



# TOWN OF UPTON, MASSACHUSETTS

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## LAND USE & INSPECTIONAL SERVICES

*\*Revised 10/18/23 to reflect correct Owner and Applicant information*

To: Upton Zoning Board of Appeals  
From: Michael Antonellis, Planner (Dir. of LUIS)  
Date: October 18, 2023  
RE: 47 Main St – Application for Comprehensive Permit

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### I. Location



#### LU&IS DIRECTOR

Michael Antonellis • [mantonellis@uptona.gov](mailto:mantonellis@uptona.gov)

#### LU&IS ADMINISTRATOR

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## II. Application Information:

Address: 47 Main Street  
Applicant: Lobisser Building Corporation\* (*CORRECTED 10/18/23*)  
Owner: Pedersen Family Living Trust\* (*CORRECTED 10/18/23*)  
Application: Comprehensive Permit  
Governing By-law: Local bylaw N/A; State law MGL 40B; Regulations 760 CMR 56.00  
Zoning District: SRA – Single Family Residential - A

Sent to All Town Boards for Comment: **9/18/23**

Advertising Dates: October 3<sup>rd</sup> & October 10<sup>th</sup>, 2023  
Advertised in: Worcester Telegram & Gazette  
Notices Sent:

### Public Hearing Deadlines:

Application Date: **9/15/2023\*** (*added 10/18/23*)  
Date of Meeting: **10/18/2023\*** (*added 10/18/23*)  
  
Public Hearing Deadline: **10/15/23** = Date of Filing + 30 Days;  
**10/18/23** - Extended by Applicant  
  
Close of Public Hearing: **4/15/2024** = Date of Hearing + 180 Days  
  
Decision Deadline: 40 Days After close of Public Hearing;  
Assuming 4/15/24 is the last Public Hearing the deadline date will be:  
**May 24, 2024** – Must be filed with Town Clerk’s Office  
  
Deadline to Appeal Decision: Decision Deadline or Date Filed with Clerk’s Office + 20 days:  
**June 13, 2024** – Assuming decision is filed on the noted May 24, 2024  
Decision Deadline.

## III. Proposed:

From Application Document:

*“Develop 68 units of mixed-income multifamily housing and accessory uses. Project includes 105 parking space, 24 of which are located in 3 detached garage buildings”*

## IV. Standards for Review – 760 CMR 56.05(4)

### (4) Scope of Board Hearing.

(a) General Principle. Consistency with Local Needs is the central issue in all Comprehensive Permit applications before the Board. Not only must all Local Requirements and Regulations applied to the Applicant be Consistent with Local Needs, but decisions of the Board must also be Consistent with Local Needs. The Board shall not address matters in the hearing that are beyond

its jurisdiction under M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.00 and that lie solely within the authority of the Subsidizing Agency.

(b) **Commentary.** In its conduct of a hearing, the Board should make itself aware of the detailed provisions for burden of proof and evidence, set forth in 760 CMR 56.07(2) and (3), that the Committee would apply to the appeal of a Board decision.

(c) **Denial.** In the case of the denial of a Comprehensive Permit, the issue shall be whether the decision of the Board is Consistent with Local Needs.

(d) **Approval with Conditions.** In the case of approval of a Comprehensive Permit with conditions or requirements imposed, the issues shall be:

1. first, whether the conditions and/or requirements considered in aggregate make the building or operation of such Project Uneconomic; and
2. second, if so, whether such conditions and/or requirements are Consistent with Local Needs. A condition which makes a Project Uneconomic will not be removed or modified if as a result of such action the Project would not be Consistent with Local Needs.

*The ZBA should reference 760 CMR 56.00 and the corresponding 40B Handbook for additional guidance.*

## **V. Consultants**

### **Town of Upton Comprehensive permit Rules and Regulations:**

4.01: When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees.

Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

- Staff suggests that the ZBA make a finding that outside consultants are needed to assist the board;
  - o Staff confirms that the town lacks necessary expertise to perform adequate review concerning much of the application material submitted;
- Staff has provided the ZBA with a proposed scope of services and contract for execution by Stantec;
- Staff has provided complete proposed scope and contract for the applicant's review.
  - o The applicant has agreed to the proposed scope and contract as presented by Stantec;
  - o While staff has email confirmation of the applicant's approval, the ZBA should still ask the applicant to confirm acceptance of Stantec as a qualified 3<sup>rd</sup> party Peer Review Consultant and the proposed scope of work;
- The ZBA and Applicant should be aware that if new information or studies are presented throughout the public hearing process which may require additional peer review services for which the applicant and ZBA will have to agree on a scope of work prior to peer review;

- And that any funds needed to provide additional review outside the original scope must be provided prior to requesting the peer review;
- That the applicant agrees to provide any necessary extensions of time throughout the public hearing for any additional peer review needed for the ZBA to make a decision;