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TOWN OF LUNENBURG ZONING BOARD OF APPEALS

**DECISION UPON APPLICATION OF WHALOM ROAD, LLC
FOR A MODIFICATION TO THE COMPREHENSIVE PERMIT
PREVIOUSLY ISSUED UNDER
MASSACHUSETTS GENERAL LAWS CHAPTER 40B**

I. Findings of Fact

1. On September 3, 2008, the Applicant Whalom Road, LLC (the "Applicant") filed an application with the Lunenburg Zoning Board of Appeals (the "ZBA") for a comprehensive permit under Massachusetts General Laws Chapter 40B, §§ 20-23 ("Chapter 40B") and the Lunenburg Zoning By-Laws (the "By-Laws") to build low or moderate income housing consisting of 120 detached single-family homes on approximately 41 acres of land and wetlands located off Whalom Road, further identified as Parcel 382 on Lunenburg Assessor's Map 91 (the "Site").

2. The public hearing was opened on November 12, 2008, was continued with the consent of the Applicant, and closed on April 28, 2010. The ZBA deliberated on May 12, 2010 and May 26, 2010, and voted to approve the comprehensive permit application subject to the conditions set forth in a Decision filed with the Town Clerk on June 9, 2010, and subsequently recorded with the Worcester North District Registry of Deeds in Book 7224, Page 203 (the "Original Decision").

3. In its original application, the Applicant proposed a project consisting of 120 detached single-family homes on the Site, depicted on a plan entitled "Lunenburg Village - Site Development Plans" prepared by Whitman & Bingham Associates. The Applicant amended its application in May, 2009 and submitted a revised set of plans. Those plans were also entitled "Lunenburg Village - Site Development Plans," and were also prepared by Whitman & Bingham, and dated May 11, 2009, revised through February 9, 2010. They are referenced in the Original Decision. In the revised submittal, the Applicant reduced the number of housing units from 120 to 64.

4. The Site is located in the "Residence A" zoning district. The district requires minimum 40,000 square-foot lots, with 100 feet of frontage and 175 feet of width. Lots in the RA district must have at least 40 feet of front yard, 15 feet of side yard and 20 feet of rear yard. Single- and two-family homes are allowed in the RA district.

5. The Site has frontage on Whalom Road, Lesure Avenue, Pleasant View Avenue, and Piedmont Avenue.

6. The ZBA's concern with the original 120-unit proposal was its density. The build-out of the Site would have left very little "green space," and would have presented

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significant stormwater drainage concerns given substandard soil conditions on the Site. It would have also strained municipal services, particularly the Town's sewer system, which has limited expansion capacity under intermunicipal agreements with Fitchburg and Leominster. Although the Site is located within the Town's sewer district, the Town's comprehensive wastewater management planning did not allocate such a large number of sewer connections on the Site.

7. The 120-unit proposal would have also impacted the bordering vegetated wetlands that cross the Site south to north, and would have presented a significant density impact on proximate residential abutters, particularly those along Whalom Road and Pleasant View Avenue.

8. The 64-unit proposal addressed most of the ZBA's density and planning concerns, allowing for more space for stormwater collection and detention, thereby reducing the risk of flooding both on- and off-site. The 64-unit design also mitigated impacts on the abutters and moved the Project away from the wetlands by at least 100 feet. It also reduced the strain on the sewer system and other municipal services.

9. Through negotiations with the ZBA that led to the Original Decision, the Applicant agreed to pay the Sewer Commission's betterment privilege fee of \$11,700 per market-rate unit, extend the municipal sewer service from Graham Street to the end of Pleasant View Avenue, and donate a .78 acre of land adjacent to the existing municipal ball field on Whalom Road.

10. The 64-unit design was a compromise achieved through negotiations between the ZBA and the Applicant. The Applicant projected its profit on the 64-unit project to be an 11% return on total development costs ("ROTC"), and accepted this level of profit even through it fell below the 15% ROTC standard under Chapter 40B.

11. The Applicant filed this current request to modify its development plans on June 27, 2013, claiming that under current market conditions, the project that the ZBA approved and the Applicant accepted in 2010 is no longer economically viable. Specifically, the Applicant contends that under current conditions, the 64-unit project would earn only a 2.9% profit.

12. The Board determined that the changes the Applicant wished to make, specifically by adding 16 more dwelling units to the project, were "substantial" under 760 CMR 56.08(7)(4). The Applicant did not contest this determination.

13. The proposed modified project (the "80-Unit Project") would consist of 80 homes, in generally the same layout as the 64-unit project on the Site. The 80-Unit Project is shown on the same set of plans prepared by Whitman & Bingham entitled "Lunenburg Village Site Development Plans." The 80-Unit Project would add two homes on the north side of the Project Site, and 14 homes on the south side of the Project Site. The Applicant proposed to add a second access/egress connection, to Piedmont Avenue, essentially looping Pleasant View Avenue with Piedmont Avenue.

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14. At the April 9, 2014 session of this public hearing, the Applicant proposed tacking a different tack, offering to build 5 garden-style apartment buildings, each with 24 apartment units (the "Revised Project"). While this type of project would increase the density to 120 housing units, it has the advantage of using less raw land and leaving more of the Project Site in an undeveloped state or landscaped with lawn and plantings. The apartment project concept would also avoid any development on the west side of the wetland that crosses the Project Site (Pleasant View Avenue), thus eliminating density and traffic concerns raised by the abutters on that side of the Site.

15. The Applicant formally amended its application for modification at the May 28, 2014 session of the public hearing, presenting a revised set of plans dated May 21, 2014, now revised through August 1, 2014¹ (the "Plans"). The ZBA retained Hamwey Engineering Inc. to provide a peer review of the site plans, and Hamwey submitted two comment letters, dated June 18, 2014 and June 20, 2014. The ZBA also received comments from the Lunenburg Water District, the Department of Public Works, the Sewer Commission and the Lunenburg Fire Chief.

16. In the Original Decision, the Applicant was obligated to extend the municipal sewer from Graham Street to the end of Pleasant View Avenue, with lateral stubs to enable connections to the residential lots on Pleasant View Avenue (Condition J.5). In this request for modification, the Applicant would not undertake this work – no work is proposed west of the wetland system. The Sewer Commission reminded the ZBA during the public hearing that its acquiescence to waivers from the Town's sewer privilege fees was predicated on the improvements the Applicant had agreed to on Pleasant View Avenue.

17. Concerning sewer fees, the Sewer Commission met with the Applicant and discussed this issue at its August 12, 2014 meeting. The Commission recommended to the ZBA through a subsequent memorandum that its connection fees be reduced to \$1,760 per unit up to 3 bedrooms, consistent with the fee structure that was in place when the application was initially filed in 2008. It also recommended that the "inflow and infiltration" mitigation fee that was recently adopted by the Commission be waived for the entire Project. The Commission further advised the ZBA not to waive the applicable privilege fees for any of the units in the Revised Project. The Applicant countered that having to pay any more than \$400,000 on sewer connection and privilege fees would render the Revised Project uneconomic. The ZBA is mindful that sewer privilege fees ensure that all sewer users pay their fair share of the capital costs of the entire municipal sewer system, and that the fees are necessary to offset additional payments that the Commission will have to pay to the City of Leominster under its intermunicipal agreement for accepting and processing Lunenburg's wastewater as a result of the increased flow generated by the expansion of the Project.

18. In this proceeding, the Applicant bears the burden of proof to demonstrate that the Project as permitted under the Original Decision is "uneconomic" and that it is "substantially more uneconomic" than the proposed Revised Project. In other words, the Applicant does not have a blank check to build as many homes as it wants on a finite parcel of land – the ZBA is only compelled to waive local bylaws to the extent necessary to make the Project "economic."

¹ Sheet N3 is revised through Sept. 22, 2014

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19. In its application before the ZBA in 2008, as amended during the course of the public hearing, the Applicant accepted an 11% return on its development costs, even though under Chapter 40B guidelines a 15% return is generally accepted as the minimum level of profit. The Applicant conceded that Project approved in the Original Decision was projected to earn an 11% profit.

20. Before it switched gears to the apartment concept embodied in the Revised Project, the Applicant presented an opinion from a respected affordable housing finance consultant Michael Jacobs, who opined that with the poor housing market in Lunenburg, the Applicant would not be able to sell its market-rate homes at the same prices that it projected in 2010 when the Original Decision was rendered. When questioned on this opinion, Mr. Jacobs conceded that the Applicant probably over-estimated its sale prices in its *pro forma* budget that was submitted to the ZBA during the prior proceedings. The ZBA's Chapter 40B consultant, Richard Heaton, examined the real estate market in Lunenburg, and found that sale prices of single-family homes increased by 7% between 2010 and 2013, with total sales increasing by 17%. The housing market in Lunenburg has not deteriorated since the Original Decision was issued 2010; if anything, the market has improved since that time, and is trending positively.

21. The Applicant presented a "summary of comparables" showing purportedly similar properties that have sold in Lunenburg and neighboring Townsend since 2012. The Applicant made deductions from the sale prices of these units, to adjust for the differences between the "comparable" sales and the proposed style of home in the Revised Project. While this approach is a commonly-accepted method of appraising the value of homes, and to develop pre-construction pricing, the means by which the analysis was done was unconventional and difficult to follow. Of the nine properties selected for comparison, only four were truly "new construction." Of those properties, the sale prices after the Applicant's adjustments were \$271,220, \$257,050, \$281,912, and \$252,534.

22. The ZBA's special counsel, who is also a licensed real estate broker, performed a more conventional comparative market analysis using the four "new construction" sales as comparables. After making appropriate adjustments for the gross living area and lot size, the average of the four adjusted sale prices was \$308,336. Significantly, the Applicant's analysis did not make any deductions for lot size, even though the "comparables" all had larger lots than the lots proposed here. If no deductions for lot size were made, the average adjusted sale price would be higher. The median price per square foot of the four comparables was \$179/sf. Applying this factor to the proposed 1,632 square foot home yields a value of \$292,100. The Applicant is projecting sale prices of the market-rate homes of between \$285,900 and \$291,000. The variance is attributable to minor exterior changes between the different styles of homes.

23. Mr. Heaton performed a sensitivity analysis indicating that if the Revised Project was limited to 72 housing units and the Applicant's projected sale prices were increased by 5% over increases in development costs, its profit would increase to 13%. A 3% increase would result in an 11% profit, which is what the Applicant has deemed acceptable for this Project. The ZBA finds that the Applicant has exaggerated the demise the of the Lunenburg housing market,

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and has underestimated its reasonably predictable revenue from the sale of market-rate homes in the Revised Project. However, the ZBA also recognizes that the original 64-unit project is uneconomic under Chapter 40B standards, and was probably less economic than even the Applicant considered it to be when the Original Decision was issued.

24. The question now turns to the economics of the Revised Project. Since the standards governing whether a project is uneconomic differ between rental developments and “for sale” projects, evaluating whether the Revised Project is “significantly less uneconomic” than the Original Project invites an apples to oranges comparison. In short, a for-sale project is considered uneconomic if its return on development costs is less than 15%. However, a rental project is uneconomic if its return on development costs is less than 2.5% above the 10-year Treasury bill rate, which fluctuates daily. The best the ZBA can do in these circumstances is to determine how close the Revised Project and Original Project are to their respective regulatory economic thresholds.

25. The Applicant provided a new *pro forma* for the Revised Project on September 18, 2014, and Mr. Jacobs presented his analysis to the ZBA on October 22, 2014. Mr. Jacobs testified that with the Sewer Commission’s requested total fees of \$1,400,737, the Revised Project’s “return on cost” is 4.79% in the first year of stabilized occupancy.

26. Mr. Heaton reviewed the *pro forma* and has advised the ZBA that the Revised Project is economic under Chapter 40B standards even if the Sewer Commission’s connection and privilege fees are paid in full (without any waivers). Specifically, Mr. Heaton observed that even assuming that Mr. Jacobs’ cost and income assumptions are correct, a return of 4.79% would likely be “economic” under Chapter 40B standards, because the appropriate benchmark – 2.5% above the 10-year T-bill rate – was 4.72% on October 21, 2014. While the standard cites a range of 2.5% - 3.5% above the T-bill rate, Housing Appeals Committee precedent treats the lower part of the range as the minimum economic threshold. The ZBA is mindful that these rates fluctuate daily, and are generally unpredictable. Notably, however, the T-bill rate on December 1, 2014 was the same as the rate on October 21st – 2.22%.

27. Mr. Heaton is critical of a key assumption in Mr. Jacobs’ analysis – the presumed rental price for the affordable units in the Revised Project. The affordable sale prices and rents in Chapter 40B projects are set based on what a family earning the target area median income can afford. In this case, Chapter 40B regulations and guidance set the target income range at 70% - 80% of the area median income. Using state-mandated assumptions, the maximum affordable rent for this project would be \$1,073 for the one-bedroom units, and \$1,273 for the two-bedroom units. Yet, in his *pro forma*, Mr. Jacobs is assuming rents of \$855 and \$1,035 for the affordable one- and two-bedroom units respectively. Curiously, even the market-rate rents for the Project are set below the maximum affordable rents - \$950 and \$1150, respectively. The fact that low- and moderate-income households in Lunenburg (70% of area median income) will be able to afford the *market* rents that will be charged in the Revised Project begs the question whether there is a need for the affordable housing that is the justification for the comprehensive permit application. Setting aside that incongruity, where the Developer can charge up to \$1,273 for an affordable two-bedroom unit, and where the Developer bears the burden of proving that

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conditions imposed on the permit render the project uneconomic, it does not seem reasonable for the Developer to voluntarily lower its rental income and then argue that it is not making enough profit.

28. Given all of the above factors, the ZBA finds that the most reasonable approach would be to waive the sewer privilege fee for the affordable units (25% of the units in the Revised Project), similar to the Original Decision, which gives the Developer a higher return on cost to buffer against T-bill rate volatility. For example, the ten year T-bill rate as reported by the Chicago Options Exchange on December 5, 2014 was 2.31%. Therefore, it shall be a condition of this Modified Decision that the Developer will pay \$957,238, rather than \$1,276,437, in privilege fees as suggested by the Sewer Commissioners on September 17, 2014. The connection fee shall remain at \$124,300. The total sewer fees will therefore be \$1,081,628 rather than \$1,400,737 as suggested by the Sewer Commissioners on September 17, 2014. According to Mr. Heaton's analysis, this adjustment will have the effect of increasing the return on cost to approximately 4.92% using Mr. Jacobs' other cost and income assumption. If the affordable rents are increased to match the market rents, the return on cost is increased further to approximately 5.16%. Either way, the Revised Project will likely be comfortably above the ten year T-bill rate benchmark.

Summary of Sewer Fees				
8-Dec-14				
	Current Full Fee	Recommend by Sewer Commission	Approved by ZBA	
	17-Sep-14	17-Sep-14	10-Dec-14	
Privilage fee	\$ 1,276,437	\$ 1,276,437	\$ 957,328	
Conneciton Fee	\$ 270,000	\$ 124,300	\$ 124,300	
I/I Fee	\$ 49,500			
Capacity Fee	\$ 42,283			
Total Fees	\$ 1,638,220	\$ 1,400,737	\$ 1,081,628	
Fee Reduction			\$ 556,592	
ten year T-bill rate				
5-Dec-14			2.31%	
Differential			2.50%	
Benchmark			4.81%	

29. At the ZBA's hearing on December 10, 2014, the Developer agreed to pay the sewer fees set forth above, but requested that they be paid over time, as each building within the Revised Project is complete. Specifically, as memorialized in a Memorandum from Michael Jacobs to Mr. Gary Lorden dated December 10, 2014 and presented to the ZBA at its hearing, the Developer proposed to pay, for each of the five buildings, \$80,200 as a condition to issuance of a certificate of occupancy, and \$4,800 per year thereafter for 30 years, interest free. The total payments per building would equal \$224,200 after 30 years. The total payments for all five buildings would equal \$1,121,000 after 30 years. The ZBA accepts this proposal and incorporates it as a condition herein.

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For the foregoing reasons, the ZBA grants the Application of Whalom Road, LLC for a modification of the comprehensive permit for the Project, subject to each and every one of the following conditions:

O. Modification of Comprehensive Permit

- O.1 Every condition in the Original Decision, is hereby re-stated and incorporated herein, and unless express amended or modified herein, shall apply to the Revised Project. To this end, all references to the "Project" in the Original Decision shall mean the "Revised Project."
- O.2 Condition A.10 is stricken and replaced with the following: "This Decision permits the construction, use and occupancy of no more than 120 housing units in five buildings on the Site."
- O.3 Condition B.1(k) is amended by adding Condition O.31 (fire protection) to the list of conditions referenced therein.
- O.4 Condition B.1(m) is amended by adding "Hamwey Engineering" to the list of vendors.
- O.5 Condition C.1 is amended by replacing "Robert Hanna" with "Gary Lorden."
- O.6 Condition C.9 is deleted.
- O.7 Condition C.12(b)(iii) is amended by removing the reference to the median at Rogers Passway approaching the F&L Right-of-way.
- O.8 Condition C.12(c) is stricken and replaced with the following:

The Applicant shall provide to the Fire Chief specifications for the emergency access gate proposed on the F&L Right of Way (connecting to Lesure Avenue) and shall implement the emergency access gate prior to the occupancy of the first building constructed in the Revised Project. Because the gate is to be installed in a normal closed and locked position, there shall be a 'DEAD END' street sign. The Applicant shall keep the emergency gate in a closed position with access only in an emergency. Access to the gate shall be provided to the Fire and Police Departments in whatever form they require. The Applicant shall maintain the access driveway on the F&L Right of Way year-round, cleared of snow, ice and any other obstructions, ensuring that it is passable by emergency vehicles coming from Lesure Avenue at all times. The Applicant shall maintain the gate in perpetuity, or until such time that the Town finds it is no longer necessary.

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- O.9 Condition C.12(d) is deleted.
- O.10 Condition C.12(g) is amended by removing references to Piedmont and Pleasant View Avenues.
- O.11 All references to “homeowners’ association” or “Association” in any condition in the Original Decision shall be removed. All obligations of said association shall be borne by the Applicant and its successors and assigns.
- O.12 Condition C.12(i) is deleted.
- O.13 Condition C.23 is stricken and replaced with “The sidewalks shown on the Plans shall be constructed and maintained by the Applicant.
- O.14 Condition C.24 is amended by striking the phrase “per Mr. Houston’s December 7, 2009 letter, § 16.”
- O.15 Condition C.25 is amended to change the maximum light pole height from 14 feet to 20 feet.
- O.16 Condition C.29 is amended by removing references to Lots 1-5.
- O.17 Condition C.30 is stricken.
- O.18 Condition C.32 is re-affirmed to the extent that such comments are still applicable to the Revised Project.
- O.19 Condition D.3 is stricken and replaced with the following:

The area in the middle of the loop driveway shall be established as a passive recreation area for the residents of the Revised Project (the “Open Space Area).”
- O.20 Condition D.7 is deleted.
- O.21 Conditions E.2, E.4, and E.6 are deleted.
- O.22 Condition E.7 is stricken.
- O.23 Condition F.4 is stricken and replaced with the following:

Vehicular parking shall only be allowed within delineated parking spaces as shown on the Approved Plans. The Applicant shall ensure that its tenants comply with this condition.
- O.24 Conditions G.1 – G.3 are stricken and replaced with the following:

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At least 25% of the units within the Revised Project shall be leased to households whose aggregate income is no greater than 80% of the area median income adjusted for household size. The Applicant shall fully comply with the affordability requirements of the Subsidizing Agency in the development and operation of the Revised Project. To the extent permitted by law and the Subsidizing Agency, the Applicant shall implement the local preference provisions of Condition G.3 of the Original Decision in the selection of tenants for the Revised Project.

- O.25 Condition G.5 is amended by striking all but the first sentence, and adding the following sentence: The term of the affordability restriction embodied in the Regulatory Agreement shall be in perpetuity, it being the intent of this Decision that the affordable units created herein shall be permanently added to the Town's Chapter 40B Subsidized Housing Inventory ("SHI"), and that all of the units created herein will qualify for inclusion in the Town's SHI.
- O.26 Conditions G.6 and G.7 are deleted.
- O.27 Condition H.1(a) is amended by striking the words "and no sale of any unit shall be permitted".
- O.28 Condition H.1(c) is amended by striking "Phase 3 or 3A as shown on the phasing plan" and replacing it with "the fifth building to be constructed in the Revised Project".
- O.29 Conditions J.1 and J.2 are deleted.
- O.30 Condition J.4 is stricken and replaced with the following:

In lieu of sewer privilege fees and sewer connections fees that would otherwise be assessed to the Revised Project, the Developer shall pay the following fees:

for each of the five proposed apartment buildings, the Developer shall pay \$80,200 as a condition to issuance of a certificate of occupancy, and \$4,800 per year thereafter for 30 years, interest free, due in monthly installments to the Sewer Commission of \$400 each. The total payments per building shall equal \$224,200 after 30 years. The total payments for all five buildings shall equal \$1,121,000 after 30 years.

Without limitation, the Developer's obligation hereunder shall be enforced as a sewer betterment lien, and subject to collection if delinquent as if it were a betterment lien governed by G.L. c. 83.

- O.31 Condition J.5 is deleted.

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- O.32 Condition L is re-affirmed, such that the 36-month period shall begin to run on the date that this decision for the Revised Project is final.
- O.33 Condition N.1 is amended by changing the deadline for turnover of the Recreation Area Parcel from the date of the issuance of the 30th certificate of occupancy, to the date of the issuance of the first certificate of occupancy for any unit within the third building to be issued certificates of occupancy in the Revised Project.
- O.34 Condition N.3 is deleted.
- O.35 The Project shall be served by water mains or service lines with adequate fire flow to protect the buildings being constructed. The Applicant shall submit fire flow test data to the ZBA for its review contemporaneous with its review of the final Approved Plans (See, Condition C.29). The Applicant shall prepare a fire protection plan for review by a fire protection peer review consultant chosen by the ZBA, which shall be submitted contemporaneous with the submission of the Applicant's proposed Approved Plans (Condition A.1). The plan shall contain the Applicant's proposed fire suppression, alarm, and notification systems. Review of the plan shall be paid for by the Applicant out of the account set up under Condition B.1(k).
- O.36 The Project shall be served by an 8" water main, and the main access drive shall have a pavement depth of at least 2 ½" inches. O.30 The Applicant shall provide to the Fire Chief specifications for the emergency access gate proposed on the F&L Right of Way (connecting to Lesure Avenue) and shall implement the emergency access gate prior to the occupancy of the first building constructed in the Revised Project. Because the gate is to be installed in a normal closed and locked position, there shall be a 'DEAD END' street sign. The Applicant shall keep the emergency gate in a closed position with access only in an emergency. Access to the gate shall be provided to the Fire and Police Departments in whatever form they require. The Applicant shall maintain the access driveway on the F&L Right of Way year-round, cleared of snow, ice and any other obstructions, ensuring that it is passable by emergency vehicles coming from Lesure Avenue at all times. The Applicant shall maintain the gate in perpetuity, or until such time that the Town finds it is no longer necessary.
- O.37 Prior to the issuance of the certificate of occupancy for the first building in the Revised Project, the parcel labeled "Water District Parcel" on the plan attached hereto as Exhibit A, consisting of 1.96 acres, shall be conveyed to the Lunenburg Water District by deed in a form acceptable to the Water District's counsel, or Lunenburg Town Counsel, with no restrictions on the use of the parcel except that the Deed shall stipulate that in the event that the Water District determines that the parcel is not needed for Water District purposes, the Water District shall convey the parcel to the Town of Lunenburg for general municipal purposes, subject to the Town's acceptance of the same.

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O.38 The land to the west of the line labeled "100' buffer zone" on the east side the wetland that crosses the Project Site shall be encumbered by a conservation restriction conveyed to the Lunenburg Conservation Commission in a form approved by Town Counsel.

III. APPLICANT'S REQUESTED WAIVERS

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

The ZBA's decision with respect to each waiver request is as follows:

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Lunenburg Zoning By Law

#	Section	Description	Request	Status	Action
1	3.4 & 5.1.5	No more than one (1) building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot, in a subdivision or elsewhere in the Town, without approval of the Planning Board.	Waive requirement to allow for five (5) buildings for use for dwelling purposes.	New waiver	Waived.
2	4.2	Residence and Outlying District Uses allow by right, by Special Permit by the Zoning Board of Appeals, and by Special Permit by the Planning Board	Allow the use of apartment buildings on a parcel of land in the Residence A Zoning District.	New waiver	Waived.
3	4.2	Requires minimum 40,000 sq. ft. lot for multi-family residential uses in residential zoning district.	Waive entire section to allow for lot sizes as shown on the Plans.	Previously waived to allow lot sizes as shown on the Plans. Waiver no longer required. New proposal has 120 units on a single lot.	
4	5.1.2.1	Requires minimum 40,000 sq. ft. lot size in residential zoning	Waive entire section to allow for lot sizes as shown	Previously waived to allow lot sizes as shown on the Plans. Waiver no longer required. All	

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		district.	on the Plans (smallest = 7,003 sq. ft.)	120 units will be located on a single lot greater than 40,000 sq. ft.	
5	5.1.2.1	Requires lot width through building to be at least 175 feet.	Waiver to allow lot widths as shown on the Plans (smallest = 85')	Previously waived to allow lot widths as shown on the Plans. Waiver no longer required. The project will consist of a single lot.	
6	5.1.2.1	Requires minimum 100 feet of frontage per lot.	Waiver to allow lot frontages as shown on the Plans, no shorter than 50 feet.	Previously waived to allow lot frontages shown on the Plans, no frontage to be less than 50 feet. Waiver no longer required. The project will consist of a single lot with greater than 100 feet of frontage.	
7	5.2.1	Requires minimum front yard setback of 40 feet.	Waiver to allow setbacks as shown on the Plans (smallest = 20')	Previously waived to allow setbacks as shown on the plans, no front yard to be less than 20 feet. Waiver no longer required. The minimum front yard setback is proposed to be 165 feet.	
8	5.2.5	Requires minimum side yard setback of 15 feet.	Waiver to allow setbacks as shown on the Plans (smallest = 13')	Previously waived to allow setbacks as shown on the plans, no side yard to be less than 13 feet. Waiver no longer required. The minimum side yard setback is proposed to be 71 feet.	
9	5.3.1.1	Requires a maximum height of a building to be 38 feet.	Waiver to allow a building height of 55 feet.	<i>New Waiver</i>	<i>Waived.</i>

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10	5.6	Governs "cluster developments" in Lunenburg.	Waive entire section to the extent applicable.	Previously waived. Waiver still required. This waiver is not affected by the proposed modification.	<i>Waived.</i>
11	6.1.2.2	Requires a six (6) foot wide screened area between all open off-street parking and loading areas from all adjacent lots, densely planted with shrubs and trees, which are at least three (3) feet high at the time of planting and of a type which may be expected to form a year-round dense screen.	Waiver to allow for the existing natural re-growth of previously cut trees with the proposed additional plantings as shown on the plans.	<i>New Waiver</i>	
12	6.4.3.4	Not more than two (2) dwellings may maintain one (1) common entrance and/or driveway.	Waiver to allow the common entrance from Whalom Road to serve as the driveway for the 120 units.	<i>New Waiver</i>	

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13	6.4.3.10	Requires that no driveway be located within 25' of a "street intersection," and within 25 feet of another driveway in non-residential districts.	Waiver to allow driveways on Lots 45 and 50 to be within 25 feet of street intersections and within 25 feet of other driveways (to the extent this bylaw is applicable), the smallest setback to be 5 feet.	Previously waived to allow driveways on Lots 45 and 50 to be within 25 feet of street intersections and within 25 feet of other driveways (to the extent this bylaw is applicable), the smallest setback to be 5 feet. Waiver no longer required.
14	6.5.1.3	Maximum Area of Building Sign in Residence A Zoning District is three (3) square feet	Waive section To allow 8' x 4'	Waived. <i>New Waiver</i>
15	6.5.1.4	Minimum distance from the street line of fifty (50) percent of the required front yard offset in Residence A Zoning District	Waive section	<i>New Waiver</i>
16	8.4	Requires "development plan review" by the Planning Board for projects that have a "substantial potential for impact upon the character of the	Waive entire section in lieu of comprehensive permit application process.	<i>Previously Waived.</i> Waiver still required. This waiver is not affected by the proposed modification. Waived.

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Subdivision Rules and Regulations

The blanket request to waive the entire Lunenburg Subdivision Rules and Regulations is **denied**. The Applicant's specific waiver requests are addressed below:

17	3.3	Requires submission of a preliminary plan.	Waive submittal requirement.	Previously waived. Waiver no longer required. The modified project will not be a definitive subdivision.	
18	3.4	Requires submission of a definitive plan.	Waive submittal requirement.	Previously waived. Waiver no longer required. The modified project will not be a definitive subdivision.	
19	4.1.3	Requires compliance with dimensional standards in Zoning Bylaw.	Waiver entire section.	Previously waived to allow for dimensional nonconformities, as permitted above. Waiver no longer required	
20	4.2.4.3	Governs vertical curves on subdivision roads	Waive requirement to allow roadway reconstruction of Lesure Avenue at station 1+00 with a centerline grade change in excess of .5%.	Previously waived. Waiver no longer required.	
21	4.10.3.1	Requires every new lot developed within the Water District to be connected to public water.	Waiver to allow the five dwellings with access off Pleasant View Avenue and Piedmont Avenue to be served by private	Previously waived. Waiver no longer required. The Applicant proposes to connect all units to the municipal water system.	

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22	4.10.4.6	Requires at least three (3) feet of cover over all drains.	Wells. Waiver to allow the proposed cover over the drains as shown on the plans.	New Waiver	Waived to allow at least two feet of cover, provided that sufficient pipe type and class to withstand vehicle loads is installed, which shall be subject to ZBA's administrative review during post-permit approval of final plans under Condition A.I.
23	5.2.1.4	Requires the subgrade surface to be prepared sixteen and one half (16-1/2) inches below the finished grade of secondary streets.	Waiver to allow for the depth of fifteen and one half (15-1/2) inches.	New Waiver	Waived.
24	5.2.3.1 & Schedule C	Requires the base course depth of pavement to be three inches (3") and surface course depth to be one and one half inches (1.5").	Waiver to allow for the depth of the base course of pavement to be two inches (2") and the top course to be one and a half inches (1-1/2")	New Waiver	Waived.
25	5.4.1 & 5.7.1 & Schedule C	Requires the separation of a sidewalk from the pavement area by a seeded grass plot.	Waiver to allow for the sidewalk to be constructed up against the back of the berm or curb.	New Waiver	Waived, provided however that the required grass strip shall be provided at the Project's driveway's entrance to the first intersection.
26	5.6.1.1 & 5.6.1.2	Requires installation of granite curb along each edge of a	Waiver to allow installation of bituminous "cape	Previously waived. The waiver from 5.6.1.1 is not required. The waiver from 5.6.1.2 is still	Waived.

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27	roadway where the grade exceeds five (5) percent and on the inner side of all roadway curves with a radius of less than 250 feet. Requires street trees to be planted at a forty (40) foot interval.	cod berm" curb throughout the project, excluding the project's entrance at Whalom Road.	required.	
5.8.1		Waive to allow for street trees to be planted at a seventy (70) foot interval with the additional plantings proposed around the buildings.	New Waiver	Waived.
28 Schedule C	Requires five foot (5') minimum cover on sewer mains.	Waive to allow for the cover as proposed on the design plans. Insulation on the mains to be provided where four feet (4') of cover is not able to be met.	New Waiver	Waived to allow at least three feet of cover, provided that pipe is insulated and sufficient pipe type and class to withstand vehicle loads is installed, which shall be subject to ZBA's administrative review during post-permit approval of final plans under Condition A.1.

Sewer Assessment Bylaw (Aug. 2001)

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29	§2	Requires payment of a compensatory sewer privilege fee to compensate the Sewer Commission for the increased use of the land from what was previously assessed.	Waiver of the privilege fee for the affordable units and one (1) of the market-rate units in the Project only. Applicant will pay privilege fee for all other units.	Previously waived, subject to the Applicant's performance of Condition J.5. <i>New Waiver.</i>	<i>Waived, subject to Condition O.24 herein.</i>
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Regulations of the Planning Board of the Town of Lunenburg Governing the Design, Construction and Maintenance of Off-Street Parking and Loading Areas

32	2-8.1	No more than 20 spaces shall be provided in a row without separation by an interior driveway and by a landscaped area. In the case of double rows, this separation shall mean 20 spaces on each side of the bay areas.	Waiver to allow no landscaped areas inside the parking areas and the layout of the parking and driveways as shown on the Plans.	<i>New Waiver</i>	<i>Waived.</i>
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By granting the waivers from local bylaws and regulations specifically listed in this Comprehensive Permit, it is the intention of this Comprehensive Permit to permit construction of the Project as shown on the final Approved Plans. If, in reviewing the Applicant's building permit application(s), the Building Inspector determines that any additional waiver from local zoning, wetlands, health or other regulations is necessary to permit construction to proceed as shown on the Approved Plans, the Building Inspector shall proceed as follows: (a) any matter of a *de minimis* nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature shall be reported back to the ZBA for disposition of the Applicant's request for a waiver therefrom.

IV. CONCLUSION

For all the reasons stated above, the request for modification of the comprehensive permit previously issued for the Project is approved with the foregoing conditions.

LUNENBURG ZONING BOARD OF APPEALS

 2/25/15

Donald Bowen, Chairman








