

# TOWN OF ARLINGTON

## Zoning Board of Appeals

730 Massachusetts Avenue

Arlington, MA 02476

### DRAFT DECISION – REVIEW COPY – OCTOBER 13, 2021

#### G.L. c. 40B, §§ 20-23

APPLICANT: ARLINGTON LAND REALTY, LLC (“Applicant”)

PROPERTY: Off Dorothy Road and Parker Street (the “Property”)

ASSESSORS’ MAP: Assessors Parcels 17-6-6A, 16-8-8, 16-8-2, 16-8-3, 16-8-4, 16-8-5, 16-8-6, 16-8-7A, 13-12-5A, 14-2-8 and 14-2-5

DEVELOPMENT NAME: Thorndike Place

DATE: \_\_\_\_\_, 2021

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#### I. PROCEDURAL HISTORY

1. An application filed by the Applicant for a Comprehensive Permit pursuant to G. L. c. 40B, §§20-23 was received by the Town of Arlington Zoning Board of Appeals (“Board”) on or about August 31, 2016 (“Application”). As originally designed, the Application proposed the development of twelve (12) home ownership units in six (6) duplex-style structures, and two hundred and seven (207) rental units in a single four-story multifamily structure, for a total of two hundred and nineteen (219) units located at the Property (the “Project”).
2. The Board’s public hearing on the Application was duly opened on September 26, 2016. On October 6, 2016, the Board submitted a notification to the Applicant pursuant to 760 CMR 56.03(8) stating it had determined that the Town met the 1.5% Land Area Minimum Safe Harbor. On October 21, 2016, the Applicant appealed the Board’s determination to the Department of Housing and Community Development (“DHCD”). On November 17, 2016, the DHCD issued a decision ruling that the Board’s Safe Harbor notification was in error, and determining that no such safe harbor was applicable. The Board timely appealed this decision to the Housing Appeals Committee (“HAC”). After a *de novo* hearing, on October 15, 2019, the HAC issued a decision upholding the determination of the DHCD, and remanding the matter back to the Board. At the request of the Applicant, the Board’s hearing was resumed on December 10, 2019. At the December 10, 2019

hearing, the Applicant requested a further continuance of public hearings until April 14, 2020 to present updated plans in advance thereof.

3. On or about March 19, 2020, the Applicant provided updated preliminary site plans prepared by BSC Group and an updated set of preliminary architectural plans prepared by GreenStaxx. However, due to the onset of the COVID-19 pandemic, the Board did not resume the public hearing until August 25, 2020, at which time all further sessions of the public hearing were conducted remotely pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, which allows for persons to attend and participate via Zoom. After the expiration of the Governor's Order, "An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency" was signed into law, extending those same provisions until April 1, 2022. Subsequent sessions of the public hearing were held on October 13, 2020, November 24, 2020, December 8, 2020, December 22, 2020, January 26, 2021, February 16, 2021, March 11, 2021, April 8, 2021, May 13, 2021, June 10, 2021, June 29, 2021, August 3, September 9, 2021, October 5, 2021, and October 20, 2021. The public hearing was closed on October \_\_, 2021.
4. During the public hearing, the Applicant was assisted primarily by its authorized representatives Gwen Noyes and Arthur Klipfel of Oaktree Development/GreenStaxx; its counsel Stephanie Kiefer of Smolak and Vaughan, LLP; its civil engineers John Hession, P.E., and the BSC Group; its traffic engineer Scott Thornton, P.E., of Vanasse and Associates, Inc. ("VAI"); its architect Scott Vlasik, of Bruce Ronanyne Hamilton Architects; and its housing consultant, Robert Engler of S.E.B. The Applicant also was represented within the public hearings by Ambrose J. Donovan, P.E., LSP of McPhail Associates LLC and senior housing management consultant, Alan Zimlicki, of ASZ Associates.
5. The Board utilized the services of its peer review engineers, BETA Group, Inc., with Marta Nover, Julia Stearns, Todd Undzis, P.E., William McGrath, P.E., and Laura Krause, Senior Environmental Scientist, handling civil engineering and wetlands, and Greg Lucas, P.E., PTOE, Tyler de Ruitter, P.E., PTOE, and Dennis Flynn, P.E., PTOE handling traffic. The Board also utilized the services of Town Counsel Douglas Heim, Esq., Director of Planning and Community Development Jennifer Raitt, Senior Planner Kelly Lynema, Senior Transportation Planner Daniel Amstutz, Town Engineer Wayne Chouinard, and other town staff. The Board was also represented during the course of the hearing by Special Town Counsel Jonathan Witten, Esq. of KP Law, and Paul Haverty, Esq., of Blatman, Bobrowski & Haverty, LLC as its Chapter 40B technical consultant through a grant from the Massachusetts Housing Partnership.

6. The Project site consists of a 17.7-acre parcel of land off Dorothy Road, and is located between Concord Turnpike (Route 2) to the south and west and residential neighborhoods to the north and east of the Property. The Property is also bordered to the east by Burch Street and the Town of Arlington Thorndike Park.
7. The Property is located within the Planned Unit Development (PUD) Zoning District. The abutting residential properties are zoned primarily as within the Two-Family (R-2) Zoning District, with the exception of the residential properties on the western side of Littlejohn Road, which are within the Single-Family (R-1) Zoning District. Thorndike Park, located to the east of the Property is in the Open Space (OS) Zoning District. Use in these districts are consistent with zoning.
8. Of the total Project site, approximately 13.7 acres are within the regulatory floodplain. The portion of the Property to be developed as the Project is approximately a 5.6 acre parcel, along the northern/central area of the Property, with limited areas of floodplain along the southern and eastern portions of the designated area of development.
9. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application. While, as described below, the design has been revised several times during the public hearing process, the final proposed Project includes 6 duplex buildings/12 ownership units along Dorothy Road and a 124-unit, four-floor senior living rental building behind the duplex units, together with accessory parking, landscaping, and access drives (the "Project"). The final proposed Project is depicted on the BSC plan set, titled "Thorndike Place Comprehensive Permit, Dorothy Road, Arlington Massachusetts," dated March 13, 2020, revised through August 27, 2021, and consisting of fourteen (14) sheets and the architectural plans prepared by Bruce Royanne Hamilton Architects and GreenStaxx, titled "Thorndike Place, Arlington, Massachusetts", dated September 2, 2021, consisting of sixteen (16) sheets.
10. Within the public hearing, during fall 2020, the Applicant submitted revisions to the Project's originally-proposed layout responsive to comments made by the Board's peer review consultants at BETA Group and by the Arlington Conservation Commission, seeking to reduce impacts within wetland resource areas and buffer thereto.
11. Thereafter, the Applicant submitted a revised set of plans and supplemental materials to the Board on November 3, 2020. The revised proposal reduced the total number of units in the Project from 219 units to 176 units. This revision also eliminated the six (6) duplex structures originally proposed by the Applicant, in favor of an all-rental development in a single structure, which was moved northerly on the Property toward Dorothy Road.

12. On January 21, 2021, Applicant's engineers submitted supplemental plans and documentation to the ZBA, including a fiscal analysis; BSC Response to BETA Group and the Town Engineer's stormwater comments; an updated stormwater report; revised Site Plan Sheets C-100, C-101, C-105, C-200, C2-03; a revised Wetland Delineation Memorandum and responses to BETA's traffic peer review. Subsequent to the Board's January 26, 2021, public hearing, the Applicant proposed further adjustments to the architecture of the building.
13. [Intentionally left blank]
12. In spring 2021, the Board requested the Applicant to consider reintroduction of the ownership duplex units within the proposed development. Thereafter, the Applicant responded to the Board's request, such that the building layout remained within the plan's perimeter access path, but the rental building was reduced in size to allow reintroduction of the six (6) duplex buildings, consisting of twelve (12) ownership units. Within this revised concept, the Applicant modified the rental building to decrease the size of the same and to decrease the number of units such that the building was designed to accommodate 124 age-restricted housing units, consisting of a mix of studio, one- and two-bedroom units together with ancillary common spaces associated with an independent living residence for seniors.
13. Between July and September 2021, the Applicant provided additional detail and assessment of the revised concept project plans, including VAI's updated traffic impact assessment report submitted on August 3, 2021, BSC updated civil plan set as revised through August 27, 2021, a full set of updated architectural plans submitted on September 2, 2021, updated stormwater management report dated August 31, 2021, updated waiver list through September 2, 2021 and written responses to BETA peer review comments (traffic, civil and wetlands), Conservation Commission comments and Town Department/Staff comments.
14. During the extensive public hearing process, there was significant public input, including strong local opposition. The Board heard input from abutters and other interested persons throughout the hearing process. The Board also heard significant input from town departments, including the Arlington Redevelopment Board, the Conservation Commission, the Department of Planning and Community Development, the Transportation Advisory Committee, Select Board, and Engineering Division. The Board also received significant input from the Arlington Land Trust and the Mystic River Watershed Association, both independent local non-profits. Additionally, the Board received correspondence from the Town's State House delegation.
15. The Board finds the final proposed Project to represent a notable improvement to the prior project design, most specifically with reductions in impact on floodplain

and wetland resource areas/buffers thereto, reduction in traffic generation and parking, reduction in impervious surfaces and a more climate change responsive design, inclusive of providing all first-floor elevations above projected 2070 storm surge elevations. While the final proposed Project may be an improvement on its predecessor, it is the duty of the Board to determine whether the final proposed Project, on its own terms, appropriately addresses local concerns.<note for deliberation>

## II. JURISDICTIONAL FINDINGS

16. 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 limited liability company, and has indicated in its application that it will conform to the limited dividend requirements of G. L. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 222 Berkley Street, Boston, MA 02116.
  - b. The Applicant has received a written determination of Project Eligibility from MassHousing dated December 4, 2015, under the New England Fund Program, a copy of which was provided to the Board with the original application. The Board subsequently contacted MassHousing regarding the changes to the proposed development, asking for a determination pursuant to 760 CMR 56.04(5). MassHousing submitted a written determination dated March 23, 2021, determining that the changes to the development, including the removal of the duplex development, would not constitute a substantial change pursuant to 760 CMR 56.04(5). The Board reserves all of its rights regarding this determination.
  - c. The Applicant provided deeds dated September 8, 2015, recorded in the Middlesex South in Book 1479, at Page 27. Thus, the Applicant has shown evidence of site control sufficient to qualify as an applicant for a Comprehensive Permit.
  - d. The Applicant has agreed to execute a Regulatory Agreement 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 DHCD.
17. The Town of Arlington (“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 original application was filed, except 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 5.64% of the total year-round housing units in the Town, based on the most recent publicly available copy of the DHCD Subsidized Housing Inventory, dated . Thus, the Town does not meet the ten percent (10%) statutory minimum.
- b. The Board has asserted a claim that there are existing affordable housing units that are 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). The Board timely asserted this claim pursuant to 760 CMR 56.03(8). The Applicant appealed this claim to the Department of Housing and Community Development, which issued a decision dated November 17, 2016, reversing the Board' Safe Harbor determination. The Board appealed this decision to the Housing Appeals Committee. On October 15, 2019, the Housing Appeals Committee upheld the decision of the Department of Housing and Community Development. Because this decision was not a final decision, the Board was not able to pursue an appeal pursuant to G. L. c. 30A, § 14 at that time. The Board reserves its rights regarding this Safe Harbor claim.
- c. The granting of this Comprehensive Permit 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.
- d. The Town has an approved Housing Production Plan pursuant to 760 CMR 56.03(4), but is not currently within (or eligible for) certification.
- e. The Town has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5).
- f. The Project as originally submitted does not constitute a Large Project pursuant to 760 CMR 56.03(6).
- g. The Applicant's Comprehensive Permit Application does not constitute a Related Application pursuant to 760 CMR 56.03(7).

### III. FACTUAL FINDINGS

### **Location of Project**

18. The Project is located on a low-lying, undeveloped 17.7 acre parcel of land located between Concord Turnpike (Route 2) to the south and west and single- and two-family residential neighborhoods to the north and east of the Property. The Property is bordered on the north by Dorothy Road and on the east by Burch Street and Thorndike Park. The northwest corner of the Property along Dorothy Road is at the intersection with Littlejohn Street.
19. The Property is located within the Planned Unit Development (PUD) Zoning District. In this District, duplex homes are allowed as of right and multifamily housing is conditionally allowed. The maximum building height in the PUD district is 85 feet and residential housing is limited to five (5) floors. The height of Applicant's senior rental building, which is four (4) floors, and the three-floor duplex structures adhere to the zoning height limits.
20. While the Property is approximately 0.7 miles (a 13-minute walk) from the Alewife MBTA station utilizing the Minuteman Bikeway, there is no direct access to the station or the transit-oriented development around it. Vehicular access to the neighborhood in which the Property is located is via Lake Street, one of the most congested thoroughfares in Arlington, and within the local road network consisting of narrow, 25-foot wide local roads. The local road network is stressed even in the absence of the Project by the cut-through pressure exerted by the congestion on Lake Street. There is no direct automobile access from the Property to Route 2.
21. The location of the Project presents several major problems that make reconciling and balancing local needs, including the local need for affordable housing, uniquely difficult. These problems include repeated and severe flooding that will certainly be exacerbated in the future by rapid climate change; the presence of extensive wetlands and related resource areas on the majority of the site; decades of neglect that have resulted in serious degradation of the Property; the Project's isolation from the transit-oriented development in the immediate vicinity of the Alewife MBTA Station; the location of the Project in a uniform, long-established residential neighborhood that is much smaller in scale; and the poor performance of Lake Street and the surrounding network of local roads from both a traffic and safety point of view. If the Property were larger, or the Project smaller, it would have been easier, though not necessarily easy, to resolve the conflict among local needs brought about by these difficulties. As it is, the Project is uniquely challenging.
22. In response to the site challenges, the Applicant addressed the Board's concerns, resulting in a final project design that is notably reduced from the original project iterations, maintains a compact design away from protected vegetated wetland resource areas, has been engineered to account for climate change concerns and

incorporates traffic mitigation measures targeted to decrease individual vehicular trips to and from the Project site. /Board to discuss/

### **Wetlands and Flooding**

23. The Property is located in a neighborhood that has been historically subject to flooding. The Board has received testimony of this historic flooding on and around the Property, a remnant of the “Great Swamp” of Alewife. Much of the Property, notably its southern portion closest to Route 2 is bordering vegetated wetland, with a pocket of isolated vegetated wetland to the east of the proposed development envelope proposed on the Property.
24. The southern and eastern portions of the property are largely within the regulatory floodplain. The site has provided flood storage capacity over the years. Still, a 2015 letter to Town Counsel noted that “historical reports indicate that flooding occurs beyond the 100-year flood extents shown” by FEMA. A 2015 letter from the Arlington Conservation Commission noted that “neighborhoods surrounding the Mugar Property have a long history of street and basement flooding during and after storm events” and “Alewife Brook runs ‘backwards’ (away from the Mystic River) during large rain and flood events, which may contribute to flooding of the Property and its neighborhood.”
25. A memorandum prepared by Weston & Sampson on behalf of the Arlington Land Trust noted that “there is concern that developing on the wetland will exacerbate an area that has already experienced extreme flooding events in recent decades.” The Weston & Sampson report evaluated the prior project design of a 176 multifamily unit project, and not the current project. The revised building footprints will be predominantly outside the floodplain, and the proposed first floor elevation of all buildings will be above the 2070 projected flood elevations.
26. During the hearing process, the Board expressed concerns that climate change will aggravate the historical flooding problem of the area and that climate change will strengthen storms and create more severe precipitation events. Recent data already show heavier rainfall than older data, and the situation will inevitably get worse. Addressing flooding in the era of climate change requires designing, not for the past, or even the present, but for the future. Resiliency is a key local concern.
27. Current Massachusetts legislation requires that buildings be designed to the 100-year base flood elevation (BFE), which is currently 6.8 feet NAVD88 and the 500-year flood elevation is at 10.75 feet NAVD88.
28. Applicant’s revised project design, as approved by this Decision, has included climate resiliency measures, including, *inter alia*, raising the building elevations. The elevation of the first floor of the senior living rental building is at Elevation 16

and the first floors of the duplexes along Dorothy Road are at Elevation 12, both above the existing 100 and 500-year base flood elevation and also above the elevations associated with projected sea level rise (SLR) and storm surge (SS) effects under the current standards as well as the 100 year flood under projected 2070 flood elevation modeling.

29. The Cambridge Climate Change Vulnerability Assessment and Cambridge Flood Viewer were also considered by the Board with respect to projected 2070 SLR/SS and precipitation flooding at the Property. Per the Cambridge Flood Viewer, the anticipated 2070 100-year SLR/SS flood elevation is 22.5 Cambridge City Datum, which datum is 11.65 above NAVD88, making the equivalent 2070 100-year flood elevation to be Elevation 10.85. The first floor of each of the duplexes (with FFE at Elevation 12) and the senior rental building (FFE at Elevation 16) are designed above the projected 2070 flood elevations.
30. The neighborhood north and west of the Property is also subject to periodic flooding during or after storm events. Neighbors are deeply concerned that development of the Property will exacerbate the flooding that they already experience.

30A. In response to the Board's request, the Applicant has submitted a summary of the evidence in the record on whether the Project would exacerbate the flooding that the surrounding community experiences already. The Board has also asked its peer consultant, BETA, to review the Applicant's conclusions.

(a) The flooding currently experienced on Dorothy Road and Littlejohn Street is so-called localized flooding, which tends to happen after a heavy rain. The intersection of Dorothy and Littlejohn is a low point in the neighborhood with two catch basins at the Dorothy/Littlejohn intersection and two catch basins in the vicinity of 56 and 57 Dorothy Road. These catch basins discharge through a municipal 12" storm drain across the Thorndike Place property to the southeast at Route 2. There is some question whether the 12" municipal storm drain has adequate capacity to accommodate the localized flow. In any event, only a very small part of the project area currently drains into those catch basins, and that proportion will be reduced essentially to zero after the project is built. The project is designed in accordance with Massachusetts guidelines to retain all stormwater onsite. As designed, it will not contribute to the localized flooding that currently is the bane of the neighborhood.

(b) The project area experiences stream flooding as well. Stream flooding is related to the flow from Alewife Brook. The current FEMA designated 100-year elevation on the site is 6.8. The Thorndike Place project will involve filling certain "Border Lands Subject to Flooding" (BLSF), which would reduce storage

capacity and increase the stream-flooding risk. This filling is offset, however, by the creation of new storage to compensate for storage lost to disturbance. The Applicant has agreed to meet the requirement of the Arlington Wetlands Protection Regulations (which are more stringent than state law) for compensatory storage on a 2:1 basis (that is, two units of compensatory storage for every unit of storage lost to filling). By meeting this standard, the proposed project will not contribute to increased flooding on adjacent or downstream properties. This has been confirmed by the Town's Peer review consultant, BETA Group, in their September 8, 2021, Comprehensive Permit Civil / Wetland Peer Review #5.

(c) The third potential source of flooding is groundwater flooding. Based on the test pits conducted on November 25, 2020, groundwater on the site is estimated to be at elevation 3.0. The Applicant has agreed to conduct additional groundwater testing to confirm the seasonal maximum high groundwater elevations on the site. While there are potential concerns for controlling groundwater flooding on the Property (and the Applicant is addressing those concerns), the Applicant offered testimony from Ambrose Donovan, PE, LSP of McPhail Associates, that the proposed development, including the projection of building foundations below groundwater, would have no impact on the groundwater table in the vicinity of the project.

(d) In a memorandum dated October 8, 2021, the Town's peer consultant, BETA Group, reviewed and concurred with the Applicant's summary of the evidence on flood risk, subject to the gathering of additional data on groundwater elevations. While BETA stresses that the project cannot be expected to improve existing conditions off-site, it agrees that stormwater management associated with the project will not exacerbate them. BETA observes, however, that additional precautions may need to be taken to protect the proposed project itself from groundwater flooding depending on the gathering of additional data on peak-season groundwater elevations.

(e) The project's stormwater management system has been designed to meet and exceed the Massachusetts Stormwater Standards. In particular, the proposed stormwater runoff rates are equal to or less than existing runoff rates for the 2 through 100-year storm events using NOAA 14+ precipitation data. The use of the NOAA 14+ data exceeds current state requirements, although it conforms to the current practice of the Arlington Conservation Commission and was requested by the Commission. The Commission stresses that in practice these data reflect current precipitation conditions and do not fully take into account the likelihood that climate change will result in more extreme precipitation conditions in the future.

(f) The Board takes note of the observation of the Applicant's engineer that the

- construction of the project may provide an opportunity for the Town to clear its existing easement of vegetation and increase the capacity of the municipal system to minimize the likelihood of localized flooding in the future.
31. Sea level rise and storm surge present additional dangers. There is a substantial possibility that the Amelia Earhart Dam in Somerville and Everett will be flanked or overtopped in the next thirty to forty years. This could lead to reversed flows on the Mystic River and its tributaries and severe flooding upstream. The risk of this regional catastrophe may not be much influenced by this Project. Here the key issue is whether the project design is sufficient to protect the persons and property of residents of the proposed apartments as well as neighbors. This is an additional aspect of the challenge of resiliency.
  32. As important as flood storage is, the wetlands on the site serve other important values as well, as neighbors have pointed out. In recognition of the strong local interest in protecting wetlands as an environmental resource, the final proposed Project has been designed, as confirmed by BETA peer review, to provide compensatory flood storage at a ratio of 2:1.
  33. The Project will involve limited work within the buffer zone and within floodplain as defined by M.G.L. c.131, §40 and its regulations at 310 CMR 10.00, the Project will be required to obtain an Order of Conditions under the State Wetlands Protection Act. The Project's applicability under the Arlington Wetlands Bylaw, which is more restrictive than the state Wetlands Protection Act in a number of aspects, including protecting additional resource areas and requiring 2:1 compensation for disturbed areas, was extensively evaluated within the public hearing and such considerations are subsumed within this Comprehensive Permit, which is a master permit of all local approvals.
  34. The Project includes 25,310 square feet of temporary disturbance in the locally protected Adjacent Upland Resource Area ("AURA") associated with site grading and compensatory storage creation and approximately 1,206 square feet of pervious walkway within the outer portions of the AURA, together with 623 square feet of disturbance of the outermost 25 feet of AURA associated with a portion of the back wall on the first floor/garage of the senior living building.
  35. The Project is designed to provide for 2:1 compensatory flood storage, as confirmed by the Board's peer reviewer, and as required by the Arlington Wetlands bylaw. Likewise, in its review letter of August 18, 2021, the Conservation Commission confirmed to the Board that "[t]he ACC is satisfied that the proposed Compensatory Flood Storage Area is appropriate for the 2:1 compensatory flood storage[.]"
  36. The Project does not directly alter either the bordering vegetated wetland or isolated vegetated wetland delineated on the Property. There are some impacts to portions of

the 100-foot AURA associated with the final proposed Project, mainly associated with site grading, compensatory storage, a pervious walking path/fire truck path to the rear of the senior living building as well as a small portion along the southwestern end of the senior living building, which is within the outermost 25 feet of the 100 foot buffer. The Board finds this work within the buffer to be limited in scope and consistent with the local wetlands bylaw, subject to the conditioning herein.

#### Existing Conditions and Open Space

37. Application of the local bylaw has been complicated in some instances by practical difficulties in determining the location of some jurisdictional wetlands. While undeveloped at present, it is important to note the Property as it currently exists is not in pristine condition. After prior unsuccessful attempts over the past decades to develop the land, it has been neglected for many years. In that time, construction and other debris has been deposited in many areas of the site. Invasive vegetative species have taken root. Historic wetlands have been filled and further obscured by overgrowth. More recently, an encampment of homeless people has been established on the Property, which has resulted in sanitation and other issues.
38. The Town and the owner have taken action to rehouse/relocate this population within the recent past, but left unmanaged, the possibility of return encampments is likely.
39. The portion of the Property to be developed as housing units is limited to a 5.6 acre portion of the site, closest to Dorothy Road, and on the predominantly upland portion of the Property. The balance of the Property, approximately 12 acres, is proposed to be restricted against future development and retained as open space. This proposed open space area has potential for passive recreation, environmental education, and a connection to the Minuteman Trail.
40. The Board has received evidence of the policies and efforts of local and state government to preserve the Property for Open Space purposes. A 1992 Metropolitan District Commission (MDC) study ranked the Property the 3rd highest priority for conservation of 205 key open space parcels not yet protected in the metropolitan area. In 2000, the MDC “reiterate[d] its belief that the Mugar parcel is among the most significant, privately owned Open Space parcels remaining in the metropolitan region”. In 2015, its successor agency, the DCR “acknowledge[d] that permanent protection of the site would complement other protected open spaces in and around Alewife Brook”. The parcel abuts other protected Open Spaces including the Minuteman Bikeway and Thorndike Field.
41. The Town of Arlington has consistently identified the parcel as a top priority for

Open Space. Town Meeting in 2000 and again in 2001 voted to direct the Select Board to negotiate with the Owner to acquire the site. The Trust for Public Land was engaged to assist with the negotiations, which were unsuccessful.

42. The Board has received evidence of the Town’s policy that the parcel is needed for Open Space, which has been consistently articulated in its planning documents. The Town’s Master Plan names the parcel “a high priority for preservation”. Arlington’s Open Space and Recreation Plan (2015-2022), adopted as a Town policy document by the Arlington Redevelopment Board acting as the Town’s planning board, states that “The 17-acre Mugar property in East Arlington remains the highest priority goal for acquisition and protection as open space and floodwater storage.”
43. The Town’s policy to preserve the entire Property as open space is inconsistent with the development of any portion of the Property. However, if development of a part of the Property is to take place, as the final proposed Plan envisages, it is extremely important to ensure the restoration and remediation of the remaining land and to prevent its future use or development in ways that are inconsistent with its function as passive open space.

Neighborhood Compatibility

44. The final proposed Project envisions 12 dwelling units in 6 duplex structures and a large rental building to be used for senior housing. The senior housing will provide senior independent living with services and will be available to people 62 years of age or more. The Applicant anticipates that the residents of the senior housing will consist primarily of people in their 70s and 80s. While the proposed senior housing will address the Town’s concern to provide more housing for seniors, it is unlikely that this population would use the Alewife MBTA station heavily for commuting. Even though proximity to the MBTA would continue to be an attractive feature for some residents of the senior housing and many residents of the duplexes, the final proposed Project has largely abandoned the theme of transit-oriented development as an organizing principle.
45. [Intentionally left blank]
46. The six (6) duplex structures along Dorothy Road are generally compatible with the size and scale of adjacent residences along Dorothy Road and throughout the neighborhood.
47. While the four-story senior residential building is smaller than the apartment building previously proposed, it continues to be massive in comparison to the size and scale of residences in the surrounding neighborhood. The duplex structures

along Dorothy Road will address this concern in part by providing a street-level visual buffer from the senior residential building. The senior residential building also features a number of design elements that reduce its visual impact. Nevertheless, the neighborhood continues to be concerned that the final proposed Project is too big and is incompatible with the established character of the neighborhood.

48. The neighborhood's concern includes not only the size of the proposed structures but the activities that will be associated with those structures. One indicator of level of activity is trip generation on a daily basis (rather than the peak hour basis that is primarily relevant to the analysis of transportation impacts). The Applicant estimates that the final proposed Project will generate approximately 412 trips per day. The Board has received testimony that the neighborhood today is very quiet and that children can safely play in the streets. Some residents fear that the greatly increased activity associated with the final proposed Project will adversely affect safety and the established quality of life in the neighborhood.
  
49. To reduce vehicular trips for the residents and staff of the senior living building, the Applicant's project includes a jitney service, which would provide transportation to the MBTA and other local destinations. The residents of the senior living building would also be served by transportation services provided by the Council on Aging. Moreover, a portion of the residents of both the duplex units and the senior housing building will value bicycling for recreation and as a mode of transportation. The Project is close to the Minuteman Bikeway, and the Bikeway in turn leads to a network of other bike paths. Bicycling may diminish the possible neighborhood disturbance that is an expressed local concern.

### **The Transportation Network**

50. The final proposed Project enjoys convenient access to the Alewife MBTA station and to several bus routes. The project also is close to several major highways, including the Concord Turnpike (Route 2), Alewife Parkway (Route 16), and Massachusetts Avenue. The proximity of the Minuteman bikeway provides bikers with access to an extensive network of trails. For pedestrians, it is but a short walk from the project to the Minuteman Bikeway. In some respects, however, the project is not especially pedestrian friendly. While shopping opportunities exist in Fresh Pond and along Massachusetts Avenue, each of those destinations would be a substantial walk, especially to the elderly people who are expected to reside in the senior residential building. The Applicant proposes to address this issue by

providing a jitney service not just to the MBTA station but to other destinations in the vicinity.

51. Road congestion in the vicinity of the Project is a serious local concern. In addition to the jitney service, the Applicant proposes a number of other measures to reduce automotive traffic and congestion on the road network. These include scheduling deliveries and trash pick-up outside of peak traffic hours; scheduling staffing schedules outside of peak traffic hours; charging separately for parking in order to discourage car ownership, providing bicycle parking, including interior and exterior racks; and reaching out to Zip Car for possible car-share options. The Applicant also proposes to provide a transit information packet to residents and staff at the senior residential building.
52. We would usually expect access to a project of the size proposed by the Applicant to be available via multiple connections. That is not the case here. All automobile traffic accessing the Project site must travel on Lake Street, one of the most congested streets in Arlington. From Lake Street one must utilize narrow residential side streets to the entrance to the proposed apartment building, located at the corner of Littlejohn Street and Dorothy Road. At present, local regulations prohibit turns from Lake Street onto Wilson Road, Littlejohn Street or Homestead Road between 7-9 a.m. and 4-7 p.m., Monday-Friday.
53. The access drive to the senior residential building is located near the Littlejohn Street/Dorothy Road intersection. Access to the duplexes is from Dorothy Road, with a series of five (5) shared driveways along Dorothy Road.
54. Lake Street is a major commuting route between Route 2 and Massachusetts Avenue. It also provides access to the Hardy School, a K-5 grammar school serving residents of East Arlington, and to Thorndike Field, a heavily used field for sports teams and recreation activities. The use of Thorndike Field overlaps with the evening commute.
55. Due to the coronavirus pandemic, it is difficult to account for “typical” vehicle traffic volumes on Lake Street to support a robust analysis of the traffic impacts that may come from the development. Both the Board’s traffic peer review at BETA and the Town’s Transportation Advisory Committee agreed upon the methodology utilized by VAI to adjust the traffic data to account for the traffic decrease associated with the coronavirus pandemic. Historical traffic data shows that Lake Street has had extensive traffic back-ups during morning and evening rush hours, and that condition is likely to return during the post-Covid period. The Revised Traffic Impact Assessment found all five of the unsignalized Lake Street intersections within the study area are expected to operate at Level of Service E or F under a no build scenario (the absence of any significant new Site development).

Delays at these intersections are noted as exceeding 50 seconds, the threshold for Level of Service F conditions, and as such any additional Site traffic will further increase delays beyond this threshold.

56. The congestion on Lake Street affects the surrounding neighborhood streets as well. Signs are already posted to prevent Lake Street traffic from turning into the neighborhood during rush hour to try and bypass the delays on Lake Street. Additional burdens on the already over-burdened Lake Street are bound to cause additional problems. These problems will affect families of students at Hardy School, contestants at the Thorndike athletic fields, commuters both by auto and by transit, residents on the streets surrounding the Project, and residents of the project as well.
  
57. In an attempt to address these challenges, VAI's Revised Traffic Impact Assessment ("TIA") for the Project demonstrates that traffic projections for the mixed duplex/senior living apartment proposal are reduced from the prior proposal of a 176-unit multifamily project. Peak hour evening trips associated with the Project are projected to be a reduction of 15% of the prior proposal. <provide over current> <daily trips The Board's peer reviewers at BETA have confirmed the same. Further, while the VAI traffic projections based traffic counts on ITE Land Use Code 252 (senior adult housing - attached) for the four-story building, the Board's peer review traffic engineers suggested that ITC Land Use Code 253 (congregate care) would appear to be more applicable, noting that the Applicant has used conservative assumptions for trip generation rates.

#### **Civil Engineering/Site Design**

58. Within the public hearing, the Board engaged in review of potential civil engineering, site design, traffic, stormwater and floodplain impacts of the Project, having received comment from BETA, the Conservation Commission and the Town departments and staff.
  
59. At the Board's request, upon input from the Arlington Conservation Commission, the stormwater system has been designed to NOAA 14+ rainfall data. Overall post development peak run-off rates for the site are mitigated to be equal to or lower than predevelopment peak ruff-off rates.
  
60. The Project will connect to the Arlington municipal water and sanitary sewer systems. It will not connect to the stormwater sewers. The Town Engineer has informed the Board that stormwater and sanitary sewers are not combined in Arlington and that there are no combined sewer overflows (CSOs) anywhere in the town.

61. The Applicant originally proposed 315 parking spaces for the Project, a ratio of 1.44 parking spaces per unit. The Applicant subsequently reduced the parking ratio to 193 spaces, or approximately 1.12 spaces per unit. The Applicant's final project design provides 95 parking spaces, 84 garage parking spaces and 11 surface parking spaces, for the senior living building. The parking garage will include 10 EV charging stations, with an additional 10 EV-ready parking spaces, as shown on the Project Plans. The parking garage will provide for eight (8) handicap parking spaces as well as two (2) surface parking spaces designated for handicap parking, as shown on the Approved Plans. The Project's duplex units will have tandem parking to accommodate two vehicles per unit, with the exception of the eastern end unit, which will have a single parking space.
62. The Applicant did not originally propose bicycle parking. With the original reduction in the number of units, the Applicant revised the number of proposed bicycle spaces to 176 interior spaces with an additional 16 exterior spaces. The Applicant's final proposed Project includes 28 covered, secured bicycle parking spaces together with a possible expansion for eight (8) additional bicycle parking spaces for the senior residential building. Outside the main entrance of the senior living building, the Applicant will provide an additional two bike racks, capable of securing six (6) bikes per rack.
63. On-site, exterior Project amenities include *inter alia*, onsite bicycle parking, a walking path around the senior residential building, gardens and courtyard space with benches along the western side of the development area and woodland restoration area to the south of the senior residential building, as shown on the Project Plans.
64. Approximately 31.9% of the 5.66 acre development site will consist of impervious surface with the remainder consisting of pervious surface. The Board finds that the total amount of impervious area within the 5.66 acre development site is 78,628 square feet.
  - 64A. Based on the revised plans, the floor area of the proposed lower-level apartment parking garage is approximately 33,050 square feet. In the event of a basement flood to the established 6.8 ft. flood elevation, this represents 200,000 gallons of water. To prevent this occurrence, the Applicant had previously proposed temporary flood barriers to be installed at the driveway entrance to the garage.
  - 64B. The Board finds that the tree planting and landscaping details proposed by the Applicant are insufficient in light of the site disturbance that the Project will entail. Given the extent of the vegetation proposed to be removed within a resource area (BLSF) and AURA, the Applicant should provide a Landscape Plan to ensure appropriate revegetation of the site. ,

Proposed condition to be inserted at the appropriate place: The Applicant shall provide a Landscape Plan as described in Section 24 and should include the elements described in the guidance provided in Section 24 E as follows:

- (a) Narrative describing existing conditions, proposed plantings, list of existing and proposed species, size of existing species and proposed species, quantity plants before and after revegetation and the rationale for the removal and maintenance plan.
  - (b) Affirmation of the Revegetation Activities, all plans must be accompanied by written testimony and scale diagram from a certified arborist or wetland scientist or landscape architect. The document must include at a minimum the necessity of vegetation removal, surface area to be removed, quantity of individual plants by species.
  - (c) Planting Plan – drawn to scale, properly identified resource area and buffer zone and the project site, location of replacement species, comply with (AAN), erosion controls, estimated tree canopies after 15 years of growth, name, sizes and locations of trees to be planted, and total area of SF of the area shaded by the canopies.
  - (d) Existing species list.
  - (e) Replacement species list,
  - (f) Rationale for Removal,
  - (g) Maintenance Plan.
  - (h) The Plan shall include monitoring reports submitted annually in June for a three-year monitoring period. The reports shall include photo documentation, the health of new plantings and any mitigation. This report can be combined and submitted with the ISMP report.
65. Stormwater management 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. The system incorporates best management practices (BMP's) to facilitate total suspended solids (TSS) removal, infiltration and detention of stormwater flows.

65A. The Board finds that if not appropriately mitigated, creation of new compensatory flood storage areas will involve vegetation removal and grading that can have serious negative environmental impacts.

Proposed Condition to Be Inserted in the Appropriate Place: The Applicant shall provide a Compensatory Flood Storage Mitigation Plan for the proposed compensatory flood storage area to mitigate the negative environmental impacts associated with vegetation removal and grading to create this new flood storage area. Said Plan shall provide the following:

- (a) A minimum ratio of 2:1 cubic feet of compensatory flood storage of a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project.
- (b) With at least a 3-year monitoring schedule with a 100% survival rate.
- (c) Only native non-cultivar species shall be planted on the site.
- (d) Plants shall be installed and maintained in accordance with standards of the American Association of Nurserymen (AAN).
- (e) A monitoring report shall be submitted annually in June for the three-year monitoring period. The report shall include the health of the new plantings and the success of the invasive plant management. The report shall include photo documentation and yearly recommendations for future success.

65B. The Board finds that the Applicant must provide adequate quantity of vegetation and that said vegetation shall be maintained to provide the resource area values protected by the Bylaw. Further, the Applicant shall submit an Invasive Species Management Plan for work in the AURA and other resource areas which identifies the location of invasive species management, species and quantities of invasive plants to be managed, and methods of removal and control of each species.

66. The Board finds that the Project, as shown on the Approved Plans avoids alteration of the 25-foot No Disturb Zone to Isolated and Bordering Vegetated Wetlands on the Site.

### **General**

67. The Project, as conditioned herein, will address the lack of affordable rental units in the Town for seniors aged 75 and older, and will also address the lack of affordable

homeownership units. The final proposed Project consists of 12 duplex units housed in six (6) structures, of which 25% of the units (3 units) will be designated as affordable units and subject to a deed rider as required by the Subsidizing Agency, together with 124 age-restricted (62+) senior residential units in a single, four-floor building, of which 25% of the units (31 units) will be made available for lease to low and moderate income persons.

68. The creation of 124 units of senior rental housing, with 25% of such units made affordable to low and moderate income residents, is responsive to the concerns raised in the Arlington Master Plan and its determination that “[c]hanging demographics will result in a growing number of Arlington residents over the age of 65 in coming years. The Town may not be able to accommodate all of its older residents on fixed incomes in the coming years.” Master Plan, p.88.
69. The Board finds that the conditions imposed in Section IV of this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the project uneconomic. <for discussion> To the extent that such conditions may render the project uneconomic (as defined in 760 CMR 56.02), the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
70. 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 Local Concerns.
71. The Board acknowledges concerns raised by abutters and other interested parties about the Project’s potential incompatibility with abutting residential uses, particularly relating to stormwater and floodplain impacts, as well as traffic and parking impacts. The Board has addressed these concerns by the imposition of appropriate conditions. The Board further finds that 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.
72. The Board finds that the construction of the Project, as conditioned, will be consistent with local needs.
73. The Applicant has proposed that the portion of the Property outside of the development area, shown on the plans as containing approximately 12 acres (the “Conservation Parcel”) be placed under a conservation restriction and may be deeded to entity third party to hold the 12-acre parcel as open space. The Town has expressed significant concern regarding the existing condition of the proposed Conservation Parcel, which will require extensive clean-up relating to years of

illegal dumping and habitation. Through the terms of a Memorandum of Understanding (MOU) with the Town of Arlington, the Applicant intends to establish a proposed funding schedule to advance certain conservation and/or restoration efforts for the Conservation Parcel. The Applicant has made the following attestations:

- a. The Applicant has offered to record a perpetual restriction against future development on the Conservation Parcel. The area to be conserved is to be consistent with the BSC plan entitled “Proposed Conservation Parcel,” as revised through August 27, 2021.
  - b. The Applicant has contracted for third party services to engage in removal of solid waste and needles / sharps previously disposed on the property. Under this commitment, the first step necessarily involves the removal of needles / sharps from the ground. The work on the removal of the sharps began in September 2021, and will continue to advance to the removal of solid waste / former encampment sites.
  - c. Working together with the Somerville Homeless Coalition and the Arlington Police Department, the Applicant has been responding to the community issue of housing for unhoused persons on the property.
  - d. The Applicant recognizes that additional funds will be required to remove additional solid waste / debris and to prepare and implement a prioritized mitigation plan to reduce the invasive species population and provide for replanting / rehabilitation within the Conservation Parcel. While the Town and the Applicant negotiate final terms for a MOU regarding the disposition of the Conservation Parcel, the Applicant has agreed to set aside an additional \$100,000 toward planning and removal of solid waste / invasive species within the Conservation Parcel.
  - e. The Applicant has agreed that it will fund, over the course of a ten-year period, an annual contribution of \$25,000 for continued implementation / maintenance of the Conservation Parcel. To provide assurance to the ZBA, the Applicant has agreed to accept a condition to include a \$25,000 annual maintenance budget for ten years upon issuance of the final certificate of occupancy.
74. The Board finds that the Applicant must abide by the requirement that no work activities are authorized nor shall occur within the 25-foot No Disturb Zone of Isolated or Bordering Vegetated Wetlands on the Site.

Decision on Application for Comprehensive Permit  
Arlington Land Realty, LLC  
Off Dorothy Road, Arlington, MA  
\_\_\_\_\_, 2021  
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#### IV. CONDITIONS

##### A. **General**

- A.1 The holder of this Comprehensive Permit is Arlington Land Realty, LLC. The Property is defined as the property located between Concord Turnpike (Route 2) to the south and residential neighborhoods to the north and east of the Property, off Dorothy Road and Parker Street, shown on a plan entitled “Thorndike Place Comprehensive Permit, Dorothy Road, Arlington, Massachusetts” prepared by BSC Group, dated March 13, 2020, with revisions through August 27, 2021. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit.
- A.2 Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project (“Approved Plans”). Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Director of Planning and Community Development who shall have the authority to approve such changes as immaterial changes. It is understood that the areas on the interior of the senior residential building designated for Common Area spaces have not been fully designed for the intended uses, e.g., dining rooms, kitchen, reading nooks/library/meeting rooms/etc., and that the layout and designation of those spaces shall be depicted on the Final Plans (the provision of such additional detail shall not constitute a change in the Approved Plans so long as the number of units, unit sizes and the number of bedrooms is not changed). If the Director of Planning and Community Development determines that any proposed changes do not conform to the requirements of this Comprehensive Permit, they shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this Decision or seek modification in accordance with 760 CMR 56.05(11). The Approved Plans consist of the following plan set from the BSC Group, Inc.:

“Thorndike Place Comprehensive Permit, Dorothy Road, Arlington, Massachusetts” dated March 13, 2020, with revisions through August 27, 2021, and consisting of the following sheets:

G-100	Title Sheet
G-101	General Notes & Legend
V-100	Existing Conditions Plan
C-100	Existing Environmental Resources Plan
C-101	Site Preparation Plan
C-102	Overall Site Plan
C-103	Layout and Materials Plan
C-104	Grading and Drainage Plan
C-105	Utility Plan
L-100	Planting Plan
C-200-203	Civil & Landscape Details
unnumbered	Potential Conservation Parcel, dated 8/27/21

Architectural details contained in the plans entitled Thorndike Place, Arlington Massachusetts, dated September 2, 2021, prepared by Bruce Ronayne Hamilton Architects/GreenStaxx, and consisting of the following sheets:

Sheet 1	Garage Plan
Sheet 2	Ground Floor Plan
Sheet 3	Second Floor Plan
Sheet 4	Third Floor Plan
Sheet 5	Fourth Floor Plan
Sheet 6	Duplex "A" Floor Plans
Sheet 7	Duplex "B" Floor Plans
Sheet 8	Duplex "A" Elevations
Sheet 9	Duplex "B" Elevations
Sheet 10	North Elevation – Dorothy Road
Sheet 11	West Elevation
Sheet 12	North Elevation – 4-Story Building
Sheet 13	East Elevation
Sheet 14	South Elevation
Sheet 15	Site Section at West End-Dorothy Road
Sheet 16	Site Section at East End – Dorothy Road

- A.3 The Applicant shall be a Limited Dividend Entity as required by Chapter 40B and its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.

- A.4 The Project shall consist of not more than twelve (12) duplex ownership units, contained within six (6) duplex structures together with 124-unit senior living residential apartment units located within a single residential structure, and other related residential amenities, all as shown on the Approved Plans. The Project shall consist of no more than twelve (12) four-bedroom duplex ownership units and a 124 unit apartment building, consisting of 58 studio apartments, 23 one-bedroom units and 43 two-bedroom units, with the total number of bedrooms associated with the senior living building to be 167 bedrooms.
- A.5 There shall be ninety-five (95) vehicle parking spaces (inclusive of required handicap spaces) for the senior living apartment building. The duplex units will have driveway parking for 2 vehicles per dwelling unit, with the exception of the end units, with one parking space to the side/rear of the duplex unit.
- A.6 Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, those waivers from the Arlington 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. Any subsequent revision to the Approved Plans, including but not limited to revisions in the Final Plans, referenced below, that 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).
- A.7 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Director of Planning and Community Development or other Town Departments, the Director of Planning and Community Development or applicable Department Head will review and/or provide a written response within forty-five (45) days following submission. For submissions that require assistance from an outside consultant, as determined by the Director of Planning and Community Development or applicable Department Head, the forty-five day time period shall not begin until the consultant's fee has been fully funded by the Applicant. Should forty-five (45) days elapse without a response as aforesaid, said plans or documents shall be deemed approved.
- A.8 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan financing terms as set forth in the financing entity's Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph.

- A.9 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The applicable limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project, provided that the Regulatory Agreement with the Subsidizing Agency has not otherwise expired.
- A.10 The sidewalks, driveways, roads, utilities, drainage systems, and all other on-site infrastructure shown on the Approved Plans (excepting the existing storm drain and sewer lines) as serving the Project shall remain private in perpetuity, and the Town shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal, landscape maintenance, and hydrant maintenance. It is recognized that the storm drain/storm drain easement running under the site and existing sewer easement are the legal obligation of the Town to maintain, repair or replace. The proposed access drive within the Project shall not be dedicated to or accepted by the Town.
- A.11 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.

**B. Affordability**

- B.1 Except as may otherwise be allowed by the Subsidizing Agency MassHousing or other Subsidizing Agency, pursuant to the applicable subsidy program, a minimum of twenty-five percent (25%) or three (3) of the ownership duplex condominium units and thirty-one (31) units of the rental apartments shall be reserved for income-eligible households, meaning that they shall be sold and/or rented, as applicable to and occupied by households, as proposed by the Applicant, whose income (adjusted for household size) is not more than eighty percent (80%) of the Area Median Income (“AMI”), as determined by the United States Department of Housing and Urban Development (“HUD”) and the Subsidizing Agency (the “Affordable Units”). This condition is not intended to create or impose conditions with respect to such affordable units, which is the purview of the Subsidizing Agency, but rather to reiterate the requirements of Chapter 40B. As determined by the Subsidizing Agency, the Affordable Units (rental) shall generally be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency, except for fluctuations based on changes of household eligibility income allowed by the Regulatory Agreement. It is presumed that the Subsidizing Agency will require the Applicant to be responsible for maintaining records sufficient to comply with its guidelines for the location of Affordable Units in the Project and occupancy of such Affordable Units by income-eligible households. The Applicant shall provide the Board with a copy of such records at the Board’s request. As will be set forth more fully in the Regulatory Agreement, the location of the affordable units may change in the event that the income of a household occupying an affordable unit increases beyond allowable program limits. The Board acknowledges that affordable unit location is an issue within the exclusive jurisdiction of the Subsidizing Agency.
- B.2 All of the Project’s Affordable Units shall be restricted for sale (as to duplex units) or rental (as to age-restricted senior apartment units) to households earning no more than the maximum allowable household income, adjusted for household size, as determined by MassHousing or any substitute Subsidizing Agency. The Affordable Units shall be maintained as affordable in perpetuity, which for the purposes of this Decision shall mean for so long as the Property does not comply with applicable zoning and other local requirements without the benefit of this Comprehensive Permit.
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan (“AFHMP”) prior to the marketing and sale of affordable ownership units or rental of affordable apartment units, and shall ensure that the Project complies with the Subsidizing Agency’s Fair Housing requirements.
- B.4 For the initial rent-up of the Project, the Board considered imposing a local preference requirement for the affordable units, but after discussion determined

that the imposition of such local preference requirement would not be appropriate. Accordingly, the Board has made the affirmative determination that no local preference shall be applicable. A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project's Monitoring Agent.

**C. Submission Requirements**

- C.1 Prior to any construction or 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 Director of Planning and Community Development, as noted below), the Applicant shall:
- a. Deliver to the Board a check in a reasonable amount determined by the Director of Planning and Community Development to be used for staff to retain outside experts, if necessary, for technical reviews and inspections required under these conditions but at inception shall not exceed \$6,500 unless an alternate amount has been agreed upon by the Board and the Applicant. Said funds shall be deposited by the Board with the Town Treasurer in an account pursuant to G. L. c. 44, § 53G and shall only be used for technical reviews and inspections associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Said funds may be used by the Board to hire civil engineering, traffic engineering, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof. Such outside review shall be limited only to those circumstances where Town staff is unqualified to undertake such review.
  - b. Obtain and file a copy of a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA), if necessary. The Board shall also be provided a copy of the Stormwater Pollution Prevention Plan (SWPPP) submitted along with the NPDES filing.
  - c. Submit to the Board for review and administrative approval Final Engineering Drawings and Plans (“Final Plans”), such approval to be that the plans conform to the requirements of this Comprehensive Permit and incorporate the relevant conditions herein. The Final Plans shall also incorporate all relevant conditions herein and requirements not otherwise waived by this decision of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the

Professional Land Surveyor of record, the Professional (Civil) Engineer of record, and a Registered Landscape Architect. Final Architectural Plans shall be stamped by a Registered Architect. The Final Plans shall be submitted to the Board 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 Site Plan Submission Date”).

- d. Submit to the Board for its administrative approval, a landscaping plan with the Final Plans in substantial conformance with the Planting Plan included in the Approved Plans, signed and sealed by a Registered Landscape Architect or Civil Engineer, depicting the following:
  - i. Overall planting plan that includes a demarcation of clearing and the limits of work;
  - ii. Planting plans for the access drive showing shade trees and lighting fixture locations, as applicable;
  - iii. Plans of walkways in open space and recreation areas, if any;
  - iv. Prototype planting plans for each building that include shade trees, ornamental trees, shrubs, and groundcovers, as may be applicable;
  - v.
  - vi. Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;
  - vii. Tree protection and preservation plans
  - viii. Construction fencing along abutting property lines, if any; and
  - ix. Specifications for site amenities such as benches, trash cans, lighting fixtures.

All plantings shall consist of native, non-invasive, drought-tolerant species. Plantings installed along drives and walkways shall also be salt-tolerant. The final landscaping plans shall preserve the existing perimeter tree cover to the greatest extent practicable. Annually for a 3-year period after completion of plantings, the Applicant shall remove and replace any dead or diseased plantings and trees serving as screening. The contract with the Management Company shall address ongoing maintenance of landscaping features.

- e. The Board finds that the Applicant must provide a Compensatory Flood Storage Mitigation Plan for the proposed compensatory flood storage area to mitigate the negative environmental impacts associated with vegetation removal and grading to create this new flood storage area. Said Plan shall provide the following:

- i. A minimum ratio of 2:1 cubic feet of compensatory flood storage of a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project.
  - ii. With at least a 3-year vegetation monitoring schedule with a 95% survival rate.
  - iii. Only native non-cultivar species shall be planted on the site.
  - iv. Plants shall be installed and maintained in accordance with standards of the American Association of Nurserymen (AAN).
  - v. A monitoring report shall be submitted to the ZBA annually in June for the three-year monitoring period. The report shall include the health of the new plantings and the success of the invasive plant management. The report shall include photo documentation and yearly recommendations for future success.
  - vi. If the survival rate of the plantings is less than 100%, dead and failing plantings will be replaced with healthy plants of identical species and similar size.
  - vii. If monitoring shows that plant survivorship and health is less than 95% in the third-year report, annual monitoring and replanting will continue until target plant survivorship and health goals are achieved.
  - viii. If target invasive species management goals are not achieved and documented in the third-year report, invasive plant management and annual reporting will continue until invasive plant management goals are met. (Fuchs/MyRWA)
- f. Submit to the Director of Planning and Community Development a construction mitigation plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Director of Planning and Community Development, no other construction of units shall commence, and no building permits shall be issued under this Comprehensive Permit until the Director of Planning and Community Development and other applicable staff has approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Building Commissioner and/or Director of Planning and Community Development concerning the Final Site Plans within forty-five (45) days after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.
- g. The Final Plans shall be in substantial compliance with the Approved Plans.

- h. The Final Plans shall include final design and details for the proposed roof stormwater storage system. The limits of rooftop storage shall be delineated and the outlet control for the rooftop storage is to be detailed.
  - i. The Final Plans shall show designated snow storage areas, consistent with the area shown on the Approved Plans
  - j. The Final Plans shall provide for the relocation of an existing utility pole, presently located in the area of the proposed driveway for duplex units 3 and 4. Applicant shall also coordinate with the utility company to relocate such pole.
  - k. The Applicant must provide notification to the Arlington Assessor's Office for address and unit numbering.
- C.2 Prior to the issuance of any building permits, the Applicant shall:
- a. Record this Comprehensive Permit with the Middlesex South Registry of Deeds, at the Applicant's expense, and provide proof of such recording with the Board.
  - b. Submit to the Board and the Director of Planning and Community Development evidence of Final Approval from the Subsidizing Agency (MassHousing), as required by the Project Eligibility letter and the Chapter 40B regulations.
  - c. Submit to the Board a copy of the Regulatory Agreement and Monitoring Services Agreement for the Project. Execution and recording of such Regulatory Agreement with MassHousing shall be complete prior to the issuance of any building permit. It is understood and agreed that Monitoring provisions may be included with the Regulatory Agreement, in lieu of a separate Monitoring Services Agreement.
  - d. Submit to the Building Commissioner final Architectural Plans prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts ("Architectural Plans"). The Architectural Plans shall be submitted in such form as the Building Commissioner may request pursuant to the State Building Code.
  - e. An automatic sprinkler system conforming with NFPA 13 and a fire alarm system conforming to NFPA 72 shall be required in the senior rental building. Both systems shall be monitored by a UL approved central station monitoring service.
  - f. Obtain and file with the Building Commissioner a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.

- g. Obtain all necessary building, electrical, plumbing, and associated permits required to begin construction of the Project required by state law.
- h. The Applicant will be responsible for all applicable sewer permit, capacity impacts and privilege fees, as applicable. Notwithstanding the following, the Applicant shall not be responsible for any infiltration and inflow (“I/I”) fees or other municipal fees that were not set forth in a published rule, regulation or bylaw in existence at the time of the Comprehensive Permit Application filing.
- i. The Applicant will be responsible for all applicable water and sewer system fees as per officially promulgated fee schedules uniformly applicable to all other Town of Arlington projects. Notwithstanding the following, the Applicant shall not be responsible for any infiltration and inflow (“I/I”) fees or other municipal fees that were not set forth in a published rule, regulation or bylaw in existence at the time of the Comprehensive Permit Application filing.
- j. Submit to the Board a revised Stormwater Report documenting any changes in design that have occurred during the preparation of Final Plans, if any, that were not included in the Stormwater Report dated August 2021.
- k. The Applicant shall perform additional test pits at the proposed stormwater basins to confirm groundwater elevations during seasonal high groundwater conditions as confirmed by monitoring nearby USGS wells. These test pits shall be witnessed by the Town and/or its agent. Should revisions to the infiltration system design be required based on additional groundwater investigations, revised plans and stormwater calculations will be provided to the Planning and Community Development for review prior to building permits.
- l. The site shall be graded to ensure that no increase in peak runoff rate or volume is directed toward Dorothy Road consistent with the analysis provided in the Stormwater Report dated August 2021 (revised). The Applicant shall set aside \$100,000 in escrow toward planning and removal of solid waste / invasive species within the Conservation Parcel.
- m. The Applicant and the Town of Arlington sign a mutually agreeable Memorandum of Understanding (MOU) regarding the disposition of the Conservation Parcel. The Applicant has agreed to the terms outlined in Finding 71 above. These findings do not limit the Applicant’s obligation to clean / restore / remediate the site, nor does it remove any other requirements on the Applicant under State or Federal Law.

**D. Construction Completion/Certificate of Occupancy (Note: Make Section E)**

D.1 Prior to issuance of a certificate of occupancy for any structure in the Project, the Applicant shall:

- a. Submit engineer's interim certification of compliance with utilities plan and profiles for such Phase (as applicable) to the Building Commissioner.
- b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the structure and supporting infrastructure has been constructed in compliance with the Final Plans in all material respects.
- c. Obtain acceptance from the Arlington Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the structure.
- d. Obtain a sewer connection sign-off from the Arlington Department of Public Works for the structure.
- e. Submit a request for legal addresses for all new buildings from the Engineering Division of the Public Works Department.
- f. In the absence of a signed agreement between the Applicant and the Town to the contrary, endorse an agreement to provide an annual contribution of \$25,000 for a period of ten years for improvements / maintenance of the Conservation Parcel for passive recreation by the Town of Arlington.

D.2 Prior to issuance of the certificate of occupancy for the Project, the Applicant shall:

- a. Submit to the Board, in digital file format and full-size paper copies, a final as-built plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.

- b. For the senior residential building, the Applicant shall provide to the Board evidence of a property management plan (if property management will be done in-house), or shall provide a copy of a contract with a Management Company if property management will be conducted by a third-party. The Applicant shall submit to the Board all information relating to the issues of building security, public access, pet policy, staffing, trash removal, and smoking policies, and other issues addressed in the conditions herein.

**E. Project Design and Construction (NOTE: Make Section D)**

- E.1 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall attend a preconstruction conference with representatives from the Arlington Fire Department, the Department of Public Works (Arlington Water and Sewer Division and Engineering Division), Planning and Community Development and other Town staff and consultants as may be determined. The Applicant and the site general contractor shall host a meeting open to all members of the public to review the construction schedule, hours, policies, procedures, and other neighborhood impacts at least fourteen (14) days prior to the start of construction.
- E.2 Prior to the pre-construction conference, the Applicant shall submit a Construction Management Plan (“CMP”) for administrative approval by the Board. The CMP shall provide documentation of various construction related activities, including:
  1. A Project Description and outline of primary construction tasks,
  2. A Project Schedule including hours of operation, duration of primary construction tasks and estimated completion date,
  3. Project logistics, including staging areas, truck routes, laydown areas, contractor parking, and construction traffic management,
  4. Site Management including noise mitigation, dust control and security,
  5. Public Safety and Coordination, including contact information and site inspections.
  6. Coordination with Town to provide construction updates on Project’s website and website posting on municipal site.

- E.3 The Applicant shall permit authorized representatives of the Board, as appointed by the Chair, to observe and inspect the Property and construction progress until such time as the Project has been completed and the final occupancy permit issued. Such duly authorized representatives shall adhere to safety precautions imposed by the contractor or the Applicant, inclusive of wearing protective headgear, protective glasses or footwear. Such authorized representatives must acknowledge that they are entering an active construction site and assume the risk thereof.
- E.4 The proposed construction shall be in accordance with applicable Federal and State laws, rules and regulations. Except as waived herein, the proposed construction shall be in accordance with applicable Local laws, rules, and regulations.
- E.5 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.
- E.6 Prior to construction, a CCTV sewer pipe inspection will be performed along the 14/18' sewer main from the existing manhole located to the west of the proposed resident outdoor/garden area to the manhole located adjacent to the southwest lot corner of 56 Dorothy Road. To the extent the pre-construction CCTV inspection demonstrates that repair is needed, such repair is the responsibility of the Town. Upon completion of the construction, a post-construction CCTV sewer pipe inspection will be performed through this same pipe. Based on the outcome of the post-construction inspection, if it is determined that Project construction caused damage and/or disturbance to the sewer pipe, the pipe shall be repaired/replaced at the expense of Applicant's site contractor.
- E.7 During construction, the Applicant shall conform to all local, State, and Federal laws and provide advance notice to abutters per the Town's Residential Construction Control Agreement regarding noise, vibration, dust, and blocking of Town roads in order to accommodate delivery of materials to the site or for other construction staging purposes. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan.

- E.8 The Applicant shall not drive piles in the construction of the building and shall use the least intrusive reasonable alternatives from the point of view of vibration, noise, and inconvenience to the neighborhood. The Applicant shall specify any methods involving subsurface compaction as part of the construction management plan. The Applicant shall keep all portions of any public way used as access/egress to the Project reasonably free of soil, mud or debris deposited due to use by construction vehicles associated with the Project.
- E.9 Appropriate signage shall be shown on the Final Plans, consistent with the sign information shown on the Approved Plans and descriptions provided within the hearing. Signage to include and entry sign at the main access drive, with such additional wayfinding signage to direct residents or guests to parking garage and main entrance and canopy sign above senior residence building, as to be depicted on Final Plans. A temporary sign including the name and address of the project and contact information for the Applicant, general contractor, engineers, architect, and other relevant parties shall be posted on site for the duration of construction operations. The sign must be legible and able to be read from Dorothy Road.
- E.10 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.
- E.11 The Applicant has proposed to use all electric for the Project. If any gas service is to be used, gas service locations shall be included on Final Plans.
- E.12 The Applicant shall install lighting on the site that conforms to the Town of Arlington's Zoning Bylaw and Town Bylaw. Lighting shall be down-lit/shielded to prevent light spillover onto surrounding properties and comply with dark sky requirements. Management of outdoor lighting shall be the responsibility of the Applicant.
- E.13 Utilities, including but not limited to telephone, electric, and cable, shall be located underground. The general contractor shall be responsible for coordinating all subsurface work with Dig Safe prior to the commencement of any excavation.
- E.14 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Geotechnical Engineer to the Building Commissioner as meeting design specifications, as applicable.
- E.15 The Applicant shall test the soil during construction to confirm soil types in the areas of the infiltration system. Such testing shall be witnessed by the Board's designee. All unsuitable material, if any, discovered in excavation for the infiltration system shall be removed and disposed of in accordance with State and local regulations.

- E.16 Construction activities shall be conducted between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays, Sundays, or legal holidays. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; loading of construction dumpsters and erection of new structures. All off-site utility work shall be coordinated and approved by the Building Department and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on the Property during construction.
- E.17 Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. During construction, the site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- E.18 No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- E.19 All dumpsters serving the Project shall be enclosed and covered (with the exception of construction dumpsters used during construction). The Board shall review the dumpster location as part of the approval of the Final Plans if different from what has been shown on the Approved Plans.
- E.20 All retaining walls visible from a public way or direct abutters, as determined by the Building Commissioner based upon the time of year when such walls would be most visible, shall be constructed in an aesthetic manner. Specifically, retaining walls shall avoid the use of exposed concrete to the greatest extent practicable.
- E.21 Snow shall be stored within the areas of the Property designated on the Approved Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site. Snow may not be placed in or adjacent to resource areas.

- E.22 The Applicant shall comply with all applicable local, state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP's Noise Policy contained in DAQC Policy 90-001 as well as the Arlington Noise Abatement Bylaw contained at Title V, Section 12. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements.
- E.23 The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways, driveways, and sidewalks providing access to both the residents of the Project and emergency vehicles. Neither snow nor sand may be placed in or adjacent to resource areas.
- E.24 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris deposited due to such use during the duration of construction.
- E.25 The Applicant shall comply with DPW requirements regarding curb-cut permits.
- E.26 To the extent earth removal is necessary, the Applicant shall prepare an earth removal plan, showing all necessary cuts and fills, and describing the number of truck trips necessary for the earth removal.
- E.27 Prior to commencing earth removal, the Applicant shall provide the Board with the results of a Phase I Site Assessment pursuant to G. L. c. 21E.
- E.28 All catch-basins shall have oil/water separators as shown on the Approved Plans.
- E. 29 Project sidewalks and pathways/walkways shall be compliant with the requirements of the Americans with Disabilities Act ("ADA") and the requirements of the Massachusetts Architectural Access Board ("AAB").
- E. 30 This Comprehensive Permit shall be a master permit which is issued in lieu of all other local permits or approvals that would otherwise be required, except for the issuance of Building Permits and Certificates of Occupancy by the Building Department under the State Building Code; provided, however, the Applicant shall pay all local fees for such permits or approvals as published in the Town regulations or bylaws applicable to the Project, including but not limited to building permits, inspections, water and sewer connections, and curb cuts, but not

including any I/I fees if such fees were adopted after the filing of the comprehensive permit application

**F. Traffic/Traffic Safety Conditions / Sidewalks**

- F.1 Access and egress to the Project shall be via Dorothy Road and/or Littlejohn Street, consistent with the Approved Plans.
- F.2 The operator of the senior living building is required to include within its vendor contracts requirements that vendors coming to the Property as well as scheduled deliveries to the Property use smaller delivery vehicles. The operator shall also use all reasonable efforts to schedule vendor deliveries during off-peak hours.
- F.3 The senior living residence will own or lease a van to provide complimentary jitney service to the senior living residents and staff, available seven days a week to provide access to and from Alewife MBTA station and other local destinations.
- F.4 The Applicant shall ensure that emergency vehicles can adequately maneuver through the site. The Arlington Fire Department shall review the Final Plans to ensure compliance with this condition.
- F.5 The Applicant shall provide 28 long-term bicycle parking spaces that are covered and secure, together with an additional expansion area within the garage capable of providing long-term bicycle parking for up to eight (8) additional bikes.
- F.6 The Applicant shall provide two (2) outdoor short-term bicycle parking racks, each capable of parking up to six (6) bicycles each. These parking racks shall be in the proximate area as shown on the Approved Plans, near the main entrance of the senior residence building.
- F.7 The Applicant shall provide new residents with transportation information packets with information on getting around Arlington sustainably.
- F.8 The Applicant shall provide 95 total parking spaces for the senior residence building, inclusive of 84 garage parking spaces and eleven (11) surface parking spaces, for a ratio of 0.76 spaces per unit. The parking shall include 8 garage level handicap parking spaces and two surface handicap parking spaces.
- F.9 Parking for senior residence apartment units shall be subject to an additional monthly fee, separate from rent, in order to discourage motor vehicle ownership in the Project.

- F.10 The Applicant shall provide electric vehicle charging stations for 10 garage parking spaces and shall provide wiring and amperage as needed to allow for an expansion of up to 10 additional garage parking spaces available for future use as vehicle charging stations should the need subsequently arise for more vehicle charging in accordance with tenant demand.
- F.11 The Applicant shall provide tenants information regarding the existing weekday peak hour turn restrictions from Lake Street onto Wilson Avenue, Littlejohn Street and Homestead Road.

**G. Police, Fire, and Emergency Medical Conditions**

- G.1 The Applicant shall provide professional property senior housing operator/management and maintenance personnel on the premises during typical business hours and an emergency contact name and number for tenants and the Arlington Police Department and Fire Department.
- G.2 Stairwells and garages must be minimum two-hour fire rated, and residential units must be minimum one-hour fire rated or as required by state building code.
- G.3 The four-story residential structure shall be fully sprinklered to NFPA regulations.
- G.4 Compliance with all State Building Code and NFPA requirements relating to fire access and safety shall be met.
- G.5 All elevators must have emergency generator backup.

- G.6 The Project shall provide and maintain fire access sufficient to comply with applicable State Building Code and/or Fire Code requirements to enable access for emergency vehicles as approved by the Arlington Fire Department.
- G.7 The Project shall provide adequate external lighting to ensure safety of the residents of the Project. External lighting shall conform to the requirements of the local Regulation of Outdoor Lighting [Title V, Section 14].
- G.8 As proposed by the Applicant, the Project shall have an access system and shall have staff on-site to address security concerns with the Police Department
- <discuss>G.9 During times of construction, the Project, including all structures shall be accessible to Fire Department and other emergency vehicles. Additionally, all hydrants shall be operational during construction in accordance with NFPA requirements. Standpipes shall be operational on each floor during construction, as required by the Building Code and the Fire Department.
- G.10 The Applicant shall consult with the Fire Department prior to the commencement of construction to provide an on-site emergency plan, which shall be updated as necessary throughout the construction process.

**H. Water, Sewer and Utilities**

- H.1 The Applicant shall be responsible for the design and installation of the utilities servicing the Project in accordance with the Approved Plans.
- H.2 All water and sewer infrastructure shall be installed in conformance with the Arlington Water and Sewer Division's technical requirements. The Applicant shall provide the Arlington Water and Sewer Division with calculations to ensure the distribution system for the area has the necessary capacity to meet system demand required prior to the commencement of construction.
- H.3 Fire hydrants shall be placed as shown on the Approved Plans in locations approved by the Arlington Fire Department. If the Arlington Fire Department approves different hydrant locations, such modification shall be accepted administratively as an insubstantial change pursuant to 760 CMR 56.05(11).
- H.4 The service size for the domestic water service should be verified by the Arlington Water and Sewer Division and information on the fire service size and requirements should be verified by the Arlington Fire Department. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Arlington Water and Sewer Division. Any connections to the Town water main shall be triple-gated and a tee connection.

- H.5 The water and sewer utilities servicing the buildings in the Project shall be installed and tested in accordance with applicable Town requirements and protocols, except as may be waived herein.
- H.6 Utilities shall be installed underground by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like. The Applicant shall request a Grant of Location from the Select Board for any installation of new utility poles or underground conduit in the public right of way as needed.
- H.7 The Applicant shall be responsible for all trash, recycling, compost, or yard waste removal from the senior residential building. The Town of Arlington shall not have any responsibility for trash, recycling, compost, and/or yard waste pickup associated with the senior residential building. Applicant shall provide a copy of Arlington's trash and recycling policies and guidelines to all purchasers of the duplex units, which will be serviced by municipal trash and recycling.
- H.8 Fire hydrants on the Property shall remain private, and shall be maintained by the Applicant.
- H.9 The Applicant shall design and provide a temporary wider sewer easement (beyond the existing 10ft) during the period of construction, to provide suitable room to perform all necessary work within the easement. The Applicant shall provide the Arlington Water and Sewer Division with up-gradient sewer flow, with peaking factor, and suitable capacity for proposed additional flow into the sewer system. All sewer services should utilize 8" service lines and shall discharge into a sewer manhole when entering the Town sewer collection system. Upon completion of construction, the Applicant shall notify the Arlington Water and Sewer Division to conduct a post- construction evaluation of the sewer main.  
<No easement from ZBA – Board of Survey>

**I. Wetlands/Floodplain/Environmental Conditions**

- I.1 Prior to commencement of site clearing, preparation, and construction, erosion control measures shall be installed consistent with the Approved Plans.
- I.2 The Applicant will be required to obtain an Order of Conditions from the Arlington Conservation Commission, or a Superseding Order of Conditions from the Department of Environmental Protection, because the Applicant proposes work within the one hundred foot (100') buffer zone to a bordering vegetated wetland (BVW) and work below the FEMA 100-year floodplain.

- I.3 No uncovered stockpiling of earthen and/or construction-related materials shall be permitted within the one hundred foot (100') Wetland Buffer Zone (also referenced locally as Adjacent Upland Resource Areas ("AURA")) or other resource areas.
- I.4 No heavy equipment may be stored overnight within fifty feet (50') of bordering or isolated vegetated wetland resource areas and no refueling or maintenance of machinery or vehicles shall be allowed within the one hundred foot (100') Buffer Zone, AURA, or within any bordering or isolated vegetated wetland resource area or Bordering Land Subject to Flooding (BLSF).
- I.5 There shall be no dumping of woody vegetation, leaves, grass clippings, brush, or other debris into a wetland resource area or associated buffer zones. Dumping of snow into wetland resource areas is also prohibited and shall comply with the current Mass. DEP Bureau of Water Resources Snow Removal Guidance. The foregoing does not apply to the clean snow removed from the emergency access road as long as no sand or de-icing materials are used, and the snow is clear of all foreign debris.
- I.6 While no dewatering is anticipated by Applicant, any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street drain, or adjacent property. Discharges are to be set back at least fifty feet (50') from BVW and IVW. Any catch-basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin and again once operations cease. Authorization from the Arlington DPW shall be sought prior to discharge to any municipal drainage system.
- I.7 The Applicant shall hire a qualified Environmental Monitor who will report to the Board and will be on-site as project construction advances. The Environmental Monitor shall submit an electronic report to the Board weekly during site preparation work within the one hundred foot (100') buffer zone to vegetated wetlands, including an update on the functionality and condition of the erosion control measures, until such time that the site is stabilized. The Applicant shall provide the Board with the name(s), address(es) and telephone number(s) of the Environmental Monitor prior to the start of work.
- I.8. While active construction work is underway within the one hundred foot (100') buffer zone, and during the creation of the floodplain compensation area including removal of vegetation including invasive species, final grade establishment, creation of soil profile to support proposed plant species, and restoration of a diversified plant community, the Environmental Monitor shall provide monthly

- status reports to the Board to confirm that all activities are substantially in compliance with the Comprehensive Permit and Order of Conditions issued by the Arlington Conservation Commission. The ZBA may reduce the frequency of inspections or reports as deemed appropriate. The qualified Environmental Monitor shall also submit an electronic report after every rain event exceeding 0.5 inches of rain in a 24-hour period to the Board regarding the condition of the Property during and after the rain event. Such report shall also include the status of erosion control measures and any additional measures to address stormwater management caused by said rain event. The qualified environmental monitor will also review the developer's SWPPP inspection reports, as appropriate and necessary.
- I.9 All work shall be conducted in accordance with the approved erosion and sedimentation control plan. Within one week of final grading, weather permitting, all disturbed areas located within wetland resource areas and buffer zones shall be stabilized against erosion. This shall be done either by sodding or by loaming, seeding and mulching according to Soil Conservation Service Standards and the Approved Plans. Stabilization will be completed when the surface shows complete vegetative cover. Temporary stabilization measures approved by the Board's inspectional engineer will be required should work be interrupted for more than ten (10) days.
- I.10 The Applicant, successor or assigns shall ensure the cleanliness of all catch basins and roadway affected by the project related activity. All catch basins will be protected by a "Silt Bag Inlet Protection" device or equal during the project work period. The applicant shall inspect and clean as necessary, all catch basins and sweep the roadway at least weekly during construction. It may be required more frequently during and after rain events. If it is deemed necessary to remove the Silt Bag Inlet Protection to prevent localized flooding and public safety concerns, the Developer shall notify the Board and Arlington DPW and also the qualified Environmental Monitor.
- I.11 There shall be no sedimentation into wetlands or water bodies located on or off-site from point or non-point source discharges. <timeline for notice, remediation>
- I.12 The Board or its agent (which may be the Town Conservation Agent acting on behalf of the Board) shall have the right to enter the Property for inspections and to evaluate compliance with the wetlands conditions contained herein upon reasonable notice of not less than twenty-four (24) hours. Access shall be allowed without the need for advanced notice in emergency situations when necessary to prevent imminent harm to wetlands resource areas.

- I.13 Prior to the commencement of work within any resource areas, the Applicant shall, in addition to any other security or surety required by this Decision, provide the Town security in the amount of \$10,000 (via bond, passbook, cash or tripartite agreement) in order to provide security for the work and erosion control measures in or adjacent to resource areas. In the event that said work or erosion control measures have been deemed to have failed or require maintenance, the Applicant shall be given written notice of such deficiency, along with an opportunity to cure the same within fourteen (14) days. In the event that the Applicant does not timely cure the deficiency, said security may be accessed by the Board to pay expenses for replacement, repair or maintenance of erosion controls if the Applicant refuses to repair, replace or maintain such erosion control measures in a timely manner upon written notification from the Board or its agent. To the extent that Board is required to access and use this security, as aforesaid, the Applicant shall replenish said security to return it to \$10,000.
- I.14 Prior to any work commencing on-site, the Applicant shall submit to the Board for review, proof that a Self-Verification Notification Form has been submitted to the US Army Corps of Engineers, if necessary.
- I.15 Prior to any work commencing on-site, the Applicant shall submit to the Board proof that a National Pollutant Discharge Elimination System (NPDES) Construction General Permit is active for the project.
- I.16 Copies of all information and all required reports regarding a US EPA NPDES permit and Stormwater Pollution Prevention Plan (SWPPP) shall be forwarded to the Board via electronic copy.
- I.17 The Applicant shall submit for review and administrative approval to the Town Engineer design details confirming that the rooftop detention system will conform to the runoff assumptions and calculations in the Applicant's Stormwater Analysis. Any change to the rooftop detention system design will require the approval of the Board.

- I.18 Notwithstanding the provisions of Condition C.2.k, the Applicant shall, through documentation to be submitted to the Board for review, establish seasonal high groundwater elevations at the Property to ensure that there is a minimum of a two-foot separation between the bottom of the stormwater management infiltration chambers and the seasonal high groundwater table. The Applicant shall provide proposed locations and number of test pits and wells to the Board for review and administrative approval. Seasonal high groundwater shall be established based on Volume 2, Chapter 2: Structural BMP Specifications for the Massachusetts Stormwater Handbook, with specific requirements, as follows "Estimate seasonal high groundwater based on soil mottles or through direct observation when borings are conducted in April or May, when groundwater levels are likely to be highest. If it is difficult to determine the seasonal high groundwater elevation from the borings or test pits, then use the Frimpter method developed by the USGS (Massachusetts/Rhode Island District Office) to estimate seasonal high groundwater. After estimating the seasonal high groundwater using the Frimpter method, re-examine the bore holes or test pits to determine if there are any field indicators that corroborate the Frimpter method estimate.
- I.19 <deletion recommended>
- I.20 The Applicant shall retain a qualified professional engineer to oversee the installation of the stormwater system. A stormwater mitigation report shall be submitted to the Board within ten (10) days of the completion of the installation of the stormwater management system. Such stormwater mitigation report shall include as-built plans, photographs from installation, and a written summary of the installation of the stormwater management system, as well as stormwater best management practices (porous pavement, rain gardens, and similar elements within the Property).
- I.21 The Applicant shall only treat planted areas within resource areas and buffer zones with slow release nitrogen fertilizer once during the initial planting year. Application of this fertilizer is not permitted after <before> storm events. Lawn fertilizer may only be applied twice per year, once in the Spring and once in the Fall, with the exception of the initial planting year. <other nutrients are advantage, for discussion>
- I.22 The application of plant nutrients shall comply with 330 CMR 31.00. No other herbicides or treatment methods may be utilized on the Property unless approved as part of the approved Invasive Species Management Plan. No pesticides or rodenticides shall be used to treat pest management issues within resource areas. <herbicides necessary for success subject to mass regs and ConCom, for discussion>
- I.23 The application of sand and/or salt within one hundred feet (100') of resource area is prohibited. <discuss alternatives>

- I.24 <Removed – duplication of Condition I.10.>
- I.25 The Applicant shall conduct a thorough catch basin sump cleaning at all protected catch basins at the end of construction of the Project.
- I.26 The Applicant shall provide compensatory flood storage as indicated in Condition C.1.
- I.27 The Applicant shall submit for review and administrative approval by the Board a restoration plan for the proposed compensatory flood storage area(s) of the Site to mitigate for the negative environmental impacts of the vegetation removal and grading to create the compensatory flood storage area. Revegetation of the compensatory flood storage area is recommended that will establish a diverse community of ground cover and native woody species that will establish in all vegetative layers to create a resilient vegetative composition.
- I.28 The Applicant shall submit for review and administrative approval by the Board an invasive species management plan for work within the AURA and other resource areas and including the BLSF / floodplain compenstation areas outlining all locations for invasive management, the species and quantities of invasive plants to be managed, and the method of management.
- I.29 All mitigation plantings and all plantings with resource areas shall be native, and shall be installed and maintained according to the standards of the American Association of Nurserymen (AAN). In the event that the AAN ceases to exist or to issue or maintain relevant standards, such plantings shall be installed and maintained in accordance with standards established by a successor organization, if any, and if there is no successor organization, then a generally acceptable standard setting organization satisfactory to the Conservation Commission. This shall be a continuing condition in perpetuity that survives the expiration of this permit
- I.30 All plant species planted and invasive species removed through the Project shall be monitored for three years. A survival rate of one hundred percent (100%) must be maintained for the approved plantings at the end of the third year of monitoring. If the survival rate is less than one hundred percent (100%) after the end of the third year, the Applicant must submit proposed recommendations for replacement to the Board for its review and administrative approval. A monitoring report shall be submitted annually in June for each of the years in the three-year monitoring period, reporting on the health of the new plantings and the success of the invasive plant management. <separate invasives and restoration, five-years, maintenance thereafter>

- I.31 No work shall be allowed within twenty-five feet (25') of any bordering or isolated vegetated wetland resource area. Work within the AURA that is beyond the 25' no disturb zone is approved in accordance as shown on the Approved Plans. Any changes to the Project Plans that will result in the limit of work to be closer to bordering or isolated vegetated wetland or would result in further disturbance of the AURA would need authorization from the Board and/or the Conservation Commission. <confirm invasive species control is exempted from 31, 32, 33>
- I.32 No disturbance shall be allowed between twenty-five feet (25') and fifty feet (50') to any resource area, except as shown on the Approved Plans. <confirm invasive species control is exempted from 31, 32, 33>
- I.33 Limited activity only is allowed between fifty feet (50') and seventy-five feet (75') to any resource area. Mitigation must be provided for any work between fifty feet (50') to one hundred feet (100') of any resource area. Definitions of "work", "disturbance", "limited activity" and "mitigation" shall be as defined in the Arlington Regulations for Wetlands Protection (2015), Section 4 and 25. <confirm invasive species control is exempted from 31, 32, 33>I.34 The Applicant shall revise and provide to the Board the Long-Term Pollution Prevention & Operations and Maintenance Plan to include requirements for inspection and cleaning of trench drains and the roof stormwater outlet to ensure these are functional prior to significant rain events as well as maintenance of the compensatory flood storage areas to ensure these remain functional and will provide the anticipated flood storage.
- I.35 The Applicant shall revise the Long-Term Pollution Prevention & Operations and Maintenance Plan to include provisions for maintenance and cleaning of compensatory flood storage areas to ensure these remain functional. <for discussion>
- I.36 The Board finds that the Applicant must provide adequate quantity of vegetation and that said vegetation shall be maintained to provide the resource area values protected by the Bylaw. Further, the Applicant shall submit an Invasive Species Management Plan for work in the AURA and other resource areas which identifies the location of invasive species management, species and quantities of invasive plants to be managed, and methods of removal and control of each species. <for discussion>
- I.40 Any building or site dewatering operations shall conform to the following:
1. The Applicant shall notify the Conservation Commission that dewatering is required prior to commencing any dewatering operations.

2. Any catch basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin.
3. Any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street, drain, or adjacent property. Filtering is essential to remove any automotive pollutants from the water prior to discharge.
4. Measures shall be taken to ensure that no erosion or scouring shall occur on public or private property, or on the banks or bottoms of water bodies, as a result of dewatering operations.
5. Dewatering shall not take place in any manner that leads to water being discharged or allowed to flow onto property not under the control of the Applicant without the expressed consent of that property owner.

I.41 The Applicant is to ensure that the proposed rain garden(s) will function as intended. (BETA, MyRWA)

**J. Other General Conditions**

- J.1 This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later, as per 760 CMR 56.05(12)(a). In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time construction authorized by the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.
- J.2 The Applicant shall comply with all local regulations of the Town and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
- J.3 The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.
- J.4 This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction. Overnight parking of vehicles on public ways is prohibited in the Town of Arlington.

- J.5 In the event that the Applicant (or its Management Company) fails to maintain the stormwater management system for the Project in accordance with its operation and maintenance plan, within fourteen (14) days of notification by the Town to the Applicant/Management Company, the Town may conduct emergency maintenance and/or repair, as it deems necessary, and the Applicant shall, prior to the issuance of any certificates of occupancy, convey such easement or other rights in a form mutually acceptable to the Town and the Applicant as may be reasonably necessary to complete such repair and/or maintenance. In the event the Town opts to perform such maintenance in accordance with this paragraph, the Applicant shall reimburse the Town within forty-five (45) days for all of its reasonable expenses related to such work.
- J.6 The Project entrance way and interior roads, and drainage systems associated therewith shall remain private, and the Town shall not have any legal responsibility for the operation and maintenance of such. The Town shall also have no obligations relating to the proposed recreational areas on the Development Parcel, the construction and operation of which shall be the sole responsibility of the Applicant. The Applicant is required to maintain the sidewalk along Dorothy Road clear of snow per local ordinance.
- J.7 Notwithstanding any provisions of the previous condition (J.6), the Town shall have no obligations relating to the construction and operation of the Conservation Parcel except as mutually agreed to in a separate M.O.U.
- J.8 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) enforcement by the Zoning Enforcement Officer pursuant to G. L. c. 40A, § 7; (b) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

### **DECISION**

In consideration of all of the foregoing, including the plans, documents, and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit for the construction of twelve (12) ownership units and one hundred, twenty-four

(124) age-restricted rental apartment units pursuant to Chapter 40B, §§ 20-23, for the development described above.

**RECORD OF VOTE**

The Board of Appeals voted \_\_\_\_\_, at its public meeting on November \_\_, 2021, to grant a Comprehensive Permit subject to the above-stated Conditions, with this Decision as attested by the signatures below.

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

Dated: \_\_\_\_\_, 2021

Filed with the Town Clerk on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Town Clerk

**Notice:** 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 Office of the Town Clerk, Town Hall, Groveland, Massachusetts. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.

## **DECISION ON WAIVERS**

The Board takes 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:

1. Town of Arlington Bylaws, Title III, Article I, Sections 1 and 2 “Use of Streets for Construction or Demolition Materials”: This section requires a permit from the Board of Public Works or Town Engineer, and included bond requirements, for work adjacent to public ways and for the use of public ways to place building materials and/or rubbish. The Applicant requests a waiver except from the bonding requirements.

**Board Action: Waiver Denied. The Applicant has requested a waiver of the procedural requirements of this section, a waiver that is unnecessary for a comprehensive permit application, as all other local approval processes are subsumed into the comprehensive permit application. The Applicant has not set forth any substantive waiver requests of this section, therefore no such waivers are granted.**

2. Town of Arlington Bylaws, Title V, Article 8, and Town Wetland Protection Regulations “Wetland Protection Bylaw” and “Wetland Regulations of the Town of Arlington Conservation Commission dated June 4, 2015): The Applicant requests a waiver of the procedures, jurisdictional requirements, applications, fees, costs, regulations, policies, and enforcement, consultant fees of the Wetlands Bylaws and Regulations.

**Board Action: Waiver Denied. To the extent that this waiver request constitutes a request for a waiver of the procedural requirements under the Wetlands Bylaw and Wetlands Regulations, this request is denied as unnecessary, as the procedural requirements of other local permitting processes are subsumed into the comprehensive permit process. To the extent that this waiver request seeks substantive waivers (such as jurisdictional requirements, policies, etc.), this waiver request is overly-broad and is therefore denied.**

3. Wetlands Protection Bylaw, Section 2, and Wetlands Regulation Sections 2(A)(5), 4(3) and 4(7), Areas Subject to jurisdiction under local bylaw/definitions of same: The Applicant requests a waiver of these sections to waive the Area Adjacent to Upland Resource Area “AURA” as a resource area, to allow portions of the AURA to be graded, completed as compensatory floodplain storage and/or emergency access areas, as shown on the Approved Plans.

**Board Action: Waiver Granted to allow work within the AURA as shown on the Approved Plans. The request to waive the AURA as a resource area in general is denied.**

4. Town of Arlington Wetlands Regulations, Section 24 “Vegetation Removal and Replacement”: This section requires an application process in which the Applicant must list all species existing and all proposed replacement species within resource area, including specific requirements for deciduous trees, evergreen trees and shrubs. The Applicant requests a waiver to allow for the Applicant to provide a detailed re-vegetation plan of all areas not otherwise permanently altered for emergency access road or those portions of the southerly side of the building within the floodplain, and to allow a re-vegetation plan acceptable with industry standards.

**Board Action: Waiver Denied as Unnecessary. The Project is providing habitat restoration in the location of the 2:1 floodplain compensation area and also will be providing habitat restoration of the rear acreage that will remain undeveloped. Such restoration efforts should follow the guidance provided by the Regulations in Section 24.**

5. Town of Arlington Wetlands Regulations, Section 25 “Adjacent Upland Resource Areas”: This section regulates the 100-foot buffer zone to resource areas. The Applicant requests a waiver to allow for grading and compensatory flood storage as shown on the Approved Plans, and for limited permanent impacts to the outer AURA area for emergency access road, and portions of the garage structure. No alteration will occur within 25’ to a state-listed wetland resource area.

**Board Action: Waiver Denied as Unnecessary. <for discussion>**

6. Town of Arlington Bylaws, Title V (Regulations Upon Use of Private Property), Article 8, Section 11 “Bond to Secure Corrections of Flooding Conditions”: This section requires an applicant to post a bond where a structure in excess of 6,000 square feet in area is proposed within two hundred yards of an existing stream or wetland to post a proper bond sufficient in the opinion of the Commission to secure performance of measures necessary to correct any flooding conditions resulting from the construction. The Applicant requests a waiver of this provision.

**Board Action: Waiver Denied. Board requests a bond in the amount of \$173,900 as detailed and recommended in the September 20, 2021 memorandum from BETA Group. <for discussion>**

7. Town of Arlington Bylaw, Title V, Section 8 “Wetlands Consultant Fees”: This section allows the Conservation Commission to impose fees upon an applicant to cover the cost of the Commission retaining an outside wetlands consultant to review the Applicant’s submittals. The Applicant requests a waiver of this requirement.

**Board Action: Waiver Denied. The Conservation Commission needs to retain the funds for potential peer review needs, due to the complexity of the project and uncertainty in several aspects of the proposal (including uncertainty in groundwater elevations). <town bylaw only><support review of work under conditions>**

8. Town of Arlington Bylaw, Title v, Article 9 “Placement of Dumpsters”: This section requires a permit to be issued by the Select Board for the placing of dumpsters or portable storage containers. The Applicant does not request any substantive waivers of this provision, seeking only a waiver of the procedural requirement of obtaining a permit from the Select Board.

**Board Action: Waiver Denied as unnecessary. The dumpsters will be internal to the apartment building per the provided plans.**

9. Town of Arlington Bylaw, Title V, Article 15, Sections 1-5 “Stormwater Mitigation” – This section requires Engineering Division review and approval of proposed stormwater systems. The Applicant has proposed to manage stormwater in accordance with the MassDEP’s Stormwater Policy and Technical Guidance, unless otherwise exempt. Stormwater to also be managed in accordance with a US EPA Stormwater Construction Permit for Massachusetts.

**Board Action: (from Applicant: Waived. Stormwater will be managed in accordance with the MassDEP’s Stormwater Policy and Technical Guidance, unless otherwise exempt. Stormwater to also be managed in accordance with a US EPA Stormwater Construction Permit for Massachusetts.)**  
<review><process waiver could be unnecessary>

10. Town of Arlington Bylaws, Article 16 “Tree Protection and Preservation”: This section requires approval of the Tree Warden prior to commencement of site work. The Applicant requests a waiver of the procedural requirement of obtaining approval of the Tree Warden. The Applicant does not request any substantive waivers of the requirements of this section.

**Board Action: Waiver Denied as unnecessary. Because all local permitting processes are subsumed into the comprehensive permit application, no waiver of this provision is required. The Applicant has agreed to comply with the substantive provisions of this bylaw. <2016 bylaws>**

11. Town of Arlington Bylaw, Title IX, Article 3, Sections 4A and 4B “Town Fees and Charges, Department of Community Safety and Office of Building Inspector”: These sections set forth local fees and charges. The Applicant requests a waiver of 25% of local fees to reflect the 25% affordable housing units for the Project.

**Board Action: Waiver Denied.**

12. Water Connection Fee Regulations “Water Privilege Fee”: This section details the required fees for water connections. The Applicant requests a waiver of 25% of these fees to reflect the 25% affordable housing units in the Project.

**Board Action: Waiver Denied.**

13. Sewer Privilege Fee: This section details the required fees for connection to the municipal sewer system. The Applicant requests a waiver of 25% of these fees to reflect the 25% affordable housing units in the Project.

**Board Action: Waiver Denied.**

14. Arlington Zoning Bylaws, Article 2 “Definitions”: The Applicant requests the waiver of various unspecified definitions in this section.

**Board Action: Waiver Denied. The Applicant has not submitted sufficient information for the Board to make an informed decision on this waiver request, therefore a denial is required.**

15. Arlington Zoning Bylaws, Article 4.02 “Application of Zoning Bylaws”: This section states that the Zoning Bylaws shall apply to the erection, construction, reconstruction, alteration of use of building structures or use of land. The Applicant requests a waiver to allow the erection of a multi-family residential structure, along with the accessory uses thereto, including parking, play area, terraces, landscaping and management office as shown on the Approved Plans.

**Board Action: Waiver Granted. <for discussion>**

16. Arlington Zoning Bylaws, Article 5, Sections 5.03 and 5.04 “Use Regulations”: The Applicant notes in its list of requested waivers that multi-family dwelling structures are allowed in the PUD Zoning District pursuant to the issuance of a special permit. The

Applicant also notes that no waiver of special permit requirements are required for a comprehensive permit development. The Applicant has listed no substantive provisions of these sections that require waivers.

**Board Action: Waiver Denied as unnecessary. Because G. L. c. 40B, §§ 20-23 subsumes all other local permitting processes, the Applicant is not required to obtain a special permit for the Project. Since the Applicant has detailed no substantive waivers of these sections that are necessary, the waiver request is denied.**

17. Arlington Zoning Bylaws, Article 6, Section 6.00 “Dimensional and Density Regulations” This section regulations minimum lot size, frontage, maximum floor area, maximum lot coverage, minimum lot area, minimum lot depth (front, side and rear), maximum heights, minimum landscaped areas and useable open space.

**Board Action: Waiver Denied. The Board addresses the more specific waiver requests below.**

18. Arlington Zoning Bylaws Article 6 “Table of Dimensional and Density Regulations”: The Applicant requests a waiver of the Front Yard and Side Yard Setback under Section 6.28, requiring 25 foot setback for each. The front yard setback proposed for the townhomes on Dorothy Road is 20 feet and the southwest corner of the senior residential building rear yard setback is 18.7 feet from the lot line, due to the odd configuration of the property lines; no adjacent buildable property is impacted by the rear year setback waiver.

**Board Action: Waiver Granted.**

19. Arlington Zoning Bylaws, Article 6, Section 6.07 “Buildings in Floodplains”: This section requires the issuance of a special permit for buildings within floodplains. The Applicant requests a waiver of this special permit requirement. No substantive waivers of this bylaw were requested.

**Board Action: Waiver Denied as unnecessary. Applicant is not required to obtain waivers of special permit requirements, as all other local permits are subsumed into the comprehensive permit.**

20. Arlington Zoning Bylaws, Article 6, Section 6.30 “Open Space Regulations for Planned Unit Developments”: This section sets forth a minimum requirement of 10% landscaped and 10% useable open space for apartments in the PUD Zoning District. The Applicant requests a waiver to allow for less than 10% useable open space.

**Board Action: Waiver Granted. The Applicant has agreed to set aside 12 of**

**the 17.7 acres as open space, in lieu of strict adherence to the 10% usable open space requirement, as that term may narrowly be construed under the Bylaw. <Applicant’s language>**

21. Arlington Zoning Bylaws, Article 7, Section 7.06, 7.073 Signs Permitted in any B, I or PUD District: This section allows for one sign for each street or parking lot frontage. No more than 2 permanent signs for any one business or industrial establishment. Allows for one directory sign of occupants/tenants. The Applicant requests a waiver to allow for entry sign at main access drive on Dorothy Road, with additional internal signage to direct residents/guests to main entrance (freestanding); direct to parking garage (freestanding); and a canopy sign above entrance to Independent Living building,

**Board Action: Waiver Granted only to allow the Applicant (1) Ground Sign not to exceed \_\_\_ sq. ft and (1) Canopy Sign not to exceed the size of the face of the proposed entry canopy. Directional and other signs to comply with the bylaw. <larger directional signage?> 1sf, on layout plan C-103>**

22. Arlington Zoning Bylaws, Article 8, Section 1 “Off-Street Parking Requirements”: The Applicant requests a waiver of the minimum parking requirements (1 space per efficiency unit, 1.15 per single bedroom and 1.5 spaces per two-bedroom unit and 2 spaces per three-bedroom unit) to allow for a parking ratio of no less than 0.76 spaces per unit associated with the senior residential building. The amount of parking proposed by Applicant was deemed appropriate by the peer review engineer.

**Board Action: Waiver Granted.**

23. Arlington Zoning Bylaws, Article 8, Section 8.12 “Parking/Loading space standards”: This section limits the number of compact spaces to 20% (via special permit). The Applicant requests a waiver to allow approximately 25% of the parking spaces to be compact spaces.

**Board Action: Waiver Granted.**

24. Arlington Zoning Bylaws, Article 10, Section 10.02: This section prohibits permits from being issued for structures that do not comply with the substantive provisions of the Arlington Zoning Bylaws. The Applicant requests a waiver to allow permits to issue for the structures as approved by the comprehensive permit decision.

**Board Action: Waiver Granted to allow construction as shown on the Approved Plans.**

25. Arlington Zoning Bylaws, Article 10.11 “Special Permits”: This section sets forth the special permit review requirements for the Board or the Arlington Redevelopment

Board, and limits the duration of special permits to two (2) years. The Applicant requests a waiver of the procedural requirements for special permits, and also requests a waiver of the two (2) year lapse provision.

**Board Action: Waiver Denied as unnecessary. Because a comprehensive permit subsumes all other local permitting processes, a waiver of the special permit process is not required. The Board grants the substantive waiver of the two-year lapse provision contained in Section 10.11, so that the comprehensive permit shall lapse if substantial use has not commenced within three (3) years, as set forth in 760 CMR 56.05(12)(c).**

26. Arlington Zoning Bylaws, Article 10, Section 10.12 “Variances”: This section sets forth the criteria for the grant of variances pursuant to G. L. c. 40A, § 10. The Applicant requests a waiver of the variance process.

**Board Action: Waiver Denied as unnecessary. The Applicant is not required to obtain variances as part of a comprehensive permit application, therefore the provisions of Section 10.12 are not applicable to this application.**

27. Arlington Zoning Bylaws, Article 11, Section 11.04(a-g) “Floodplain District”: This section imposes a special permit requirement upon uses within the Floodplain District. The Applicant requests a waiver of this special permit requirement.

**Board Action: Waiver Denied as unnecessary. Applicant is not required to obtain waivers of special permit requirements, as all other local permits are subsumed into the comprehensive permit.**

28. Arlington Zoning Bylaws, Article 11, Section 11.05(b), (d) and (f): This section requires a special permit for specific uses and structures in the Inland Wetland District. The Applicant requests a waiver of this special permit requirement.

**Board Action: Waiver Denied as unnecessary. Applicant is not required to obtain waivers of special permit requirements, as all other local permits are subsumed into the comprehensive permit.**

29. Arlington Zoning Bylaws, Article 11, Sections 11.06(b), (d)(1), (d)(4), (d)(5), (d)(6), (e), and (f) “Environmental Design Review”: This section sets forth a special permit process for projects subject to Environmental Design Review. The Applicant requests a waiver of the special permit process and review standards. The Applicant also requests a substantive waiver of the signage requirements to allow for temporary construction signage as allowed by the Building Inspector.

**Board Action: Waiver denied as unnecessary. The Applicant is not required to obtain waivers of the procedural requirements for special permits pursuant to 760 CMR 56.05(7).**

30. Arlington Zoning Bylaws, Article 11, Section 11.08 “Affordable Housing Requirements”: This section requires 15% of new residential units be restricted as affordable units. The Applicant requests a waiver to allow compliance with the requirements of the Subsidizing Agency.

**Board Action: Waiver Granted.**

31. Zoning Board of Appeals Comprehensive Permit Regulations, Section 3.1 and 3.2 “Application and Documentation”: The Applicant requests a waiver to allow for an application that does not comply with the requirements of Section 3.0; substantive compliance with the Application/Documentation was received by the Board during the course of the public hearing.

**Board Action: Waiver Granted.**

**END OF DECISION**