

RECORD AND RETURN TO:

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~ Recording Information Area ~

**TOWN OF UPTON**  
**Zoning Board of Appeals**  
Town Hall  
One Main Street  
Upton, MA 01568

**DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT**  
**G.L. c. 40B, §§ 20-23**

APPLICANT: Lobisser Building Corp., a Massachusetts Corporation with an address of 1 Charlesview Road, Hopedale, Massachusetts (“Applicant”)

PROPERTY: 47 Main Street, Upton, Massachusetts (the “Property” or the “Site”)

ASSESSORS’ MAP: Assessors Map 202, Parcel 108

PLAN OF RECORD: As Defined in Decision

PROPERTY OWNER: PEDERSEN FAMILY LIVING TRUST u/d/t dated January 26, 1999

DEVELOPMENT NAME: UPTON APARTMENTS

DATE: August 21, 2024

**I. PROCEDURAL HISTORY**

1. An application for a Comprehensive Permit was received by the Town of Upton Zoning Board of Appeals (“Board”) on or about September 15, 2023. (“Application”). The Application proposed the development of sixty-eight (68) rental units, which was later reduced to sixty (60) rental units, which will be contained in one four-story building at the Property (the “Project”). The Project

includes three vehicle garage buildings including enclosed bicycle storage, co-working space, an office/leasing area, a package room, a fitness room, a grill area, a dog park/wash, and a playground. The Project also includes a private roadway, on-site parking, stormwater management systems, landscaping and lighting improvements, and new utility connections with associated appurtenances.

2. After the Applicant agreed to an extension of the initial hearing date by letter, dated September 18, 2023, the Board commenced a duly noticed public hearing on October 18, 2023. With appropriate extensions agreed to by the Applicant, public hearings were held on the following dates: October 18, 2023; November 15, 2023; December 20, 2023; January 17, 2024; February 21, 2024; March 20, 2024; May 15, 2024; June 20, 2024; and July 17, 2024.
3. The Applicant, by a letter dated May 20, 2024, extended the Board's time to close the public hearing pursuant to 760 CMR 56.05(3) to August 1, 2024.
4. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application. The documents, correspondence, reports, plans and reviews, including those listed in Exhibit A, were submitted to and considered by the Board during the public hearing, and are incorporated by reference.
5. During the course of the public hearing process the Applicant made several revisions to the Project. Such revisions are reflected in the Plans defined herein. The total number of units was reduced from sixty-eight (68) to sixty (60) units. The basement level in the original building design was eliminated. The sewer connection design was modified to eliminate having the sewer line cross through a wetland and creating a temporary wetland disturbance. Revisions also included moving the driveway farther away from Whitney Lane to provide additional space to install screening. The garage buildings were repositioned to improve screening. The number of balconies was reduced. The building elevations were enhanced by providing greater articulation. The total number of parking spaces per unit was increased. The Applicant also made stormwater upgrades and modifications to the overall design to the satisfaction of the Board and its peer reviewers.
6. On July 17, 2024, the Board closed the public hearing. The Board held a duly noticed public meeting on August 21, 2024 to deliberate and finalize this written decision.

## **II. GENERAL FINDINGS**

7. The Property on which the Project is located is within the Single Residential A (SRA) Zoning District, as depicted on the "Zoning Map of Upton, Massachusetts, as amended" (§ 300-2.2. Map.), and as defined in Article 2. (Districts), § 300-2.1. (Establishment) of Chapter 300 of the "Bylaws of the Town of Upton, Massachusetts" or "Zoning Bylaw." The Property is currently wooded and vacant

and consists of 6.75 acres which is shown on the Plans of Record (defined below). The abutting land uses are predominately single family residential housing in addition to a funeral home located adjacent to the Property at 45 Main Street.

8. During the public hearing, the Applicant was assisted primarily by its project developer, Kevin Lobisser and David Pyne, Jr. of Lobisser Building Corp., and its engineers, Peter Lavoie and Michael Dean, P.E. of D&L Design Group. The Applicant was also assisted by its traffic consultant, Jeffrey Dirk, P.E., P.T.O.E. of Vanasse & Associates, Inc., its Architect, Jeremy Baldwin, R.A. of Maugel DeStefano Architects, and its Environmental Specialist, Goddard Consulting, LLC. The Applicant also had assistance by its attorney John Smolak, Esq. of Smolak and Vaughn LLP, and by its 40B Development Consultant Edward Marchant of EHM/Real Estate Advisor.
9. The Board utilized the services of Evan Drew, P.E., P.T.O.E. and David Glenn, P.E. of Stantec Consulting Services, Inc. (Stantec) to peer review the Applicant's Transportation Impact Assessment (TIA). The Board also utilized the services Vannary Tan, Civil Designer, and David Glenn, P.E., Senior Civil Engineer, of Stantec to peer review the civil engineering aspects of the Applicant's proposal and to peer review the Applicant's stormwater design. The Board also was assisted by Michael Antonellis, the Town Planner for the Town of Upton. Attorney Christopher J. Alphen served the Board as its technical consultant through the Massachusetts Housing Partnership 40B Technical Assistance program.
10. Throughout the public hearing process, the Board received significant input from departments and officials of the Town of Upton, including the: Select Board, Fire Department, Police Department, Conservation Commission, Historical Commission, Planning Board, Lakes & Ponds Committee, Sewer Department, Water Department, and others.
11. The Town of Upton Select Board provided a letter dated June 8, 2023, to MassHousing stating it had concerns about the suitability of the site to accommodate the Project. The Select Board did recognize, however, the Town's ongoing goal to meet the region's need for affordable housing. The Select Board opined at a joint hearing held on July 17, 2024, that the Board had followed all the procedural steps and properly evaluated the proposed project.
12. The Board received significant input from abutters and other interested persons throughout the hearing process.
13. The Application submitted by the Applicant complied with the Massachusetts Department of Housing and Community Development Comprehensive Permit Regulations, 760 CMR 56.05(2), and the Town of Upton Zoning Board of Appeals Rules and Regulations (March 2018).

## **II. JURISDICTIONAL FINDINGS**

14. The Applicant has demonstrated its eligibility to submit an application for a comprehensive permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
  - a. The Applicant is a Massachusetts Corporation and has indicated in the Application that it will conform to the limited dividend requirements of G. L. 40B, §§ 20-23, and by virtue of receiving the “Site Approval Letter” (as defined below) from the Massachusetts Housing Finance Agency (“MassHousing”) (“or “Subsidizing Agency”), establishing it is a limited dividend organization as defined under 760 CMR 56.02, thus satisfying the requirements of 760 CMR 56.04(1)(a). The Applicant has a principal address of 1 Charlesview Road, Hopedale, Massachusetts.
  - b. The Applicant has received a written determination of Project Eligibility from MassHousing (MassHousing ID No. 1192), pursuant to the Federal Home Loan Bank of Boston New England Fund (“NEF”) Program where MassHousing serves as the Subsidizing Agency, dated August 11, 2023 (the “Site Approval Letter”), to develop sixty-eight (68) units of rental housing on the Property, and thus, satisfying the requirements of 760 CMR 56.04(1)(b). A copy of the Site Approval Letter was provided to the Board with the Application.
  - c. The Applicant provided evidence that the Property is controlled by the Applicant. The Property is owned by Kenneth M. Pederson, Jr. and Diana B. Pedersen, Trustees of the Pedersen Family Living Trust u/d/t dated January 26, 1999, by a deed recorded with the Worcester Registry of Deeds in Book 22967, Page 307. The Applicant provided a copy of the purchase and sales agreement between it and the current owner, as amended. Thus, the Applicant has shown evidence of site control sufficient to qualify as an applicant for a Comprehensive Permit; thus, satisfying the requirements of 760 CMR 56.04(1)(c).
  - d. The Applicant has agreed to execute an affordable housing regulatory agreement with MassHousing (the “Regulatory Agreement”, further defined below) that limits its annual distributions in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by the Executive Office of Housing and Livable Communities formerly known as the Department of Housing and Community Development (EOHLC), as well as by MassHousing.
15. The Town of Upton (“Town”) did not meet the statutory minima set forth in G. L. c. 40B, § 20 or 760 CMR 56.03(3) to 56.03(7) at the time the Application was filed, as noted below:
  - a. At the time of the filing of the Application, the number of low or moderate

income housing units in the Town constituted 6.37% of the total year-round housing units in the Town, based on the available copy of the EOHLC Subsidized Housing Inventory, dated June 29, 2023. Thus, the Town does not meet the ten percent (10%) statutory minimum as described under 760 CMR 56.03(3)(a);

- b. The Town does not have information to indicate that existing Subsidizing Housing Inventory-qualified housing is located on sites that comprise more than one- and one-half percent (1.5%) of the total land area of the Town that is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) as described under 760 CMR 56.03(3)(b);
- c. The granting of a comprehensive permit for the Project will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year as described under 760 CMR 56.03(3)(c);
- d. The Town of Upton has an approved Housing Production Plan entitled “Town of Upton Housing Production Plan – 2023,” which was approved on August 30, 2023, but the Town was not eligible for certification within the meaning of 760 CMR 56.03(4) at the time the Applicant filed the Comprehensive Permit Application;
- e. The Town has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5);
- f. The Project does not constitute a Large Project pursuant to 760 CMR 56.03(6); and
- g. The Application does not constitute a “related application” pursuant to 760 CMR 56.03(7).

### **III. FACTUAL FINDINGS**

#### Project

- 16. The Project will consist of up to sixty (60) rental units, of which fifteen (15) units (or 25% of the total number of units if a different number of units is constructed) within the Project (hereinafter, the “Affordable Units” as further defined under Paragraph IV.A.2 below), and which Affordable Units shall be restricted to households whose maximum income does not exceed eighty percent (80%) of the applicable Area Median Income (“AMI”) adjusted for household size in

accordance with state requirements for low- or moderate-income housing. As proposed, the Project will consist of one four-story building. There will also be at least ninety-three (93) parking spaces at the Site for the 60 dwelling units. The Project includes a combination of surface parking and garage parking spaces noted above, enclosed bicycle storage, co-working space, an office/leasing area, a package delivery room, a fitness room, a grill area, a dog park/wash, and a playground. The Project also includes a private roadway, stormwater management systems, landscaping and lighting improvements, electric vehicle charging stations, and new utility connections with associated appurtenances.

#### Location of Project

17. The Project is located off Main Street (Route 140). The existing Site consists of one parcel (also identified as Parcel 202-108 on the Upton Assessors records) containing 6.74 acres. The Property consists of undeveloped, moderately dense forested land. Wetlands, as defined under the Massachusetts Wetlands Protection Act (MGL c. 131, Section 40) and as located on the Property and as confirmed with an Order of Resource Area Delineation (DEP File No 311-0799), issued on June 30, 2022 (“ORAD”). Nearby land uses include single family residential dwellings located to the west and north (Whitney Lane), to the north (Hazeltine Road), and to the east (School Street) of the Property. There are also residential land uses to the south of the Property (Main Street/Route 140) along with commercial uses including the Pickering & Son Upton Funeral Home/garage/office complex located at 45 Main Street. The Memorial Elementary School is located west of the Site at 69 Main Street.
18. Access to the Property will be via an entrance driveway off of Main Street (Route 140) between 45 Main Street and 51 Main Street.
19. A small portion of the Upton Center Historic District (UCHD), approximately 0.69 acres, is located at the southern frontage of the Property on Main Street. The entrance driveway to the Project is within the UCHD. No Project structures will be within the portion of the designated UCHD on the Property. A Project Notification Form was filed with the Massachusetts Historical Commission (MHC) on October 2, 2023. The MHC issued its determination on October 27, 2023, stating that *“After review of MHC files and the materials you submitted, it has been determined that the project is unlikely to affect significant historic or archaeological resources.”*

#### Civil Engineering, Site Design, and Stormwater Impact

20. The Board engaged peer review professionals from Stantec to evaluate civil engineering, site design, and stormwater impacts of the Project.
21. Stantec issued peer review reports outlining its comments relative to the Application, as amended. During the course of the public hearing, the Board finds the Applicant has satisfactorily addressed all of Stantec’s comments.

22. By a letter dated October 11, 2023, the Town of Upton Board of Assessors issued a letter noting no concerns about the proposal. The anticipated address of the Project will be 47 Main Street.
23. By a letter dated October 18, 2023, the Upton Conservation Commission issued a letter with several recommendations and determinations. The Conservation Commission opined that the Property “*is not shown on any MA National Heritage and Endangered Species Program maps or FEMA flood maps.*” The Conservation Commission recognized that the Property is subject to the Town of Upton Wetland Bylaw but for the Board’s grant of the Applicant’s requested waiver from the applicability of the Town of Upton Wetland Bylaw.
24. The Project will connect to the Upton municipal water system and the Upton municipal sewer system. As noted in the Comprehensive Permit Application, an 8” water main extends up Main Street (Route 140), adjacent to the subject Site, and there is an 8” municipal gravity sewer within Main Street (Route 140) which ties into the Upton Wastewater Treatment Facility located at 43 Maple Avenue, which is approximately ½ mile from the Site. The Upton Water Superintendent did not indicate any concerns regarding the Project’s proposal to connect to the municipal water and sewer system. According to the Memorandum to Dennis Westgate, DPW Director, from Tighe & Bond, dated June 10, 2024, “the existing system will be able to handle the additional flows from the 47 Main Street development.”
25. By a letter dated January 19, 2024, Captain Daniel Lazarz of the Upton Fire & EMS Department issued a comment letter to the Board regarding the proposed Project, with comments addressing access and project configuration. The Applicant has addressed such comments through modifications of the Project plans, including the elimination of the basement level of the proposed building. The Applicant submitted a Swept Path analysis using a template of the Fire Department’s largest fire fighting vehicle.

In response to the Applicant’s modification, by email dated May 15, 2024, Captain Lazarz stated that “[t]he revised design and plans responded to the key items and issues in our review letter except one item regarding standby power.” In response to the comment about standby power, the Applicant responded by stating that a standby generator was not necessary.

26. By a letter dated January 4, 2024, Captain Lazarz concluded that “*static and residual pressure of the Town Water system and the proposed 8” water main loop should comfortably provide the necessary water supply for the required combined sprinkler standpipe system and the needed fire flow for the two private water/fire main for a building of this size and construction type.*” Additionally, in Captain Lazarz’s January 19, 2024 memorandum, he found that “*Fire & EMS and code enforcement had a preliminary meeting with the development Team and*

*confirmed this general water supply arrangement is acceptable and will provide a sufficient fire flow that will need to be confirmed in a detailed design of the building.”*

27. All fire hydrant locations have been approved by the Fire Chief. The proposed Swept Path Analysis turning templates for access are also acceptable to the Fire Department.
28. The Board finds that the landscaping proposed by the Applicant, and as conditioned by this decision, is sufficient in light of the site disturbance that the Project will entail. The landscape design objective for the proposed development will be to enhance the built environment through the creation of a sustainable landscape that blends into the Site’s natural surroundings. The overall design will emphasize the use of low maintenance, native plantings and strive to integrate the proposed development’s needs into the Site’s surrounding environment. The proposed landscape design is consistent with the quantity and quality provided in other similar developments. The Applicant agreed during the public hearing that the fill to be used for the Project will exclusively come from Kimball Sand Co. Inc of Blackstone Massachusetts and/or Pyne Sand & Stone Co. Inc., of Douglas, Massachusetts unless another source of fill is authorized by the Board of Health. Slip verifications shall be provided to the Building Commissioner and Board of Health for any and all fill used on the site
29. Throughout the public hearing process, the Board carefully assessed the Project’s stormwater impact. Specifically, the Board was concerned with the stormwater impacts to neighboring parcels. As confirmed through third party peer review, the stormwater management system has been designed in compliance with the Mass Stormwater management standards in accordance with 310 CMR 10.05(6)(k) through (q) and defined in detail in the MassDEP Stormwater Management Handbook for new construction.
30. Access to the Site is to be provided by a single unsignalized driveway located along Main Street, a state jurisdiction roadway. This location requires a new access driveway, as shown on the Plans of Record.
31. The Project will provide a total of ninety-three (93) parking spaces, comprised of seventy (70) surface parking spaces located on the Project Site and twenty-three (23) garage parking spaces located in three detached garage structures (2 garage structures with 7 parking bays each and 1 garage structure with 10 parking bays). One of the 24 garage bays will be reserved for covered bicycle storage. There will also be outdoor bicycle racks.
32. The Board’s peer reviewer Stantec concurred with the findings of the Applicant’s Transportation Impact Assessment (TIA) prepared by Vanasse Associates, Inc. (VAI). After public hearing discussion, and input from the Upton Police Department, the Board requested that the Applicant provide additional data regarding the traffic impact to the intersection at Main Street and Fiske Avenue.

The Applicant provided additional data regarding the Fiske Avenue intersection. In turn, Stantec reported that it “*concurs with the findings in VAI’s Updated Traffic Impact Assessment as it relates to their development’s impacts to the intersection.*” Stantec found that VAI “*sufficiently addressed all comments.*” Stantec agreed with the conclusion of the updated Vanasse June 15, 2023 TIA: “*The Project will not result in a significant impact (increase) on motorist delays or vehicle queuing over Existing or anticipated future conditions without the Project (No-Build conditions), acknowledging that one or more movements at the study area intersections are currently operating or are predicted to operate at or over capacity (i.e. level-of-service (LOS) “E” or “F” respectively) independent of the Project.*”

33. VAI, the Applicant’s Traffic engineer, has also developed a Transportation Demand Management (TDM) plan which shall be implemented by the Applicant.
34. The Project, as conditioned herein, will add needed affordable rental units in the Town.
35. The Board finds that the conditions imposed in Section IV of this decision are necessary in order to address matters of “Local Concern” as defined under 760 CMR 56.02.
36. Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit B, the Applicant has requested, and the Board has granted, those waivers from the Upton Zoning Bylaw and other local by-laws and regulations as specified therein. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of permit or inspection fees has been granted except as otherwise conditioned herein. Any subsequent revision to the Plans of Record (defined below), including but not limited to revisions in any final construction plans, which requires additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).
36. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting waivers may have an adverse impact on matters of “Local Concern.”
37. The Board further finds that the conditions detailed below appropriately address these matters of Local Concern in a manner that outweighs the regional need for affordable housing. The Board finds that the conditions imposed below address local and regional housing needs while properly protecting valid issues of Local Concern.
38. The Board finds that the construction of the Project, as conditioned, will be “Consistent with Local Needs” as defined under 760 CMR 56.02.
39. On the basis of the testimony of the Applicant, the Board’s technical consultants,

Town officials, Town staff, and others, the Board finds that the need for the affordable housing produced by the Project outweighs the matters of Local Concern identified during the public hearing process, subject to the conditions set forth below.

## **DECISION**

Pursuant to G.L. c.40B, the Zoning Board of Appeals of Upton, after closing the public hearing on the Application and making the findings of fact set forth above, voted at its meeting on August 21, 2024, by a vote of 5 to 0, which constitutes a majority vote of the Zoning Board of Appeals of Upton, to grant a Comprehensive Permit to the Applicant for the construction of sixty (60) dwelling units on the Property, with associated infrastructure and improvements, subject to the conditions set forth below (this “Comprehensive Permit”).

## **IV. CONDITIONS**

The grant of this Comprehensive Permit is subject to compliance with all of the following conditions:

### **A. REGULATORY CONDITIONS**

- A.1 The total number of dwelling units to be constructed at the Premises shall be sixty (60), as shown on the Plans of Record as defined under Paragraph IV.B.3. below.
- A.2 Fifteen (15) of the sixty (60) dwelling units shall be affordable units. As set forth in MassHousing’s Site Approval Letter, the affordable units shall be marketed and rented to eligible households whose annual total household income may not exceed 80% of the applicable area median income, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (the “Affordable Units”). Subject to approval by the Massachusetts Executive Office of Housing and Livable Communities (the “EOHLC”), all of the units shall be eligible to be included in the Town’s Subsidized Housing Inventory (“SHI”), as maintained by EOHLC.
- A.3 The Applicant shall notify the Board and the Town Planner when building permits are issued and cooperate with the preparation of request forms to add the units to the SHI.
- A.4 The Applicant shall notify the Board and the Town Planner when occupancy permits are issued and cooperate with the preparation of request forms to add the units to the SHI permanently.
- A.5 The Affordable Units shall permanently remain affordable, for the longest period allowed by law, so that the Affordable Units shall continue to serve the public

purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

- A.6 The Applicant shall enter into the Regulatory Agreement, in a form and substance reasonably acceptable to the Subsidizing Agency, and reasonably acceptable to the Board and its legal counsel, and countersigned by the Subsidizing Agency as required under G.L. c.40B, which shall be recorded with the Registry of Deeds against the Property prior to issuance of any building permit for the Project. Board acknowledgement of the Regulatory Agreement shall not be unreasonably withheld. To the extent that there is a conflict between the terms of the Regulatory Agreement and the provisions of this Comprehensive Permit, the terms of the Regulatory Agreement shall prevail.
- A.7 A springing affordable restriction and regulatory agreement, in a form mutually acceptable to the Town, Town Counsel, and the Applicant, and in a form and substance reasonably acceptable to the Subsidizing Agency (the “Local (Springing) Regulatory Agreement”), shall be recorded with the Registry of Deeds against the Site before issuance of any occupancy permit for the Project; provided, however, that the Local Springing Regulatory Agreement shall be recorded after the MassHousing Regulatory Agreement is recorded, and prior to any mortgages or other liens being recorded.
- A.8 The Local (Springing) Regulatory Agreement: (i) shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (ii) shall require that all of the affordable units in the Project shall be rented in perpetuity to low and moderate income households as that term is defined in M.G.L. Chapter 40B, Sections 20-23; (iii) shall restrict or limit the dividend or profit of the Applicant only if and as provided in the Regulatory Agreement, and no independent limitation on dividends or profits is imposed hereunder; and (iv) shall restrict the number of allowed units as set forth in the Comprehensive Permit and if the Comprehensive Permit is modified in the future, then the Applicant shall request a modification of the Local (Springing) Regulatory Agreement to conform to the Permit as modified. The Local (Springing) Regulatory Agreement shall not be interpreted to impose any independent restriction or limitation or additional requirement as to the dividend or profit of the Applicant beyond those required by the Subsidizing Agency.
- A.9 The Local (Springing) Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the holder of the use restriction in accordance with 760 CMR 56.05(13).
- A.10 While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible for monitoring compliance with affordability requirements pursuant thereto; however, the Town may request and shall be provided by the Applicant

with all information that is provided to the Subsidizing Agency and may take any steps allowed under G.L. c. 40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.

- A.11 When the Local (Springing) Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee.
- A.12 At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall provide the Town with a reasonable monitoring fee. Said monitoring fee shall be reasonably consistent with the monitoring fees previously required by the Subsidizing Agency.
- A.13 To the extent allowed under G.L. c. 40B and the regulations promulgated thereunder and other applicable law, and subject to the approval of the Subsidizing Agency, with respect to at least 70% of the Affordable Units, the Applicant shall provide a preference category in the initial lease-up for Qualified Occupants, who are defined as : (i) Upton residents which shall be defined as a household in which one or more members is living in the Town of Upton at the time of the resident's application. Documentation of residency should be provided such as rent receipts, utility bills, street listing or voter registration listing; (ii) Town-employees including but not limited to teachers, janitors, firefighters, police officers, librarians, or town hall employees; (iii) Employees of businesses located within the Town of Upton; or (iv) Households with children attending the Town of Upton schools, Mendon Upton Regional School District schools, and Blackstone Valley Regional Vocational Technical High School. The Town shall be responsible for providing the Applicant with all necessary information and data to support the local preference request as further detailed in paragraph IV.A.17.
- A.14 If the Subsidizing Agency approves a local preference, it shall be implemented by the Applicant and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference set forth herein.
- A.15 The foregoing local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units shall be borne by the Applicant.
- A.16 The Applicant shall submit to the Board a report on marketing activity at the Project during the initial lease-up, on a quarterly basis, demonstrating compliance with the local preference requirement pursuant to the plan approved by the Subsidizing Agency as set forth below; provided, however, that the reporting obligations to the Town shall not exceed the requirements imposed by the Subsidizing Agency.
- A.17 The Applicant shall cooperate with the Town's preparation of any documentation required for approval of the local preference categories by the Subsidizing

Agency. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or EOHL, then this condition shall be void.

- A.18 The Applicant shall develop an initial lease-up plan for the Affordable Units for review and approval of the Subsidizing Agency, said plan to conform to any and all affirmative action requirements or other requirements as imposed by federal or state regulation and shall, to the extent approved by the Subsidizing Agency, conform with the local preference requirement set forth above.
- A.19 Profits from the Project in excess of those allowed under applicable law and regulations shall be utilized as provided in the Regulatory Agreement with the Subsidizing Agency and as required and provided for under G.L. c.40B and 760 CMR 56.00.
- A.20 The Applicant shall annually provide the Board or its designee with copies of any and all documents and statements provided by the Applicant to the Subsidizing Agency or its designated auditor of the Applicant's costs and revenues for informational purposes upon request by the Town.
- A.21 The Town, by and through the Board or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Comprehensive Permit.
- A.22 Prior to receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Commissioner and the Board.
- A.23 The Affordable Units shall be distributed within the building in accordance with a distribution plan approved by the Subsidizing Agency prior to the granting of Final Approval.
- A.24 The Affordable Units shall have equal access to all common infrastructure and amenities located within the Project.

## **B. General Conditions**

- B.1 The Applicant shall comply with all local by-laws, rules and regulations of the Town of Upton and its boards, officers and commissions in effect as of the date

the Comprehensive Permit Application was filed with the Town, unless expressly waived hereunder.

B.2 The Project shall conform to all applicable state and federal laws, codes, regulations, and standards including, but not limited to, the following:

- a. Massachusetts Building, Plumbing, and Electrical Codes;
- b. The Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and its associated Regulations at 310 CMR 10.00, if applicable;
- c. Massachusetts Department of Environmental Protection Sewer Extension Regulations, if applicable;
- d. DEP Stormwater requirements;
- e. Water Quality Regulations, 314 CMR 9.00, relating to stormwater, updated February 2008; and
- f. U.S. Army Corps of Engineers, Regulatory Program under Section 404 of the Clean Waters Act.

B.3 Except as may be provided for in the following Conditions, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this condition, which for purposes of this Comprehensive Permit shall be considered the approved plans for the Project (“Plans of Record”). The Plans of Record shall consist of the plan set entitled:

A set of signed and stamped civil engineering plans and specifications, consisting of 19 sheets, entitled “Upton Apartments, 47 Main Street, Upton, Massachusetts, Preliminary Residential Development Plans, Comprehensive Permit Application, Upton Zoning Board of Appeals, dated September 13, 2023, as most recently revised on July 17, 2024, unless otherwise shown, prepared by D&L Design Group, consisting of the following:

**SHEET TITLE (SHEET NUMBER)**

- a. Cover Sheet (Sheet C-0.0);
- b. General Notes, Abbreviation and Legend (Sheet C-1.0);
- c. Existing Conditions (Sheet C-2.0);
- d. Overall Site Plan (Sheet C-3.0);
- e. Site Plan (Sheet C-4.0);
- f. Grading & Drainage Plan (Sheet C-5.0);
- g. Utility Plan (Sheet C-6.0);
- h. Construction Details (Sheet C-7.1);
- i. Construction Details (Sheet C-7.2);
- j. Construction Details (Sheet C-7.3);
- k. Construction Details (Sheet C-7.4);
- l. Landscape Plan (Sheet C-8.0);
- m. Erosion Control Plan (Sheet C-9.1);
- n. Erosion Control Plan (Sheet C-9.2);
- o. Lighting Plan (Sheet C-10.1) (Rev. January 8, 2024);
- p. Lighting Details (Sheet C-10.2)(Rev. January 8, 2024);

- q. Basin Cross Sections (C-11.0);
- r. Profile Sheet (Sheet C-12.1); and,
- s. Profile Sheet (Sheet C-12.2).

Collectively, the “Civil Plans.”

A set of signed and stamped architectural plans and specifications, consisting of -- sheets, entitled “Upton Apartments, 47 Main Street, Upton, Massachusetts,” dated September 7, 2023, as most recently revised on June 28, 2024, unless otherwise shown, prepared by Maugel DeStefano Architects, Inc., consisting of the following:

**SHEET TITLE (SHEET NUMBER)**

- a. Cover Sheet (Sheet A.000);
- b. Site Plan (Sheet A.100);
- c. First & Second Floor Plan (Sheet A.101);
- d. Third & Fourth Floor Plan (Sheet A.102);
- e. Roof Plan (Sheet A.103);
- f. Elevations (Sheet A.201);
- g. Building Sections (Sheet A.301);
- h. 1-Bed Units Plans (Sheet A.601);
- i. 2-Bed Units Plans (Sheet A.602);
- j. 3-Bed Units Plans (Sheet A.603);
- k. Southwest Perspective (Pres-01);
- l. Northwest Perspective (Pres-02);
- m. Southeast Perspective (Pres-03); and
- n. Northeast Perspective (Pres-04).

Collectively, the “Architectural Plans,” and with the Civil Plans, the “Plans of Record.”

The interior and exterior of all buildings and structures shall be constructed substantially as represented in the Application, as revised, and on the Plans of Record. However, changes to the interior layout of the units or minor modifications to the interior unit sizes shall not be considered “changes” to the Plans of Record as long as the revisions do not change the total number of units in the building or the number of bedrooms or bathrooms contained in a unit.

- B.4 All the conditions contained in the Plans of Record, specifically the specifications and conditions contained in the “General Notes” contained in Sheet No. C-1.0 of the Plans of Record, shall be conditions of this Decision and hereby are incorporated herein by reference.
- B.5 The Applicant shall submit to the Building Commissioner for review and administrative approval the Plans of Record (“Final Plans of Record”) that conform to the requirements of all conditions and requirements described in the Comprehensive Permit. Applicable sheets of the Final Plans of Record shall be

signed and sealed by the Professional Land Surveyor of record, the Professional (Civil) Engineer of record, and the Registered Landscape Architect of record. Final Architectural Plans shall be stamped by a Registered Architect. The Final Plans of Record shall be submitted to the Building Commissioner at least forty-five (45) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the "Final Plans of Record Submission Date"). If peer review is deemed necessary by the Building Commissioner, the Board's peer review engineers shall provide an estimated reasonable cost for a peer review to the Building Commissioner and the Applicant for review of materials for completeness and compliance with this Comprehensive Permit within fourteen (14) days of Applicant's submission of Final Plans of Record.

- B.6 If the Building Commissioner believes that deficiencies exist in the post-permit documents and plans, the Building Commissioner shall notify the Applicant of the deficiencies and the Applicant shall have an opportunity to cure the deficiencies and the Applicant and the Board may mutually agree to extend the 45-day period for review to cure the deficiencies.
- B.7 If the deficiencies are not timely cured, then the Board may vote to determine that the relevant conditions of the Comprehensive Permit have not been satisfied and the Applicant may avail itself of any avenue of appeal that may exist or may take further action to make additional submissions to the Board and its peer review consultant, to try to obtain the approval required by this condition, so long as this Comprehensive Permit has not lapsed and so long as the Applicant pays the reasonable fees of the peer review consultant.
- B.8 All structures and Site improvements within the Project Site shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, sewer and water infrastructure and the Applicant shall bear the cost of maintenance, repairs, replacement, snow plowing and trash removal for same in perpetuity.
- B.9 The driveway shall be maintained as a private driveway. The water main on private property shall be maintained by the Applicant.

### **Water, Sewer and Utilities**

- B.10 The Project shall be served by municipal sewer and water, at the Applicant's sole expense, in accordance with the Department of Public Works (DPW) requirements. All facilities shall be installed as shown on the Final Plans of Record.
- B.11 The Applicant shall be required to comply with DPW Water and Sewer Connection Requirements, including Chapter 233 (Sewers) and other written requirements and policies of the DPW's Water and Sewer Division.

- B.12 All water and sewer infrastructure facilities for the Project shall be constructed and fully operational prior to the issuance of the first occupancy permit for the Project; provided, however, that the required water and sewer infrastructure shall not include building service tie-in infrastructure for any building that has not yet been built or for which an occupancy permit has not yet been requested.
- B.13 Fire hydrants shall be located as required by the Fire Chief for the Town of Upton and shall be operational when the first framing of any structure begins.
- B.14 Final drawings showing the on-Site water distribution system and sewer system shall be submitted to the respective departments for their review and approval.
- B.15 All utilities within the Premises shall be installed underground, with the exception that the connection point for the electrical service in Main Street may be on the premises and may require additional above ground infrastructure at the discretion of National Grid and/or other utility service providers.
- B.16 All water and sewer construction and materials shall be in accordance with the requirements of the DPW, as well as any applicable intermunicipal agreements. The Applicant shall be responsible for the design and installation of the utilities servicing the Project. All details shall be satisfactory to the Town's DPW Director or their designee. The connections shall meet all connection requirements. Contractors shall be duly licensed as required by the Town.
- B.17 The Applicant shall be required to comply with the DPW and Public Works regulations including construction and design regulations. All materials used will need to comply with said regulations.
- B.18 The Applicant shall install sub-meters at each multifamily dwelling unit. There will be separate electric meters for each unit (heat/hot water/cooking/plug electric) and for "house" electric uses, including the garages and Site lighting. There will be a metering system to bill residents directly for water/sewer usage, as applicable. Inspections will be made periodically during construction by the DPW and any charge will be passed through to the Applicant. The Applicant shall pay the Connection Fees due in accordance with the agreements by and between the Applicant and the Town of Upton. Notwithstanding the foregoing, pursuant to the waiver granted herein, the Applicant shall be responsible for the payment of fifty percent (50%) of the sewer connection fees for the affordable units only.
- B.19 The Applicant shall submit final construction plans to the DPW in order to receive the required permits for the construction of the sewer and the building utility connections, and the comments contained within the Water and Sewer Design Peer Review Memorandum, dated June 10, 2024, to Dennis E. Westgate, Director of Public Works, from Emily Church and Lauryn Patterson, of Tighe & Bond, shall be completed to the reasonable satisfaction if the Director of Public Works.

B.20 The Applicant shall work with the DPW Director to determine and confirm the necessary fire flow and adjust the design as needed prior to the issuance of a building permit. The Applicant shall retain a qualified third-party contractor to undertake a flow test to confirm adequacy of fire flow pressure, and will provide the results to the DPW and Fire Department, and testing shall be coordinated with the DPW. The Applicant shall work with the DPW Director to re-check the sewer line slopes to ensure there is adequate slope so that no backups occur.

### **Police, Fire, and Emergency Medical Conditions**

B.21 Prior to issuance of any building permits for the Project, the Applicant shall, if required by the Town, conduct, or submit a report if completed, a hydrant flow test to determine available flow and pressure to fight a fire. The results of any such test shall be provided to the Water Superintendent and Fire Chief. In the event that there is insufficient water pressure or volume for fire protection, plans shall include on-Site improvements such as a fire pump or off-Site improvements to the municipal water distribution system as required to maintain a residual pressure of 20 pounds per square inch (psi) in the municipal water distribution system. The procedure for flushing, disinfecting and pressure testing of the water mains shall be approved by the Town's Water Superintendent.

B.22 The building shall be sprinklered as required by Building and Fire Codes, including attics and storage spaces. The Applicant shall submit final fire alarm/sprinkler plans to the Fire Chief for review and approval. The Project shall install the sprinklers in compliance with M.G.L. c. 148, §26I.

B.23 The building shall have an elevator and the radio intercom infrastructure or telephone as requested by public safety officials. This shall include bi-directional amplifiers for police and fire communications. The building shall be equipped with an elevator that returns to the ground floor when a power outage occurs.

B.24 Compliance with all applicable State Building Code and NFPA requirements relating to fire access and safety shall be met. A Supra brand rapid entry key box shall be installed.

B.25 The Project shall maintain fire access to all four sides of the residential structure at all times consistent with the Final Plans of Record.

B.26 Any fences or obstructions to be constructed shall be approved by the Upton Fire Department to confirm that they do not impede access or operations.

B.27 All of the units within the Project shall be handicap adaptable and accessible without structural changes. There shall be elevator access to all floors. All doors on accessible routes shall comply with 521 CMR 20.00 and 521 CMR 26.00. To the extent possible, and without changes to the proposed floor plans, the doors within the Project shall provide thirty-six (36) inch doors.

B.28 The building shall provide accessibility for those who are blind or have low vision and comply with all other accessibility requirements in accordance with the requirements of the Massachusetts Architectural Access Board Regulations (521 CMR).

### **Wetlands/Environmental Conditions**

B.29 Wetland resource areas, as defined under the Massachusetts Wetlands Protection Act regulations, 310 CMR 10.00, are located on the Property as confirmed by an Order of Resource Area Delineation (ORAD) issued on June 30, 2022. A Notice of Intent was filed with the Upton Conservation Commission (UCC) on May 22, 2024. The UCC public hearing for the NOI was opened on June 12, 2024. Prior to the commencement of Site Work, a Wetlands Order of Conditions shall have been issued.

B.30 Fertilizer, pesticide and herbicide use shall be minimized to the extent consistent with good landscape maintenance practice.

B.31 The use of road salt shall be minimized but shall be allowed to the extent necessary to protect the safety of the residents of the Project.

B.32 Prior to issuance of any building permits for the Project, the Applicant shall:

- a. Prepare a Stormwater Pollution Prevention Plan (SWPPP) and submit a Notice of Intent to obtain coverage under the National Pollutant Discharge Elimination System General Permit (NPDES) Construction Permit for Massachusetts from the United States Environmental Protection Agency, as necessary for construction of the Project at the Premises. The following items shall be addressed in the SWPPP: estimated volume of excavated material and location of stockpile material; noise and dust control; means/methods for removal of ledge/refusal; and provisions to control groundwater as noted in the June 10, 2024 letter to the Board from Stantec.
- b. Provide procedures that outline the specific operation and maintenance measures for all stormwater/drainage facilities, including any temporary facilities that shall be employed to minimize or eliminate the threat of transmission of mosquito borne diseases to the residents of the Project and nearby residents.

B.33 The Stormwater Operation and Maintenance Manual contained in the Stormwater Report must be followed by the Applicant, present and future owners, and property management companies, as may be modified as required within a Wetlands Order of Conditions to be issued for the Project.

B.34 The conditions and specifications contained in the Applicant's Erosion Control

Plan and the proposed inspection programs contained in the drainage report are hereby incorporated herein by reference, as may be modified as required within a Wetlands Order of Conditions to be issued for the Project.

B.35 The Applicant shall submit, at least every two weeks in which construction activity occurs on Site and for as long thereafter as the ground remains unstabilized, a report certifying that, to the best of his or her knowledge and belief, based on a careful Site inspection, all work is being performed in compliance with the Stormwater Operation and Maintenance Manual unless otherwise required by the Wetlands Order of Conditions for the Project. All fill used by the Project shall come from either Pyne Sand & Stone Co. Inc, of Douglas, Massachusetts, or Kimball Sand Company Inc, of Blackstone, Massachusetts unless another source of fill is authorized by the Board of Health.

B.36 To the extent that the provisions related to stormwater, erosion and sedimentation control, and wetland resource areas in this Comprehensive Permit are inconsistent with the requirements of a Wetlands Order of Conditions, the terms and conditions of the Wetlands Order of Conditions shall control. The Board shall be notified by the Applicant of the adjustments required for conformance with the Wetlands Order of Conditions. Unless the Board makes a determination in accordance with this Decision and 760 CMR 56.05(11) that the required modifications constitute a substantial change, this Comprehensive Permit shall be deemed modified to conform to the terms of the Wetlands Order of Conditions.

#### **Traffic/Traffic Safety Conditions / Sidewalks**

B.37 All utility work and any other roadwork, within any public right of way shall be performed and conducted in conformance with the regulations of the governmental authority having jurisdiction over the same, whether it is the Town or the MassDOT, as applicable, including requirements for street opening permits and trench permits. All licensing, and all such work shall be performed in accordance with the governmental authority having jurisdiction over the same, whether it is the Town or the MassDOT, as applicable.

B.38 The Applicant shall patch each trench for any work that occurs in a public way for the Project as required by the MassDOT.

B.39 The Applicant shall ensure that emergency vehicles can adequately maneuver through the Site. The Upton Fire Department shall approve any final construction plans to ensure compliance with this condition.

B.40 Signs, landscaping and other features located within sight triangle areas shall be designed, installed and maintained so as not to exceed 2.5-feet in height. Snow windrows located within sight triangle areas that exceed 3.5-feet in height or that would otherwise inhibit sight lines shall be promptly removed.

B.41 Americans with Disabilities Act (ADA) compliant wheelchair ramps and

crossings shall be provided at all pedestrian crossings internal to the Project Site in accordance with the Massachusetts Architectural Access Board (MAAB) regulations.

- B.42 Where perpendicular parking is proposed the drive aisle behind the parking shall be a minimum of 23 feet in order to facilitate parking maneuvers. Vehicles exiting the Project Site shall be placed under STOP-sign control with a marked STOP-line provided.
- B.43 The surface parking area shall include a total of at least six (6) electric vehicle charging stations. The Project parking spaces, excluding those spaces with the garages, shall be available for visitors. There shall be a minimum of eight (8) accessible parking spaces.
- B.44 All signs and pavement markings to be installed within the Project Site shall conform to the applicable standards of the Manual on Uniform Traffic Control Devices (MUTCD).
- B.45 A sidewalk shall be provided along the Project Site driveway that extends to Route 140 where it will connect to the existing sidewalk along the north side of Route 140, with such connection to be in accordance with MassDOT requirements.
- B.46 Signs and landscaping to be installed as a part of the Project within the intersection sight triangle areas of the Project site driveway shall be designed and maintained so as not to restrict lines of sight.
- B.47 The Project shall include at least 93 parking spaces. Parking spaces, including garage spaces, shall be allocated and leased in accordance with any applicable EOHLC requirements, if any. The Board takes no position on how the garage spaces are allocated.
- B.48 Parking on Main Street shall be prohibited. No Parking signage on the main access driveway will be installed in locations to be approved by Fire and EMS agree with, and No Parking signage will be added near the entrance curb area if approved by the MassDOT.
- B.49 A MassDOT Vehicular Access Permit will be required for the Main Street access. If Main Street is scheduled to be repaved, the Applicant shall work with the MassDOT as a part of the permitting process to coordinate work in conjunction with any proposed repaving. The Applicant will make a complete filing with MassDOT which will include design plans and related details as may be required by MassDOT. The Applicant will comply with all terms and conditions contained within a MassDOT Vehicular Access Permit to be issued for the Project.
- B.50 In an effort to encourage the use of alternative modes of transportation to single-occupant vehicles (SOVs), the following Transportation Demand Management

(TDM) measures shall be implemented as part of the Project:

- a. A transportation coordinator shall be assigned for the Project to coordinate the TDM program;
- b. A “Welcome Packet” shall be provided to residents detailing available transportation options, including those offered by the Council on Aging (COA); and
- c. Secure bicycle parking shall be provided for residents and visitors.

### **Other General Conditions**

- B.51 All lighting for the Project shall be maintained in such a way that lights shall be shielded and directed so as to avoid light trespass exceeding 0.5 foot candles at the Property line or unshielded point sources of light visible from public ways or adjacent properties unless otherwise noted on the Final Plans of Record. The Project shall include Dark Sky compliant lighting.
- B.52 The Project lighting shall be installed in accordance with the Lighting Plan contained in the Final Plans of Record.
- B.53 No natural gas shall be used to service the Project. Natural gas or propane gas may be used for amenity features such as fire pits, and grills, if any.
- B.54 The Project shall include energy-efficient, all-electric mechanical systems, high R-Value insulation, LED lighting, lighting timers and Energy Star certified appliances.
- B.55 The Applicant shall comply with the Landscape Plan requirements included in the Final Plans of Record.
- B.56 Final design plans for the storm water management system shall comply with the Wetlands Order of Conditions.
- B.57 The Applicant shall provide 24/7 monitoring of the Project, either by on-Site management or an off-Site management entity that is available by phone 24/7. In the event the Applicant engages a management company, the Applicant shall post the name and telephone number of the management company in the building in a prominent place and shall provide the Board and Town with a current copy of the management contract upon request.
- B.58 The hours for trucks to collect or otherwise service the solid waste and recycling containers shall occur only during daylight hours between the hours of 7:00 AM and 6:00 PM. Solid waste and recycling facilities shall be provided as shown on the Final Plans of Record.
- B.59 The Applicant shall provide reasonable accommodation, in accordance with both

federal and state laws, if requested to assist any resident with disabilities with trash or other challenges they may face utilizing the services at Upton Apartments.

- B.60 All grading shall be consistent with the Final Plans of Record as revised and as approved by the Board during the public hearing based upon the peer review obtained during the public hearing. Notes shall be added to the grading plan to ensure the sidewalks are to be constructed at no greater than a 5% slope. The Project shall also conform to all applicable state Architectural Access Board and federal ADA requirements. The Property corner at the entrance of Main Street is very close to the 51 Main Street abutter's property corner. Accordingly, any work including earth removal shall be carefully monitored to ensure that the construction does not impact the abutter's property. The Applicant will investigate installing a bench along the driveway.
- B.61 There shall be no exterior construction activity, including fueling of vehicles, on the Premises before 7:00 AM, or after 7:00 PM, Monday through Friday and before 8:30 AM or after 4:30 PM on Saturday. There shall be no construction on the Premises on the following days unless a special approval for such work has been issued by the Upton Police Department: Sundays or the following legal holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas. The Applicant agrees that the hours of operation shall be enforceable by the Upton Police Department.
- B.62 If applicable, the Applicant shall obtain approval from the Upton Board of Health for the dog wash facility.

### **C. Construction and Performance Guarantees**

- C.1 The Applicant shall provide the Board and its agents with authority to enter the Premises during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard hat, safety glasses and work boot requirements), with prior reasonable notice of not less than twenty-four (24) hours to determine compliance with this Comprehensive Permit. Access shall be allowed without the need for advanced notice in emergency situations when necessary to prevent imminent harm to wetlands resource areas.
- C.2 The Applicant shall pay all of the Board's prior and outstanding peer review fees if any, within 30 days of the issuance of the Comprehensive Permit. The Applicant shall pay for all reasonable post-permit peer review and post-permit inspection fees by establishing or continuing the escrow account now established pursuant to G.L. c. 44, s. 53G. No building or occupancy permit shall issue if an outstanding bill for any fee is 30 days overdue.
- C.3 The Applicant shall abide by orders issued by the Building Commissioner in conformance with applicable law in conjunction with construction of the Project,

subject to the Applicant's rights of appeal under applicable law.

C.4 Work and operations within the buffer zones within 100 feet of wetlands shall be governed by the Order of Conditions issued pursuant to the State Wetlands Protection Act, MGL c. 131, Section 40, and State Wetlands Regulations at 310 CMR 10.00.

C.5 Prior to construction, physical barriers shall be installed to provide tree protection and along the limit of the clearing line. Erosion controls and tree protection measures shall be continuously maintained throughout the course of construction. Main Street shall be swept as required and conditioned by MassDOT. Disturbed site areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized using annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures unless otherwise required in the Wetlands Order of Conditions.

C.6 The Limit of Work is identified on Sheets 9.1 and 9.2 (Erosion Control Plans) identified on the Final Plans of Record. The Applicant shall not remove any trees not contained within the “*prop. Treeline*” shown on the Final Plans of Record as part of construction, to the extent reasonably practicable. The trees outside of the limit of work shall remain as long as the trees are healthy and pose no risk to the Applicant's Project or an abutting parcel.

C.7 Prior to the issuance of any building permits for the Project, the Final Plans of Record shall include the following:

- a. Utilities, including on-Site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes;
- b. Stormwater Pollution and Prevention Plan (SWPPP) notes that address mitigation of sedimentation and erosion, including details relating to any temporary drainage basins; and
- c. Details of any temporary construction signs.

C.8 As security for completion of the infrastructure shown on the Final Plans of Record, as modified by the construction plans submitted with building permit applications, including but not limited to the roadways, sidewalks, parking, stormwater management system, lighting, water and sewer systems, landscaping, utilities, and traffic improvements as defined (collectively the “Infrastructure”), the release of occupancy permits for the Project shall be subject to the following restrictions:

- (a) No certificate of occupancy for a residential unit shall be issued until (i) completion of “Essential Infrastructure”, which is defined to be driveways and parking areas (excepting the final course of pavement for both), drainage,

traffic improvements as defined, and utilities; and (ii) all other Infrastructure as shown in the Final Plans of Record essential for occupancy, as determined by the Building Commissioner, has been constructed or installed so as to adequately serve the building.

- (b) The “Finish Infrastructure” for the Project, including, but not limited to, final top course of pavement, final striping, final landscaping, and completion of any “punch list” items identified by the Board’s engineer or Building Commissioner, shall be completed prior to the issuance of the final certificate of occupancy for the final unit in the Project, unless adequate security is provided as described below.
- (c) The determination of completeness of any Infrastructure shall be at the sole reasonable discretion of the Building Commissioner.
- (d) Notwithstanding the foregoing, the Applicant shall provide adequate security (meaning either a bond, cash, letter of credit or tri-party agreement with the Project’s lender agreeing to withhold funds) for the completion of Finish Infrastructure in an amount reasonably acceptable to the Board in consultation with its consulting civil engineer, and approved as to form by the Board’s legal counsel, to ensure the completion of any incomplete infrastructure or Site improvements required by the Final Plans of Record, as modified by the construction plans submitted with building permit applications. The security shall not expire unless and until it is satisfactorily replaced or released or partially released. No such security shall be requested until all drainage facilities and the base course of the pavement have been installed unless otherwise agreed by the Board.

C.9 The work to be secured in accordance with Subparagraph IV.C.8 above, if not otherwise completed herein, shall include any landscape screening and fencing along the Limit of Work boundary, as required by the Final Plans of Record, as modified by the construction plans submitted with building permit applications.

C.10 Requests to reduce the security may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The security retained shall be based on the work remaining.

C.11 Prior to commencing Site development activities (including Site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit (except as allowed by the Building Commissioner)(collectively, “Site Work”), the Applicant and the general contractor shall hold a preconstruction meeting with the Building Commissioner, Conservation Agent, and Highway Superintendent representative to review this approval.

C.12 Prior to starting any Site Work, the Applicant shall provide to the Building Commissioner:

- a. the company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on Site;
- b. a copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Site have been paid;
- c. certification from the Applicant that all required federal, state and local licenses and permits have been obtained;
- d. proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any Site work;
- e. proof that street signage is in place to ensure that emergency personnel can locate the Site to provide emergency services to protect and secure the Site and construction personnel; and
- f. at least 48 hour written notice. If activity on Site ceases for longer than one month, 48 hour written notice prior to restarting work.

C.13 During construction, at the end of each workday, the Applicant shall cause all erosion control measures to be in place and shall cause all materials and equipment to be secured. Upon completion of all work on Site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.

C.14 The Applicant shall take effective measures to control dust and windblown erosion at all times. All topsoil shall be stockpiled on the Site. Erosion control barriers shall be installed around the base of the stockpile. The stockpiles shall be seeded to prevent dust and wind-blown erosion.

C.15 Blasting, if any, shall be performed in a manner approved by the Fire Department and Building Department, consistent with applicable laws, so as to prevent injury or property damage to the residents of the Town and proper evidence of insurance shall be provided to the Building Commissioner before blasting begins.

C.16 Within 90 days after substantial completion of the building, the Applicant shall submit to the Town of Upton Building Commissioner two sets of As-Constructed Plans for the infrastructure improvements. The determination of the completion of "Finish Infrastructure" shall be made by the Building Commissioner. If applicable, evidence of compliance with this Comprehensive Permit and any other permits required for the construction of the improvements contemplated by this Comprehensive Permit shall be submitted to the Building Commissioner. The As-Constructed Plans shall be provided both in paper form and as AutoCAD plans, in a version approved by the Town Engineer so as to be compatible with the Town Engineer's software and hardware. The Project engineer of record shall provide a written description of any material deviations from the construction plans submitted with the building permit application. The Building Commissioner, in consultation with the peer review engineering consultant, shall approve the As-Constructed Plans.

C.17 All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the Site's storm-water management system in accordance with the Project stormwater Operation and Maintenance Plan.

C.18 During construction, the location of any and every infiltrating stormwater management area shall be protected to prevent compaction by heavy equipment and to prevent contamination of the area with soils and material that may reduce infiltration rates for the existing soils.

C.19 The Applicant shall be permanently responsible for the following within the Project:

- a. all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Final Plans of Record or alternate locations acceptable to the Fire Chief. In the event that snow impairs roadways such that the travel area is less than twenty-four (24) feet wide, and all designated snow removal locations have been exhausted, at the direction of the Fire Chief, the Applicant shall cause snow to be transported from the Project to an off-Site location for the legal disposal thereof;
- b. all site maintenance and establishing a regular schedule for Site maintenance;
- c. repairing and maintaining all on-site roadways, including drainage structures and utilities therein and the infrastructure within the Project;
- d. conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;
- e. maintaining any and all easements shown on the Plans; and
- f. Site lighting.

C.20 Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of any location to be used for mailboxes and parcel delivery areas.

C.21 As shown on the Plans of Record, the Project shall include a location for bus pickup. The Property shall include pick-up and drop-off spaces at the front of the building to accommodate short-term delivery activity (parcel delivery vans, food delivery service, tenant pick-up/drop-off, etc.)

C.22 The Applicant shall make all efforts to prohibit parking anywhere along the Fire Lane. The Applicant shall make all efforts to keep the sidewalk and walking paths clear.

C.23 Prior to commencing Site Work, the Final Plans of Record shall include a note that the construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control and blocking of Town roads and implementation dust control and abatement methods as provided by the SWPPP.

C.24 No stumps or construction debris shall be buried or disposed of at the Property.

C.25 The Applicant shall, subject to the approval of the applicable property owner, and the imposition of reasonable conditions of any other applicable local or state governmental approvals, including the Upton Conservation Commission:

- a. with respect to 11 and 13 Whitney Lane, the Applicant shall install a privacy fence along with buffer landscape plantings to be located on the Property adjacent to the properties currently owned by Richard McGuire (11 Whitney Lane) and Patrick Hurley (13 Whitney Lane) as shown on the Landscape Plan (Sheet C-8.0) of the Civil Plans;
- b. with respect to 45 Main Street, the Applicant shall continue to work in good faith with the owner of the 45 Main Street property to install swales or other stormwater improvements at the rear of the funeral home property on 45 Main Street that will help channel stormwater flows to mitigate the existing stormwater issues experienced by the funeral home property owner. Should the Applicant and owner of 45 Main Street agree on proposed stormwater improvements, the Applicant agrees to implement the same, and thereafter, the property owner at 45 Main Street shall be responsible for maintaining any such improvements installed on its property;
- c. with respect to the property known as 4 School Street, the Applicant agrees to install landscaping as depicted on a plan, dated July 16, 2024. After the Applicant's installation of the same, the property owner at 4 School Street shall be responsible for maintaining any such improvements installed on its property; and
- d. with respect to 6 School Street, the Applicant agrees to install stormwater as well as loaming and seeding, and replace the rear section of the 4-foot tall fence with a 6-foot tall fence in the rear portion of the yard as depicted on a plan entitled "Proposed Drainage Design Option #1 for 6 School Street," dated May 30, 2024, prepared by D & L Design Group. After the Applicant's installation of the same, the property owner at 6 School Street shall be responsible for maintaining any such improvements installed on its property.

The terms above shall be memorialized in written agreements by Applicant with each of the landowners above, along with other terms and conditions mutually satisfactory to the Applicant and landowners, prior to the commencement of such work.

C.26 All leases to tenants of the Project shall contain the following language: "*Tenant acknowledges that the Upton Apartment property abuts private property owned by others. All tenants, their invitees, and licensees shall refrain from entering onto the abutting private properties for any reason.*

C.27 This Comprehensive Permit is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board as required by 760 CMR 56.05(12)(b), except that the Applicant is authorized to transfer this Comprehensive Permit to a related entity which shall be considered an insubstantial change within the meaning of 760 CMR 56.05(11), provided the Applicant complies with the requirements of 760 CMR 56.05(12)(b). Otherwise, the transfer of the Comprehensive Permit in accordance with 760 CMR 56.05(12) shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).

C.28 Any changes to the Project after issuance of this Comprehensive Permit shall be reviewed and approved by the Board in accordance with 760 CMR 56.05(11). The Project shall be constructed substantially in accordance with the Final Plans of Record. Proposed adjustments to the Final Plans of Record following the issuance of this Comprehensive Permit decision shall be submitted to the Building Commissioner who may determine whether the adjustment constitutes a "change". Adjustments not rising to the level of a "change" may be approved directly by the Building Commissioner with input from appropriate department heads. Any proposed Project modification deemed by the Building Commissioner to not constitute a "change" but in his or her judgement could constitute either an "insubstantial or substantial change" within the meaning of 760 CMR 56.05 (11) shall be submitted to the Board for review and authorization.

C.29 Building construction may begin simultaneously with the commencement of construction of the infrastructure, but no occupancy permit shall issue unless and until all of the Essential Infrastructure (as defined under Section IV.C.8. above) necessary for the occupancy permit shall be fully permitted and completed and have any necessary final sign offs, except as otherwise provided herein.

C.30 Prior to the issuance of any certificate of occupancy, the Applicant shall update the Project Plans to include the driveway name and building/garage numbers that have been reviewed and approved by the Upton DPW and the Upton Fire Department.

C.31 All the proposed garage structures shall obtain foundation permits.

#### **D. Lapse**

D.1 Any Comprehensive Permit granted hereunder shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c), unless the Comprehensive Permit is duly recorded before the three year period lapses and unless construction on the Project has commenced within such period, subject to Paragraph D.2 below.

D.2 The Comprehensive Permit may be extended in accordance with 760 CMR 56.05(12), and any extension of this Comprehensive Permit shall not, by itself,

constitute a substantial change pursuant to 760 CMR 56.07(4). The Applicant may apply to the Board for extensions of these deadlines before any lapse occurs as provided under 760 CMR 56.05(12).

#### **E. Waivers**

E.1 The Applicant shall comply with the State Building Code and the Town of Upton Zoning Bylaw as of the date this Application was filed with the Board, and all other “Local Requirements and Regulations” (as defined under 760 CMR 56.02) in effect as of the date the Comprehensive Permit Application was filed, except for those Local Requirements and Regulations expressly waived and provided for herein as well as those set forth in Exhibit B. Any waiver not expressly granted or not shown on the approved Final Plans of Record is hereby denied. Grant of the Comprehensive Permit and the Waivers is expressly conditioned upon compliance with all of the conditions of approval and with continued adherence to the facts and circumstances noted in the Findings of Fact.

E.2 The Board voted to grant the waivers as provided in Exhibit B.

#### **F. Validity of Permit**

This Comprehensive Permit shall not be valid until recorded with the Registry of Deeds and evidence of such recording is provided to the Building Commissioner and the Board. Any modification of this permit shall be subject to 760 CMR 56.05(11) or any successor regulation thereto unless otherwise provided herein. Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Town Clerk’s Office, Town Hall, Upton, Massachusetts. Any appeal filed by the Applicant shall be filed with the Housing Appeals Committee pursuant to M.G.L. c. 40B, s. 23, within twenty (20) days after the filing of this notice with the Town Clerk’s Office.

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UPTON ZONING BOARD OF APPEALS

By: William Andrews, Chairman

On August 21, 2024, the Zoning Board of Appeals voted to authorize William Andrews to execute the decision on behalf of the BOARD.

## EXHIBIT A

### INITIAL APPLICANT APPLICATION AND LIST OF DOCUMENTS SUBMITTED TO THE BOARD DURING THE PUBLIC HEARING

#### List of Documents submitted to Public Record

Comprehensive Permit Application submitted September 15, 2023

- Tab 0 – Table of Contents
- Tab 1 – Zoning Board of Appeals Application Form
- Tab 2 – Narrative Description of Design Approach
- Tab 3 – Project Eligibility Letter
- Tab 4 – Purchase and Sale Agreement
- Tab 5 – Limited Dividend Entity Status
- Tab 6 – Development Team
- Tab 7 – Aerial Photo of Site and Aerial Photo with Site Plan Overlay
- Tab 8 – Preliminary Engineering Plans; Upton Apartments; 47 Main Street, Upton, Massachusetts; Residential Development Plans; Dated September 13, 2023; Prepared by D&L Design Group
- Tab 9 – Tabulation of Proposed Buildings by Type, Size, Square Footage, and Ground Cover
- Tab 10 – Existing Conditions Narrative
- Tab 11 – Site Photos, completed April 28, 2023
- Tab 12 – Preliminary Architectural Plans; Upton Apartments; Issue Date September 7, 2023; prepared by Maugel DeStefano Architects
- Tab 13 – Requested Waiver List
- Tab 14 – Transportation Impact Assessment; prepared by VAI, date June 15, 2023
- Tab 15 – Certified Abutters list; Verified abutters list by Tax Assessor

#### Town Boards, Committees, and Department Comments:

- Board of Assessors, October 11, 2023
- Conservation Commission, October 18, 2023
- Fire & EMS, January 19, 2024
- Historical Commission, October 11, 2023, and revised April 10, 2024
- Lakes and Ponds Committee, October 9, 2023
- Planning Board, October 12, 2023
- Police Department, October 12, 2023
- Land Use & Inspectional Services, October 18, 2023
- Select Board, May 7, 2024
- Fire & EMS, May 15, 2024, email by Dan Lazarz

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- Fire & EMS, January 2, 2024; email by Dan Lazarz

Revised Materials submitted:

- Drainage Plans, prepared by D&L Design Group, dated September 5, 2023, revised January 3, 2024.
- Rational Method Pipe Design Worksheet, dated January 8, 2024, revised March 25, 2024;
- Truck Simulation Plan, prepared by D&L Design Group, Dated September 13, 2023, stamped by Professional Civil Engineer Michael Dean, dated January 8, 2024
- Hydraulic / Hydrologic Calculations, prepared by D&L Design Group, September 5, 2023; revised January 8, 2024; revised February 20, 2024; revised March 25, 2024;
- Upton Apartments; 47 Main Street, Upton, MA; Preliminary Residential Development Plans; prepared by D&L Design Group, Inc.; dated September 13, 2024, revised January 8, 2024; revised March 25, 2024;
- Revised Plan Set Sheets C-11.0, C-4.0 and C-6.4; Dated September 13, 2023, revised January 8, 2024, revised February 2, 2024
- Presentation Plan sheet C-5.0, Pre-Development Drainage Map, Post-development Drainage Map; prepared by D&L Design Group, dated September 13, 2023, revised January 3, 2024.
- Lighting Plans; Site Plan, Sheet C-4.0 and attached Spec-sheets; prepared by Holbrook Associated, dated October 18, 2023

Peer Review Memos and Applicant Reponses

- Response Letter by D&L Design Group, January 8, 2024
- Comprehensive Permit Application (40B) 47 Main Street Residential Development – Traffic Impact Assessment Peer Review; prepared by Stantec; dated November 9, 2023
- Comprehensive Permit Application (40B) 47 Main Street Residential Development – Civil/Site and Stormwater review; prepared by Stantec; dated December 15, 2023.
- Comprehensive Permit Application (40B) 47 Main Street Residential Development – Civil/Site and Stormwater review; prepared by Stantec; dated February 16, 2024.
- Comprehensive Permit Application (40B) 47 Main Street Residential Development – Civil/Site and Stormwater review; prepared by Stantec; dated March 20, 2024.
- Comprehensive Permit Application (40B) 47 Main Street Residential Development – Civil/Site and Stormwater review; prepared by Stantec; dated May 3, 2024

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- Response to Traffic Impact Assessment Peer Review Proposed Multifamily Residential Development – 47 Main Street (Route 140) Upton, Massachusetts; prepared by VAI; dated January 26, 2024.
- Response to Traffic Impact Assessment Peer Review; prepared by D&L Design Group; dated February 2, 2024;
- Comprehensive Permit Application (40B) 47 Main Street Residential Development – Traffic Impact Assessment Resubmittal #1 - Peer Review; prepared by Stantec, dated February 16, 2024.
- Response to Fire & EMS Comments on the Comprehensive Permit Application for 47 Main Street; prepared by Kevin W. Lobisser, President, Lobisser Companies; dated April 3, 2024.
- Correspondence from Peter Lavoie, Project Engineer, D&L Design Group to David Glenn, Stantec, Senior Civil Engineer; Request to review stormwater impacts near culvert connecting to 52 Main Street; undated.

Supplemental Material submitted:

- Presentation of MGL Chapter 40B presented by Attorney Christopher Alphen, Blatman Bobrowski, Haverty & Silverstein, LLC; Microsoft PowerPoint format.
- Overall Site Plan, Sheet C-8.0, Presentation Plan, Sheet C-8.0, Truck Simulation Plan, Overall Topo Plan, Sheet C-8.0; prepared by D&L Design Group, dated September 13, 2023.
- Architectural Rendering; 47 Main Street, Upton ZBA Presentation; prepared by Maugel DeStefano Architects
- Traffic Impact Assessment Summary – Presentation; prepared by VAI (Vanasse & Associates, Inc), dative November 15, 2023.
- Traffic flow profile; proposed Multifamily Residential Development – 47 Main Street; prepared by VAI, dated November 22, 2023.
- Existing Conditions Plan, Sheet 2.0, Overall Site Plan, Sheet C-3.0, Site Plan, Sheet C-4.0; Revised for Traffic Comments, prepared by D&L Design Group; dated September 13, 2023, revised February 2, 2024
- Updated Transportation Impact Assessment Proposed Multifamily Residential Development – 47 Main Street (Route 140) Upton, Massachusetts; prepared by VAI, dated June 15, 2023, Updated January 26, 2024.
- Upton Wastewater Pump Station Evaluation; Upton Water Department, Date March 2020; prepared by Tight & Bond
- Appendix A; Massachusetts Historical Commission; Project Notification Form.
- Appendix A: Massachusetts Historical Commission; Project Notification Form; Stamped Received October 2, 2023; stamped reviewed by MHC dated October 27, 2023.
- Letter to applicant; Re-design of 47 Main Street and Public Hearing Topics; prepared by Michael Antonellis, director of Land Use & Inspectional Services; dated April 8, 2024.

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- Letter to the Town Manager, Joseph Laydon regarding Mass Historical Commission comments and review pertaining to 47 Main Street; prepared by Edward L. Bell, Deputy State Historic Preservation Officer & Senior Archeologist; Massachusetts Historical Commission; dated April 3, 2024.
- Project Status Report; 47 Main Street (Route 140) – Upton Apartments, Comprehensive Permit Application (40B); prepared by Stantec; dated through April 5, 2024.
- List of Waivers; Revised May 10, 2024.

EXHIBIT B

**DECISION ON WAIVERS**

The Board voted to take the following action on the waiver requests of local rules and regulations submitted by the Applicant as it has determined necessary for the construction of the Project as approved by the Board:

**Chapter 300 - Zoning Bylaw**

1. **Article 1, § 300-1.4. Applicability Scope of Zoning Bylaw:** This Section provides that the Zoning Bylaw regulates 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.

**Board Action: Waiver Granted in part as Building Commissioner retains authority to enforce the Zoning Bylaw but as modified by the Zoning Bylaw waivers granted and governed by the Comprehensive Permit.**

2. **Article 3. Use Regulations; § 300-3.1. Table A - Table of Principal Uses By District:** This section prohibits multi-family residential use and other potential accessory uses in the applicable zoning district. The Applicant seeks a waiver to permit the use of the Property for no more than a total of 60 multifamily residential rental apartment units and accessory uses including, but not limited to, office, package room, co-working space, fitness room, dog wash, and bicycle storage, as shown on the Plan of Record, and as conditioned within the Comprehensive Permit.

**Board Action: Waiver Granted**

3. **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):** This section prohibits certain accessory uses in the applicable zoning district. The Applicant requests a waiver to allow the following accessory uses, including but not limited to, office, package room, co-working space, fitness room, dog wash, bicycle storage, 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 no less than 93 vehicle parking spaces including no less than 22 garage spaces, trash receptacle area, utilities, and other appurtenant uses customary to such residential uses, as well as designated open space uses as shown on the Plan of Record, and as conditioned within the Comprehensive Permit.

**Board Action: Waiver Granted**

4. **Article 4. Dimensional Regulations, § 300-4.1. General:** The Applicant requests a waiver from the dimensional regulations to the extent necessary to allow for the construction of the apartment building and structures as depicted on the Plans of Record, subject to the conditions herein.

**Board Action: Waiver Granted**

5. **§ 300-4.2.B (Dimensional regulation tables); Table B: Residential District Lots B. Residential district lots (Table B):** The Applicant requests a waiver from the minimum stories and height regulations contained in the Dimensions Regulation Table. The Bylaw provides that the maximum stories permitted is 2.5 and the maximum height is 30 feet. The Applicant seeks a waiver to permit a building with 4-stories and a height of 47 feet, subject to the conditions herein.

**Board Action: Waiver Granted**

6. **Article 5, § 300-5.10. Off-street parking:** In a General Business District or Commercial & 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 70 surface parking spaces and 23 garage parking spaces for a total of 93 parking spaces (1.55 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.

**Board Action: Waiver Granted, to the extent necessary to permit the accessory uses.**

7. **Article 5, § 300-5.12: Signs:** 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. Waiver requested to allow permanent signs as shown in the Plan of Record 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.

**Board Action: Waiver Granted**

**8. Article 7. Special Residential Regulations, § 300-7.1.**

**Scheduled Development In Approved Subdivisions/Rate of Development:** Provides that 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, the Building Commissioner shall issue building permits for construction of new dwelling units 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.

**Board Action: Waiver Granted to allow construction of the Project in accordance with the Comprehensive Permit without any limitation imposed on the rate of development of the Project units.**

**9. Article 7. Special Residential Regulations, § 300-7.2. Townhouses and**

**Garden Apartments:** This section provides Townhouses and garden apartments shall be permitted within a Single Residential SRA or SRB District by ZBA Special Permit, provided that there be the equivalent of 15,000 square feet of lot area per dwelling unit in a Single Residential SRA District and an equivalent of 25,000 square feet of lot area per dwelling unit in an SRB District and provided that there are no more than eight dwelling units in any one townhouse building and no more than 12 dwelling units in any garden apartment building and subject to the restrictions described therein. Also includes parking, landscaping, open space and other requirements. Project building 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.”

**Board Action: Waiver Granted**

**10. Article 9. Administration and Procedures, § 300-9.1.**  
**Administration,§ 300-9.1. A., B., and C.** Provides that 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.

**Board Action: Waiver Granted in part as Building Commissioner retains authority to enforce the Zoning Bylaw but as modified by the Zoning Bylaw waivers granted and governed by the Comprehensive Permit.**

**11. Article 9. Administration and Procedures, § 300-9.4.**  
**Site plan approval; Chapter 308. (Site Plan Approval), Article I. Site Plan Approval Regulations.** Provides that Site Plan Review by the Planning Board is required for the construction, exterior alteration or exterior expansion of 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.

**Board Action: Waiver Granted to allow Project construction in accordance with the Comprehensive Permit.**

### **Chapter 137 - Earth Removal Bylaw**

12. **Chapter 1, Earth Removal:** Provides regulations for the removal of soil, loam, sand or gravel from any parcel of land not in public use in the Town of Upton. Such use shall be allowed only after a written permit is obtained from the Select Board after a public hearing of which due notice is given. The Project shall 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 coverage under the US EPA 2022 NPDDES Stormwater Construction General Permit (CGP) for Massachusetts (MAR100000), and the Comprehensive Permit Decision.

**Board Action: Waiver Granted to the extent a waiver is necessary under Chapter 40B.**

### **Upton General By-Laws**

13. **Chapter 223 – Requirements for Sewer Connections, Discharges, Rates and Fees:** Chapter 223 provides that 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. Applicant requests a waiver to allow sewer connection.

**Board Action: Waiver Granted to permit the Project to connect to sewer subject to the conditions contained herein. Board also voted to grant a waiver to allow the affordable units to connect at 50% of the customary connection fee.**

14. **Chapter 225-5 and § 255-10.B:** Removal of Public Shade Trees and other Public Trees: This section provides that 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.

**Board Action: Waiver Granted subject to the conditions contained herein.**

15. Chapter 280 (Wetlands Protection Bylaw); TOWN OF UPTON WETLANDS PROTECTION BYLAW REGULATIONS (Revised January 26, 2022)[Not codified and appears to supersede Chapter 330. (Wetlands Protection

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Regulations, approved by the Conservation Commission 4-8-2021)] Requirements for work within jurisdictional wetlands under Wetlands Bylaw, including filing, fee, notice. Chapter 280, §§280-1. through 280-15.) establishes jurisdiction (§ 280-2.) of Conservation Commission over locally defined "resource areas protected by" Chapter 280, Applications and fees. (§ 280-4.); Notice and Hearings (§ 280-5); Permits and conditions. (§ 280-7.); Authority to Promulgate Regulations (§ 280-8.); Enforcement (§ 280-11.) and other requirements described under Chapter 280. TOWN OF UPTON WETLANDS PROTECTION BYLAW REGULATIONS (Revised January 26, 2022)(Sections I through VII), (Wetlands Protection Regulations) include wetland regulations implemented under the authority of Chapter 280, including, but not limited to, Definitions Article II.); Procedures and Permits (Article III); General Standards for Resource Areas including more detailed definitions of resource areas and buffer zones (Article IV.); and, Filing Fees and Requirements (Article V.). A waiver is requested from both Chapter 280 and the Wetlands Protection Regulations, including the following:

- Article IV. General Standards for Resource Areas, Article IV.E. of Wetlands Regulations, Buffer zones including the 30-Foot No-Disturb Zone, the 50-Foot No-Building Zone and the 100-Foot Buffer Zone. The State Wetlands Protection Act has a 100-foot buffer zone only which is not a wetland resource area. The Plans of Record depict locations where the Project work will occur within these locally-defined wetland resource areas and the associated buffer zones, and the Applicant has made adjustments to eliminate as much work as is reasonably practicable from these zones.
- Sections 280-2 of Wetlands Bylaw and Section I.C. of Wetlands Regulations – Jurisdiction, provides that "said resource areas shall be protected whether or not they border surface waters". The Project does not include work within isolated vegetated wetlands (IVW) but will involve work close to IVW. Unlike Chapters 280 and 330, the State Wetlands Protection Act only takes jurisdiction over Bordering Vegetated Wetlands and not IVW.
- Sections 280-4 of Wetlands Bylaw, and Section VI . Filing Fees and Requirements of Wetlands Regulations. Filing fees. Establishes additional fees required under the Wetland Bylaw in addition to what is paid for filing fees under the Massachusetts Wetlands Protection Act. Since the Applicant has filed a Notice of Intent under the State Wetlands Protection Act, a waiver of the Chapter 280 and Local Wetlands Regulation filing fees is requested.
- Wetlands Regulations Section IV – General Standards for Resource Areas, Section H – Climate Change Resilience. Provides that the Applicant shall, to the extent practicable and applicable, to integrate considerations of adaptation planning into their project to promote climate change resilience so as to protect and promote resource area values into the future. These considerations are especially important in Land Subject to Flooding (floodplain) and Riverfront Area and other Resource Areas which protect the interest of Flood Control and Storm Damage Prevention, including Adjacent Upland Resource Areas. These Resource Areas may be directly impacted by extreme weather events expected to

be more prevalent or more intense due to climate change, in surface runoff of pollutants, and in fisheries and wildlife habitat due to changes in temperature. The State Wetlands Protection Regulations include no provisions addressing climate change and reliance. The Applicant is requesting a waiver from these provisions, given that no standards are established under the Wetlands Bylaw and Wetlands Regulations.

- **Wildlife Evaluation.** Section 280-7.F of Wetlands Bylaw. Provides that the Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, or possible presence of rare species in the area. The State Wetlands Protection Act Regulations under 310 CMR 10.60 provides that a wildlife habitat evaluation is required only to the extent that a proposed project on inland Banks, Land under Water, Riverfront Area, or Land Subject to Flooding will alter vernal pool habitat or will alter other wildlife habitat beyond the thresholds permitted under 310 CMR 10.54(4)(a)5., 10.56(4)(a)4., 10.57(4)(a)3. and 10.58(4)(d)1., and none of the state standards for wildlife habitat evaluations is triggered for the Project. Similarly, a waiver is requested because such an evaluation is not required because there is no important wildlife habitat on the Project site meriting such evaluation.

**Board Action: Waiver from Chapter 280 and the Wetlands Regulations is granted, but Project work, as approved under a Wetlands Order of Conditions, shall be included on the Final Plans of Record.**

#### **16. Chapter 340. Health Rules and Regulations, Article**

**VII. Fill, §§ 340-17. and 340-18.** This regulation 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. The provision under § 340-18. Drainage, provides that 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.

**Board Action: Waiver Granted except that any fill to be brought to the Property will be “clean” fill, and subject to the drainage calculations being reviewed under a Wetlands Order of Conditions to be issued for the Project.**

**Board Action: Waivers from the following sections of the Upton Zoning Bylaws are denied as unnecessary as the Board notes 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. For this reason, the Applicant’s requested waiver from the Article 9. Administration and Procedures, § 300-9.1. Administration. § 300-9.3. Special permits, § 300-9.3 is denied.**