300 feet of any street or way.	Waived. To be governed by an Operations and Maintenance Plan and Long-term Pollution Prevention Plan and requirements of the Stormwater Management Handbook requirements as a part of a Wetlands Order of Conditions to be issued under State Wetlands Act and State Wetlands Regulations, as well as US EPA 2022 NDPDES Stormwater Construction General Permit (CGP) for Massachusetts (MAR100000), and the Comprehensive Permit Decision.

***Applicant: Lobisser Building Corp.***  
***Project: Upton Apartments***

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<b><u>BY-LAW/ REG.</u></b>	<b><u>TITLE</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>REQUIRED</u></b>	<b><u>WAIVER ACTION</u></b>
Chapter 223	Sewers	Requirements for Sewer Connections, Discharges, Rates and Fees	The owner of any building or other structure used for human habitation, or for which sanitary sewerage facilities are by law required to be installed or maintained, and that is within the Town and upon land abutting upon a public or private way in which there is a public sanitary sewer shall connect such facilities to said sewer by a sufficient drain. For any connection (whether or not required under § 223-2) made, directly or indirectly, to a public sanitary sewer, there shall be a sewer connection fee.	Waived. ZBA to issue sewer connection permit through Comprehensive Permit. Waiver of sewer connection fees requested only for affordable units.
Chapter 255, incl.: § 255-5. (Permit for maintenance and removal of trees and shrubs), and § 255-10.B Prohibited acts.	Public Trees and Public Shade Trees	Removal of Public Shade Trees and other Public Trees	No person shall remove or do major alterations specified herein and as determined by the Tree Warden on a public shade tree or any other tree or shrub in the public right-of-way or located on other public property, or cause such act to be done by others without a permit for such work from the Tree Warden as herein provided.	Waived. To be governed by Comprehensive Permit.

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<b>BY-LAW/REG.</b>	<b>TITLE</b>	<b>DESCRIPTION</b>	<b>REQUIRED</b>	<b>WAIVER ACTION</b>
Chapter 280 (Wetlands Protection Bylaw); Chapter 330. (Wetlands Protection Regulations, approved by the Conservation Commission 4-8-2021)	Wetlands Protection Bylaw and Regulations	Requirements for work within jurisdictional wetlands under Wetlands Bylaw, including filing, fee, notice,	Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater, surface water, or storm flowage; and lands abutting any of the aforesaid resource areas as set out in § 280-7 (collectively the "resource areas protected by this bylaw").	Waived. Project will comply with Massachusetts Wetlands Protection Act. M.G.L. c. 131 §40 and 310 CMR 10.00 et seq.
Chapter 340. Health Rules and Regulations, Article VII. Fill	Fill	Requirements for Bringing Fill onsite to a project	§ 340-17. Inspection. [Amended 4-29-2021] The Board of Health reserves the right to inspect any fill used in connection with a project requiring a local permit from the Code Enforcement Department, Board of Health or Planning Board. The Board of Health may require one or more of the following: A. Fill to be of the same soil composition as original soil on site; B. Fill not to exceed the levels of toxicity of the existing soil on site or be greater than the recommended limits of soil standards set by the Department of Environmental Protection, whichever is less.; and, C. Certified lab testing of fill material. § 340-18. Drainage. When applicable, all fill must comply with the proposed drainage calculations submitted under the site plan review for the Conservation Commission, Board of Health or Planning Board.	Waived. To be governed by Comprehensive Permit.

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<b>B. TOWN OF UPTON ZONING BYLAW, AS AMENDED THROUGH NOVEMBER 1, 2022 SPECIAL TOWN MEETING, AS AMENDED</b>				
<b><u>BY-LAW/ REG.</u></b>	<b><u>TITLE</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>REQUIRED</u></b>	<b><u>WAIVER ACTION</u></b>
§ 300-1.3.	Scope	Scope of Zoning Bylaw	For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.	Waived. To be governed by the Comprehensive Permit Decision, and to allow proposed Project in conformity with all use, dimensional, parking and other requirements of the Zoning Bylaw except as modified by the approved Waivers described in this Comprehensive Permit.
§ 300-1.4.	Applicability	Scope of Zoning Bylaw	All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning Bylaw. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. Where the application of this bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this bylaw shall control.	Waived. To be governed by the Comprehensive Permit Decision, and to allow proposed Project in conformity with all dimensional, use, parking and other requirements of the Zoning Bylaw except as modified by the approved Waivers described in this Comprehensive Permit.
Article 3. Use Regulations; § 300-3.1. Table A - Table of Principal Uses By District	Use Regulations	Allowed Principal Uses	No land shall be used and no structure shall be erected or used except as set forth in the following Table of Principal Uses, Table A, including the notes to Table A, or as otherwise set forth herein, or as exempted by General Laws. Any building or use of premises not herein expressly permitted is hereby prohibited. Within the Single Residential A (SRA) Zoning District, one single family house per lot is allowed, the conversion of a single family to a two family dwelling is allowed by Zoning Board of Appeals special permit, and Townhouses and Garden Apartments (see § 300-7.2 for additional regulations) are allowed by ZBA special permit. Private garages for more than three automobiles are prohibited. Note that the Project does not fall within the definition of “GARDEN APARTMENT BUILDING” which is defined as “a structure of more than one story but not more than three stories containing garden apartment dwellings grouped around a central stairwell.”	Waived to permit the use of the Property for no more than a total of 68 multifamily residential rental apartment units and accessory uses including, but not limited to, office, package room, co-working space, fitness room, dog wash, bicycle storage, and private storage rooms contained within a single building, along with garages as described below, as shown on the Plan of Record, and as conditioned within the Comprehensive Permit.

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Article 3. Use Regulations, § 300-3.2. (Accessory uses and structures); § 300-3.2A (Accessory uses in all districts); § 300-3.2.B (Accessory uses in residential districts).	Use Regulations	Allowed Accessory Uses.	<p>§ 300-3.2. Accessory uses and structures. A. <u>Accessory uses in all districts</u>. An "accessory use," within the meaning of this bylaw, is either a subordinate use of a building, other structure or tract of land, or subordinate building or other structure: (1) Whose use is customary in connection with the principal building, other structure or use of land; and (2) Whose use is clearly incidental to the use of the principal building, other structure or use of land; and (3) Which is located on the same lot with the principal building, other structure or use of land, or on a lot adjacent to such lot, if in the same ownership; and (4) Which does not constitute, if effect, a conversion of the principal use of the premises to one not permitted.</p> <p>B. <u>Accessory use in residential districts</u>. In Single Residential SRA, District, the following uses are customarily accessory uses within the meaning of this bylaw:</p> <p>(1) Private garage for not more than three automobiles, one of which may be commercial vehicle if not exceeding 2 1/2 tons in gross weight.</p> <p>(4) Removal of sod, loam, sand, gravel or other earth products in connection with the construction of a building to be erected on the premises for which a permit has been issued, provided that the amount of such material removed does not exceed the amount contained, before construction, in the particular space to be occupied by the foundation of said building.</p> <p>The definition of "PARKING GARAGE" means "a structure which is accessory to a commercial or industrial establishment and is primarily for the parking and storage of vehicles operated by the customers, visitors and employees of such an establishment." See also, Article 5, § 300-5.10. Off-street parking, below.</p>	Waived to allow the following accessory uses, including but not limited to, office, package room, co-working space, fitness room, dog wash, bicycle storage, and private storage rooms, and related customary accessory uses, along with passive recreational open space, playground, grill area, a dog park area, and earth removal during construction, as well as a total of 105 parking spaces, or an average of 1.54 spaces per unit (including both enclosed garage parking for more than 3 vehicles, and surface parking as depicted on the Plan of Record), trash receptacle area, utilities, and other appurtenant uses customary to such residential uses, as well as designated open space uses. As to the three (3) enclosed garage buildings, two (2) enclosed garage buildings will each include seven (7) parking spaces, and the third (3 <sup>rd</sup> ) garage building will include ten (10) parking spaces. Also allow the use of one temporary construction and/or marketing trailer as Applicant's project office until use of the office in the building is permitted.
Article 4. Dimensional Regulations, § 300-4.1. General.	Dimensional Regulations – General	General Provisions Applicable to Dimensional Require- ments	No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this article, unless otherwise exempted by this bylaw or by statute. Uses not expressly allowed or allowed by special permit are prohibited.	Waived. To allow proposed Project in conformity with all dimensional requirements of the Zoning By-laws except as modified by the approved Waivers described in this Comprehensive Permit.

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<b>B. TOWN OF UPTON ZONING BYLAW, AS AMENDED THROUGH NOVEMBER 1, 2022 SPECIAL TOWN MEETING, AS AMENDED</b>				
<b><u>BY-LAW/ REG.</u></b>	<b><u>TITLE</u></b>	<b><u>DESCRIP- TION</u></b>	<b><u>REQUIRED</u></b>	<b><u>WAIVER ACTION</u></b>
§ 300-4.2. Dimensional regulation tables; § 300-4.2. Dimensional regulation tables.	Dimensional Regulations Tables	Residential District Lots (Table B)	No existing lot shall be changed as to size or shape so as to result in a violation of the requirements set forth in these tables. Residential district lots (Table B). No building or structure hereafter erected shall be located on a residential lot having less than the minimum requirements set forth in Table B except as provided herein. Not more than one dwelling shall be located upon any such lot, except in the case of multiple dwellings as provided herein.	Waived. To allow proposed Project in conformity with all dimensional requirements of the Zoning By-law except as modified by the approved Waivers described in this Comprehensive Permit.

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§ 300-4.2.B (Dimensional regulation tables); Table B: Residential District Lots B. Residential district lots (Table B)	Residential District lots	Applicable Dimensional Requirement s for Lots in SRC Zoning District	<p>The following are the required dimensional provisions for a building located within the SRA Zoning District:</p> <p>--Min. Lot Area (s.f.) = 15,000</p> <p>--Min. Lot Front Linear (in feet) = 100 [FN2]</p> <p>--Min. Lot Width (ft) = N/A</p> <p>--Min. Yard Setbacks (in feet)</p> <p style="padding-left: 40px;">Front (Main Street/Route 140) =25 feet (FN 2)</p> <p style="padding-left: 40px;">Side (West) = 10 feet (FN 8)</p> <p style="padding-left: 40px;">Side (East) = 10 feet (FN 8)</p> <p style="padding-left: 40px;">Rear (North) = 30 feet (FN 8)</p> <p>--Max Building Height Stories = 2.5</p> <p style="padding-left: 40px;">Feet = 30.0 feet (FN7)</p> <p>--Max % Coverage including building and accessory buildings = 30%</p> <p><b><i>See Footnotes (FN), next page</i></b></p>	<p>Waived to the extent the Plan of Record depicts dimensional requirements that do not comply with the dimensional requirements under Section 4.2.2 (Table B)</p> <p>294,030 s.f. [Complies]</p> <p>109.00 feet [Complies]</p> <p>N/A</p> <p>Building 360 feet [Complies] Garage B 423 feet [Complies]</p> <p>Building 292 feet [Complies] Garage A 179 feet [Complies]</p> <p>Building 175 feet [Complies] Garage C 108 feet [Complies]</p> <p>Building 76 feet [Complies] Garage A 75 feet [Complies]</p> <p>4-stories &amp; Basement <b>[Waiver]</b></p> <p>49.5 feet (not including 4-foot parapet) <b>[Waiver]</b></p> <p>7.8% [Complies]</p>
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<b><u>BY-LAW/ REG.</u></b>	<b><u>TITLE</u></b>	<b><u>DESCRIP- TION</u></b>	<b><u>REQUIRED</u></b>	<b><u>WAIVER ACTION</u></b>
			<p>Footnotes:</p> <p>2 -- To be measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line 25 feet from and parallel with the center line of the traveled way.</p> <p>7 - Except as noted herein, chimneys, spires, towers and other projections not used for living purposes, whether constituting separate structures or attached to buildings, may be constructed above the height limitations hereinbefore established, but no such structure or projection shall be constructed in any district to a height greater than 50 feet without authorization of the Zoning Board of Appeals.</p> <p>8 -- Except for accessory structures with a footprint less than or equal to 120 square feet and a height less than 15 feet, which shall have a minimum side and rear setback of 10 feet.</p>	
Article 5, § 300-5.10. Off-street parking.	Off-Street Parking	Off-Street Parking for Identified Uses	<p>In a General Business District or Commercial &amp; Industrial District, no business or commercial building shall be constructed or externally enlarged, and no business or commercial use shall be established or expand its ground floor area unless there is off-street parking provided on the lot or land associated therewith within three hundred (300) feet of such building or use as required under Section 5.10. The off-street parking requirement for zoning districts where multifamily housing is an allowed use is 1.5 parking spaces per unit. The current design includes 81 surface parking spaces and 24 garage parking spaces for a total of 105 parking spaces (1.54 parking spaces per unit). No identified residential parking requirement is provided, but any principal building or use of premises not herein expressly permitted under § 300-3.1. (Table of Principal Uses) is prohibited unless residential parking (surface and covered) is considered an accessory use under § 300-3.2.</p>	Waived, if applicable. Allow for a total of 105 parking spaces, or an average of 1.54 spaces per dwelling unit, to include surface parking as well as garage parking, all as depicted on the Plan of Record.

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Article 5, § 300-5.12	Signs	Signs Permitted within a SRA Zoning District.	<p>Only the following signs are permitted within the SRA Zoning District: Signs in Single Residential SRA, SRB, SRC, SRD and AR Districts. The following signs are allowed as of right subject to any additional regulations or prohibitions set forth in this bylaw: (1) One sign per dwelling unit or lot pertaining to a home occupation or business not to exceed four square feet and no portion of which is greater than five feet above ground level. Such sign shall be set back a minimum of 20 feet from the side and rear property lines. (2) One temporary on-site sign pertaining to the advertisement of the sale or lease of a dwelling unit not to exceed six square feet and no portion of which is greater than five feet above ground level. Such temporary sign shall be removed within one week following the date of recording of the deed or signing of the lease. (3) Two temporary off-site directional signs pertaining to the advertisement of the sale or lease of a dwelling unit not to exceed three square feet. Such temporary signs shall be installed and removed on the same day and shall only be allowed during daylight hours. (4) One temporary sign per dwelling unit pertaining to the advertisement of an architect, engineer or contractor or other participant relating to construction work on the premises not to exceed eight square feet and no portion of which is greater than five feet above ground level. Such sign shall be removed within one week following completion of said construction work. (5) One sign not exceeding 12 square feet and no portion of which is greater than five feet above ground level, bearing the name of a residential subdivision at each entrance to the subdivision. (6) One on-site sign pertaining to a residential subdivision advertising the sale or lease of subdivision lots. Such sign shall not exceed 20 square feet no portion of which shall be greater than five feet above ground level. (7) Signs erected on a lot associated with a religious organizational use or nonprofit educational organization use subject to the following criteria: One sign shall be allowed for each public entrance up to but not exceeding three signs; each sign not to exceed 20 square feet and with no standing sign greater than seven feet in height above ground level.</p>	<p>Waived. To allow permanent signs as described in the Comprehensive Permit, plus: (a) one temporary non-illuminated construction sign of no more than sixty-four (64) square feet in size from the commencement until completion of construction; and (b) one temporary on-site sign pertaining to the advertisement of the lease of a dwelling unit not-to-exceed six square feet and no portion of which is greater than five feet above ground level which such temporary sign shall be removed within one week following the date of the signing of the last lease.</p>

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Article 7. Special Residential Regulations, § 300-7.1. Scheduled development in approved subdivisions .	Residential Unit Rate of Develop-ment	Schedule of Phasing for New Dwelling Units in Subdivisions	In effect only when and if the Building Commissioner determines that 44 dwelling units, including units in multifamily complexes, have been authorized Town-wide within a twenty-four-month period. While this section is in effect, the Building Commissioner shall issue building permits for construction of new dwelling units in subdivisions given approval after passage of this section only if permit issuance will not result in authorizing construction within a twenty-four-month period of more than 44 units or 20% of the units potentially allowed in each subdivision, whichever is greater,... except that Units designed for low- or moderate-income residents of all ages and units receiving or eligible to receive state or federal subsidies shall be exempt from this scheduling bylaw.	Waived. To be governed by the Comprehensive Permit.
Article 9. Administrative Procedures, § 300-9.1. Administration, § 300-9.1. A., B., and C.	Administrati on and Procedures	Permits and Enforce-ment, Penalties	Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed in principal use unless in compliance with then-applicable zoning and after all necessary permits have been received under federal, state, or local law. The Building Inspector shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this By-Law and of permits and variances issued thereunder, including notification of noncompliance and request for legal action through the Selectmen to Town Counsel. The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals shall be three hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.	Waived. To be governed by the Comprehensive Permit, and to allow proposed Project in conformity with all use, dimensional, parking and other requirements of the Zoning Bylaw except as modified by the approved Waivers described in this Comprehensive Permit. Also allow Building Inspector to enforce Zoning Bylaw, except as waived as provided in the Comprehensive Permit Decision. Waived to exempt Project from penalties for violation of those provisions of the Zoning By-Law which have been waived pursuant to the Comprehensive Permit.

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Article 9. Administration and Procedures, § 300-9.1. Administration. § 300-9.3. Special permits, § 300-9.3. Special permits.	Special Permits	Criteria for the Grant of Special Permits	Unless specifically designated otherwise, the ZBA is the special permit granting authority. Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this bylaw, the determination shall include consideration of other factors listed therein.	**See Note 1 below.
Article 9. Administration and Procedures, § 300-9.4. Site plan approval; Chapter 308. (Site Plan Approval), Article I. Site Plan Approval Regulations	Site Plan Approval	Site Plan Approval Requirements.	Site Plan Review by the Planning Board triggered for the construction, exterior alteration or exterior expansion of a two thousand (2000) square feet or greater area, or change of use within a municipal, institutional, commercial, industrial, or multi-family structure with four or more dwelling units, or for the construction or expansion of a ten (10) car parking lot containing or that will contain 10 or more vehicle spaces for a municipal, institutional, commercial, industrial, or multi-family structure or purpose.	Waived. To be governed by the Plan of Record and Comprehensive Permit.

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<b>C. TOWN OF UPTON FEE, BOND OR OTHER REQUIREMENTS</b>				
<u>REGULATION</u>	<u>TITLE</u>	<u>DESCRIPTION</u>	<u>REQUIRED</u>	<u>PROPOSED</u>
Town Bond, Security, Building Permit Fees and other Fees and Related Costs/Requirements				To be governed by Comprehensive Permit.
Department of Public Works	Fee and Service Schedule	Schedule of Water Rates and Fees	Application Fee, Standard Inspection Fee, Service Connection Fees, Semi-Annual Service Charges, Backflow Inspection Fees, and Field Services.	To be governed by Comprehensive Permit.

**Note 1:** \*\* Note that pursuant to 760 CMR 56.00 and as specifically described under 760 CMR 56.05(7), “zoning waivers are required solely from the “as-of-right” requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district.” Accordingly, any waivers that reference special permit requirements are included only for illustration purposes.