COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. Superior Court Department
Civil Action No. _____

ANNA O'DRISCOLL, JULIE DIBIASE, and ANITA GRYAN,	)
Plaintiffs	)
v.	)
ROGER DUPONT, PATRICK HANLON, CHRISTIAN KLEIN, KEVIN MILLS, and SHAWN O'ROURKE, as they are members of the ARLINGTON ZONING BOARD OF APPEALS, and ARLINGTON LAND REALTY, LLC,	)
Defendants	)

COMPLAINT

1. This is an appeal pursuant to G.L. c. 40B, § 21 and c. 40A, §17 from a decision of the Arlington Zoning Board of Appeals (the "Board") filed in the Town Clerk's Office on December 1, 2021, granting a comprehensive permit to Arlington Land Realty, LLC (the "Developer") for a residential development consisting of 124 apartment units and 12 homeownership units on a tract of land off of Dorothy Road and Littlejohn Street in Arlington, Massachusetts (the "Project" and "Site"). A true copy of the Board's permit is attached hereto as Exhibit A (the "Decision").

The Parties

2. Plaintiff Anna O'Driscoll owns and resides at 23 Littlejohn Street, Arlington Massachusetts, and is aggrieved by the Board's Decision.

3. Plaintiff Julie DiBiase resides at 29 Littlejohn Street, Arlington Massachusetts, and is aggrieved by the Board's Decision.

4. Plaintiff Anita Gryan owns and resides at 47 Burch Street, Arlington Massachusetts, and is aggrieved by the Board's Decision.

5. Defendant Roger Dupont is a member of the Board who voted to grant the comprehensive permit and signed the Decision.

6. Defendant Patrick Hanlon is a member of the Board who voted to grant the comprehensive permit and signed the Decision.

7. Defendant Christian Klein is a member of the Board who voted to grant the comprehensive permit and signed the Decision.

8. Defendant Kevin Mills is a member of the Board who voted to grant the comprehensive permit and signed the Decision.

9. Defendant Shawn O'Rourke is a member of the Board who voted to grant the comprehensive permit and signed the Decision.

10. Defendant Arlington Land Realty, LLC is a Massachusetts Corporation with a principal place of business at 222 Berkeley Street, Boston, Massachusetts, and was the applicant to which the comprehensive permit was issued under the Board's Decision.

The Site

11. The Decision concerns a 17.7-acre tract of land, comprised of the following Arlington Assessor's 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. See, Decision, p. 1.

12. The Site abuts State Route 2, but physical access to the Site from Route 2 is restricted by the presence of wetlands.

13. The Site is located in the "Planning Unit Development" zoning district under the Arlington Zoning Bylaw. The Site abuts land located in the Two-Family zoning district, and the Single-Family zoning district.

14. Approximately 13.7 acres of the Site are within the regulatory floodplain under the Federal Emergency Management Agency's regulations.

15. The Site is located in a neighborhood that has been historically subject to "severe and repeated flooding." Decision, p. 7, ¶ 21.

16. The Site contains abundant vegetated wetland areas and a significant portion of the Site is within the 100-year floodplain.

17. Flooding regularly occurs beyond the boundaries of the 100-year floodplain on the Site and in the immediately neighborhood. Decision, p. 9, ¶ 25.

18. Nearby Alewife Brook, which is tributary to the Mystic River northeast of the Site, is known to "run backwards" during extreme storm events, contributing to flooding in the neighborhood. Decision, p. 9, ¶ 25.

19. Since at least 1992, the Site, known locally as the "Mugar parcel," has been identified as a priority for open space protection, and in 2000, the Metropolitan District Commission stated that the "Mugar parcel is amongst the most significant, privately owned open space parcels remaining in the metropolitan region." Decision, p. 30, ¶ 94.

20. The Town of Arlington has consistently identified the Site as a priority to acquire for open space preservation. Decision, p. 30, ¶¶ 95-96.

21. The Board found, supported by the Developer's own studies, that the Site provides significant wildlife habitat. Decision, p. 31, ¶ 98.

22. Vehicular access to the Site is via Lake Street, the only arterial roadway serving the neighborhood that includes the Site.

23. As the Board acknowledged in its Decision, "Lake Street… is the only way out of the neighborhood." Decision, p. 20, ¶ 66.

24. Lake Street is "severely congested" under existing conditions during peak commuting hours. Decision, p. 7, ¶ 21.

25. To access Lake Street, traffic generated by the Project must traverse a local road network (Dorothy Road, Littlejohn Street, etc.), consisting of narrow streets.

26. The Board found in its Decision that intersections along Lake Street experience "serious existing operational deficiencies." Decision, p. 18, ¶ 59.

27. All of the intersections in the neighborhood with Lake Street operate at a level of service "E" or "F" under existing conditions, creating an environment of "frustrating queues as cars from the side streets try to make their way onto Lake Street during peak hours." Decision, p. 19, ¶ 60.

The Public Hearing

28. The Developer's application for comprehensive permit was originally filed on August 31, 2016.

29. The Board timely invoked the provisions of 760 CMR 56.03(8), claiming that there are existing affordable housing units that are on sites that comprise more than 1.5% of the total land area in Arlington (excluding certain categories of land such as land under water, and publicly-owned land) (the "Safe Harbor").

30. Under Chapter 40B, G.L. c. 40B, § 20, if a municipality qualifies for the Safe Harbor, any decision it renders on the comprehensive permit application is deemed "consistent with local needs" as a matter of law, and cannot be challenged.

31. The Developer filed an appeal from the Board's Safe Harbor decision to the state Department of Housing and Community Development ("DHCD"), which ruled on November 17, 2016 that the Board could not invoke the Safe Harbor defense under the statute for this application.

32. The Board subsequently appealed DHCD's ruling to the Housing Appeals Committee, an agency within DHCD.

33. On October 15, 2019, the HAC issued a decision affirming DHCD's ruling on the Board's Safe Harbor assertion.

34. The Board subsequently resumed the public hearing on December 10, 2019, but it was continued at the request of the Developer to April 14, 2020.

35. The public hearing was closed on October 21, 2021, and the Board subsequently issued a written decision that was filed with the Town Clerk on December 1, 2021.

The Project

36. The Board found in its Decision that "the location of the Approved Project presents major problems that make reconciling and balancing local needs, including the local need for affordable housing, difficult." Decision, p. 7, ¶ 21.

37. The Board further found in its Decision that "the location of the Approved Project in an environmentally-sensitive area raises serious concerns regarding resiliency and protecting both residents of the Approved Project and neighbors from the effects of more intense storms and other weather events in the future." Decision, p. 7, ¶ 21.

38. The Project will disturb approximately 25,310 square feet of a protected wetland resource area under the Arlington Wetlands Bylaw known as "Adjacent Upland Resource Area" ("AURA"). The Board waived the Arlington Wetlands Bylaw to allow clearing of this protected area.

39. The Developer is proposing to clear the AURA in order to provide "compensatory flood storage" that is required because the Project proposes to fill portions of other protected resource areas: the 100-year floodplain, and "bordering land subject to flooding."

40. The Project is designed to conform to federal and state requirements for development in the 100-year floodplain established by the Federal Emergency Management Agency ("FEMA"). The 100-year "base flood elevation" set by FEMA is 6.8 feet.

41. FEMA's flood elevations for the Site are based on data collected over ten years ago, and do not consider storm surges and sea level rise caused by climate change.

42. The Amelia Earhart Dam (the "Dam") in Somerville affects flood elevations within the Mystic River and Little River watersheds, which include the Site.

43. According to scientific studies, the Dam is likely to be flanked by 2045, and overtopped by 2055. Further, the Site is likely to experience a greater than 20% annual probability of flooding by 2070.

44. The Project's stormwater management system proposes to collect and recharge most of the runoff into a large, centralized, sub-surface infiltration system.

45. The subsurface infiltration system is located entirely under the paved driveway and parking areas, restricting access for regular maintenance (e.g., removing accumulated solids) and repairs.

46. The Developer's test pit data estimates that existing groundwater on the Site is at elevation 3 feet (above sea level).

47. Portions of the foundations for the buildings proposed in the Project will be submerged in groundwater based on the known existing groundwater elevations. Additionally, groundwater elevations will likely rise due to "mounding" effects from the infiltration of stormwater through the Project's stormwater management system.

48. The Developer's groundwater elevation data was collected in the month of November, a time of year when groundwater levels are normally lower than average.

49. The Arlington Conservation Commission and the Board's peer review consultant recommended that the Board require the Developer to produce more reliable and current groundwater elevation data before approving the Project.

50. The Board did not require the submission of additional groundwater data, but instead approved the Project subject to an amorphous condition requiring the collection of additional data after the permit was issued.

51. The Board's groundwater collection condition, Condition I.17, requires the Developer to propose "test pits and wells" in quantities and locations that would be reviewed by the Board for "administrative approval," meaning that the Board does not have the ability to reject the proposed locations of the test pits and wells.

52. The Board's Condition I.17 does not mandate that monitoring wells be installed by the Developer on the Site, even though the constant collection of data through transducers installed in monitoring wells would provide significantly more reliable and statistically-useful data than one-time test pit observations.

53. Condition I.17 does not require the Developer to perform any mounding analyses after the additional groundwater elevation data is collected, which would assess whether the Site can adequately absorb the liquid that will be recharged into the ground through the Project's drainage structures.

54. Despite the well-documented history of "severe and repeated flooding" in the neighborhood and on the Site, due in part from groundwater inundation, the Board inexplicably did not require the Developer to perform a hydrogeologic evaluation using hydrology modeling software such as MODFLOW, a program developed by the United States Geological Survey, to assess the cumulative impacts of filling the floodplain, creating "compensatory flood storage" areas, removing scores of trees, installing building foundations into the water table, and recharging significant quantities of stormwater on the overall hydrology of the Site and the neighborhood.

55. The Developer's Stormwater Report indicates that the Project will increase the amount of infiltration/recharge on the Site from existing conditions by a factor of almost five, from 2047 cubic feet to 9737 cubic feet. This will result in increased groundwater elevations on the Site and on neighboring properties.

56. The new compensatory flood storage areas on the Site will result in additional infiltration, recharge, and elevated groundwater levels, which was not accounted for in the groundwater mounding analysis the Developer performed.

57. There is no evidence that the Developer performed any on-site soil permeability testing; soil permeability is a critical variable in any stormwater hydrology model that relies on on-site infiltration of runoff.

58. Glaciomarine clay deposits, which have very low permeability, were reported in the location of the test pits that were excavated.

59. Soil logs contained in the Developer's stormwater management report indicate the presence of fill throughout the Site. Artificial fill can be highly variable in its hydrologic characteristics, including infiltration/recharge rates.

60. The Board's conditions requiring post-permit review and approval of a groundwater elevation data collection plan, and a revised stormwater management plan that would reflect any new information gleaned from the collection plan, exceeded the Board's authority under Chapter 40B and under common law zoning principles.

61. The Board apparently relied heavily on a memorandum prepared by its consulting engineer, BETA Group, dated October 8, 2021, in approving the Project. Specifically, BETA opined that "while the project cannot be expected to improve existing conditions off-site, it agrees that stormwater management associated with the project will not exacerbate them." Decision, p. 11 (¶ 27(d)).

62. BETA's confidence in the Project's stormwater management design is unwarranted where the Developer's hydrology model is based on incomplete information, including a failure to provide reliable groundwater elevations and on-site permeability data.

63. The Project will necessarily involve a protracted construction period, during which large trucks will be traversing the narrow neighborhood streets.

64. The Board's traffic engineering consultant reported that the neighborhood generates 2,276 daily trips, and that the Project is expect to generate 412 trips, an 18% increase. Decision, p. 25, ¶ 71.

The Decision

65. In its Decision, the Board acknowledged the Project's "incompatibility with abutting residential uses," the Project's potential "flooding impacts," and the potential "traffic impacts," but it then stated that it "addressed these concerns with the imposition of appropriate conditions." Decision, p. 33, ¶ 102.

66. The Conservation Commission advised the Board that the Developer's proposed tree planting was insufficient in light of the site disturbance proposed for construction of the Project.

67. The Board did not require the Developer to submit a tree mitigation plan during the public hearing, and did not impose any condition requiring the installation of a specific quantity or species of trees to replace the trees that will be destroyed.

68. Instead, the Board imposed a condition requiring the submission of a landscaping plan "for administrative approval," which does not give the Board any discretion to reject it, and which is an illegal and unenforceable condition. Decision, Condition C.1(e).

69. Despite making extensive findings on the predicted construction impacts on the neighborhood surrounding the Site, including that the 12-18 month construction period would "certainly be a disruptive time for local residents," the Board did not require the Developer to submit a construction management plan during the public hearing, but instead imposed a condition requiring submission of such a plan post-permit, "for administrative approval," which does not give the Board any discretion to reject it, and which is an illegal and unenforceable condition. Decision, Conditions C.1(h) and D.2.

70. Acknowledging that the Project's residential buildings will be submerged in groundwater, the Board imposed a condition requiring the foundations to be "sealed and

waterproofed to protect against the infiltration of groundwater," but failed to address or otherwise protect the basements and foundations of the existing homes on abutting properties, and failed to require the Developer to undertake any kind of hydrogeological evaluation or modeling to determine what changes to groundwater elevations and flow directions could be expected in the neighborhood as a result of the construction of the Project. Decision, Condition D.30.

71. The Board's response to the Project's undisputed impacts on neighborhood traffic was to require a "post development monitoring study" to identify "traffic calming measures." Decision, Condition E.4.

72. The Board's "traffic calming" condition abstrusely requires the Developer to "participate" in a study that "shall be submitted" to Arlington's Transportation Advisory Committee "for review and approval." Condition E.4 does not impose any affirmative obligation on the Developer to actually undertake such a study, much less pay for the implementation of any mitigation that the study concludes would be necessary to offset Project-related impacts.

73. The Board's assumption that "traffic calming" will be necessary after the completion of the Project is oxymoronic, where existing and future traffic problems concern the queuing at the Lake Street intersections, not vehicles travelling too fast through those intersections.

Count I – Zoning Appeal
(G.L. c. 40A, §17)

74. Paragraphs 1- 73 are re-alleged.

75. Under Chapter 40B, a zoning board's comprehensive permit decision is evaluated under a "consistent with local needs" standard. Section 20 of the statute frames the "consistent with local needs" standard as weighing the need for housing against "the need to protect the

health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces."

76. The Decision does not "protect the health or safety of the occupants of the proposed housing or of the residents of the city or town" where:

a. the Project is located in an area already prone to severe flooding;

b. the Developer's stormwater management plan is materially deficient;

c. analysis of predicted hydrogeological impacts is woefully lacking; and

d. the Project will increase traffic on severely congested neighborhood streets.

77. The Decision is arbitrary, capricious, and an abuse of the Board's discretion.

78. The Board acted arbitrarily, capriciously and abused its discretion by granting a permit that fails to protect natural resources identified under Town bylaws and regulations, permits construction of new structures in the floodplain without fully evaluating hydrogeological impacts, and thwarts the Town's open space planning efforts.

79. The Board's Decision waives local bylaws and regulations without adequate economic justification, and allows an extreme density without any proof of its necessity to make the Project "economic" under the well-established standards governing Chapter 40B projects.

80. The Board's Decision to approve the Project without adequately addressing the health, safety, planning, and environmental issues outlined above was unreasonable, arbitrary, capricious, and an abuse of discretion and should therefore be annulled.

Prayers For Relief

WHEREFORE, the Plaintiffs request that this Court:

1. Annul the Decision;

2. Award the plaintiffs their costs (including fees of expert witnesses) and attorneys' fees in this action; and

3. Grant the plaintiffs such other relief as it deems just and proper.

PLAINTIFFS,

By their attorneys,

/s/ *Daniel C. Hill*

_____

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Dated: December 21, 2021

EXHIBIT A

TOWN CLERK'S OFFICE
ARLINGTON, MA 02476
2021 DEC -1 PM 3:30
RECEIVED

TOWN OF ARLINGTON

Zoning Board of Appeals
730 Massachusetts Avenue
Arlington, MA 02476

DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT
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:	November 22, 2021

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 submitted, 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 21, 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 Ruiter, 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. The Property is sometimes referred to as the "Mugar Property", named after the longtime property owning family

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.

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 an approximately 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 as depicted on the "Approved Plans" as listed in Condition A.2.

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, C-203; 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.

12. In April 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.

14. During the extensive public hearing process, there was significant public input, including broad, strong opposition from local residents, the Select Board, and the Town's State House delegation. The Board heard questions and comments 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 and expressions of opposition from the Arlington Land Trust and the Mystic River Watershed Association, both independent local non-profits.

II. JURISDICTIONAL FINDINGS

15. 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.

16. 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 May 13, 2016. 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. As 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

17. 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. 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. The portion of the Property along Dorothy Road is the 0.2% Annual Chance Flood Hazard Area per the local FEMA Flood Map (#25017C0419E), while the remainder of the Property is within the Special Flood Hazard Area (Zone AE).

18. The Property is located within the Planned Unit Development (PUD) Zoning District. In this District, duplex buildings are allowed as of right and a multifamily building is conditionally allowed.

19. 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.

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 neighborhood, on a 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, nor would such a link be possible due to wetland resource areas along the highway.

21. The location of the Approved Project presents major problems that make reconciling and balancing local needs, including the local need for affordable housing, difficult. In a project as complex and controversial as this one, there are a multitude of local concerns that cannot be discussed one by one. In general, however, major concerns fall into one of several categories:

    a. The Need for Affordable Housing. The Board rejects the view that there is a natural antagonism between affordable housing and other local concerns. In fact, affordable housing is one of the Town's most important policy goals, and not just a regional need.

    b. Flooding and Wetlands. The neighborhood of the Approved Project experiences severe and repeated flooding, and much of the Property consists of wetlands subject not only to state regulation but regulation under the Town's bylaws. Both the state and town regulations are administered by the Conservation Commission, which has been deeply involved in the proceedings before the Board.

    c. Climate Change and Resiliency. The Town has adopted a strong net-zero policy which, among other things, envisions electrification of new construction. At the same time, the location of the Approved Project in an environmentally sensitive area raises serious concerns regarding resiliency and protecting both residents of the Approved Project and neighbors from the effects of more intense storms and other weather events in the future.

    d. Traffic and Transportation. The Approved Project would be located in an area served by only one arterial roadway, Lake Street, which is severely congested during the morning and peak rush hour. The project's potential impact on the operation of the road system is a significant local concern. Also of concern is

traffic generated by the project, which could undermine safety and quality of life in the existing neighborhood.

e. Neighborhood Compatibility. The Approved Project involves a large building in a uniform, long-established residential neighborhood that is much smaller in scale.

f. Construction Impacts. Construction of the Approved Project will involve bringing large trucks to the site via Lake Street and narrow neighborhood streets. There are substantial local concerns relating to possible tree damage, damage to existing houses, safety, noise, and more. There is also a strong local concern to ensure transparency and cooperation in minimizing the inconveniences that necessarily attend a large project of this size.

g. Open Space and Property Management. The subject property has been neglected over the years and has at times served as a campground for the homeless. The Town has a strong policy in favor of keeping the subject property – or as much of it as possible – as open space as well as ensuring that it is managed appropriately. The Town has strong local concerns relating to the disposition and protection of the so-called Conservation Parcel.

The Board's Findings will address each of these categories of local concern.

The Need for Affordable Housing

22. The Board continues to believe that Arlington qualifies for Safe Harbor status pursuant to 760 CMR 56(c)(3)(b)(General Land Area Minimum) and reserves its rights in that regard pursuant to paragraph 16.b above. Nevertheless, the Town falls short of meeting the Town's own goals for affordable housing. One important indication of the shortfall in affordable housing in Arlington is the percentage of low and moderate income units as compared to the state's Subsidized Housing Inventory, which as of the date of the comprehensive permit application was at 5.64%. The Town's current Housing Production Plan (which was approved by the Massachusetts Department of Housing and Community Development on November 7, 2016) states that the Town has 1,121 deed-restricted affordable units, and approximately 5,185 potentially eligible households, many of whom are elderly. The shortage of affordable units in Town is an area of continuing local concern, as is the escalating cost of housing in general.

23. The Project, as conditioned herein, will be a meaningful step forward in addressing the lack of affordable rental units in the Town for seniors, as well as the lack of affordable homeownership units. The final proposed Project consists of 12 duplex units housed in six (6) duplex 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. However, the Board recognizes that the actual need for affordable housing is much greater than what's being provided by the proposed Project.

24. 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.

Flooding and Wetlands

25. The Property is located in a neighborhood that is subject to flooding. 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, the August 10, 2015 letter from Nover-Armstrong Associates to Town Counsel noted that "historical reports indicate that flooding occurs beyond the 100-year flood extents shown" by FEMA. The August 15, 2015 letter from the Arlington Conservation Commission to the Select Board 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."

26. A memorandum prepared in January 2021 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."[1] While the Weston & Sampson report evaluated the prior project design of a 176 multifamily unit project, the Board finds that flooding concerns remain. These concerns relate both to flooding on the property itself and to flooding in the neighborhood north and west of the Property. Neighbors are deeply concerned that development of the Property will exacerbate the flooding that they already experience.

27. In response to the Board's request, on October 4, 2021, the Applicant's engineer, John Hession submitted a *Memorandum on Flooding Mitigation Measures*,

[1] Memorandum to Arlington Land Trust from Weston and Sampson (Indira Gosh) (January 20, 2021) at p. 2.

summarizing the evidence in the record on whether the Project would exacerbate the flooding that the surrounding community experiences already. The Board asked its peer consultant, BETA Group, to review the Applicant's conclusions. This *Peer Review – Flood Mitigation Memorandum* was received on October 8, 2021.

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 was a question raised by the Applicant as to whether the 12" municipal storm drain has adequate capacity to accommodate the localized flow. In any event, only a very small portion 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.[2] 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 feet. (Measurements of elevation are all NAVD 88.) 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 more stringent standard, the proposed project will not contribute to increased flooding on adjacent or downstream properties.[3]

c. The third potential source of flooding is groundwater flooding, or infiltration from water flowing underground. Based on the test pits conducted on November 25, 2020, groundwater on the site is estimated to be at elevation 3.0

[2]The Project will connect to the Arlington municipal water and sanitary sewer systems. It will not connect to the town's 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.

[3] 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.

feet. The Applicant has agreed to conduct additional groundwater testing to confirm the seasonal maximum high groundwater elevations on the site, and the Board has included conditions requiring such testing. 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.[4] 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 and the Board. 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 stormwater system to reduce the likelihood of localized flooding in the future.

28. In recognition of the strong local interest in protecting wetlands as an environmental resource, the final proposed Project has been designed to provide

[4] 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.

compensatory flood storage at a ratio of 2:1 to maintain the amount of flood storage capacity on the Property.

29. 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. Accordingly, the Project will be required to obtain an Order of Conditions under the State Wetlands Protection Act ("WPA"). The Project will also comply with the Arlington Wetlands Bylaw, which is more restrictive than the WPA in a number of aspects, and for this reason, most of the Applicant's waiver requests under the Bylaw are being denied by the Board at the request of the Conservation Commission. This Comprehensive Permit contains numerous conditions intended to ensure compliance with the Bylaw.

30. 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.

31. 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[.]"

32. 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. These mainly come from 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 conditions herein.

33. The Conservation Commission noted that the tree planting and landscaping details proposed by the Applicant are insufficient in light of the site disturbance that the Project will entail. The Board finds that, given the extent of the vegetation proposed to be removed within a resource area (BLSF) and AURA, a Landscape Plan is needed to ensure appropriate revegetation of the site. The Board has required the submission of an appropriate Landscape Plan in the conditions to this Comprehensive Permit.

34. Similarly, the Conservation Commission advises 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. The Board credits the judgment of the Conservation Commission and has adopted conditions requiring an appropriate mitigation plan.

35. 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 as is required under local and state law.

Climate Change and Resiliency

A. Resilience and Response

36. The Board's consideration of stormwater management and flooding must take into consideration the prospect of Climate Change. The Board was told frequently in the public hearings that climate change is not a future threat but a present reality. The Board fully agrees.

37. The Applicant's decision to design its Stormwater Management System based on the NOAA 14+ precipitation data, as the Board and Conservation Commission requested, was a major positive step, and one that went beyond what was required by existing state and local regulations. But as the Commission and several members of the public informed the Board, those data did not anticipate the increase in the size and severity of storms to be expected as global warming continues.

38. The Weston and Sampson Study commissioned by the Arlington Land Trust advocated the use of considerably more pessimistic stormwater projections for the design of the Approved Project's stormwater management system.[5] Those recommendations go beyond what may be required under either state regulations or those of the Conservation Commission, and the Board is not confident of its authority to impose more stringent requirements under Section 40B. The Board does find, however, that it is likely that the pressure on the stormwater management system will increase with the passage of time, raising significant resiliency concerns.

39. 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

[5] Memorandum to Arlington Land Trust from Weston and Sampson (Indira Gosh) (January 20, 2021) at 15.

past, or even the present, but for the future.

40. Sea level rise and storm surge present additional dangers. There is a substantial possibility that the Amelia Earhart Dam between Somerville and Everett will be flanked or overtopped in the next thirty to forty years.[6] This could lead to reversed flows on the entire Mystic River and all its tributaries, resulting in 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 senior living building and duplexes as well as neighbors.

41. Applicant's revised project design, as approved by this Decision, has included climate resiliency measures, including, *inter alia*, raising the building first floor elevations. Under current Massachusetts law, buildings are to be designed to the 100-year base flood elevation (BFE), which is currently 6.8 feet and the 500-year flood elevation is at 10.75 feet. When the Weston and Sampson report was issued in January 2021, the Applicant had proposed to locate the 176 unit apartment building with the first floor at 13 feet, which Weston and Sampson criticized as insufficient.

42. The Applicant returned to this issue in its proposal for a senior residence building. 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. The Cambridge Climate Change Vulnerability Assessment and Cambridge Flood Viewer support this conclusion.

43. The Applicant is proposing a basement level garage in the senior living building at Elevation 6.0 and in the duplexes at Elevation 2.0. Both of these are well below the current BFE. There was considerable concern raised during the Public Hearings in regards to this condition. There was concern expressed for the residents who would need to contend with the flooding and accompanying damage. There was also concern for how such structures could impact the flow of groundwater. The Applicant indicated they would protect the new structures on their Property with appropriate waterproofing to prevent infiltration. Their site engineer provided calculations showing that the imposition of the new basements into the water table would not cause any mounding or raised elevation of groundwater that extended beyond the edge of the Property.

[6] Id. at pp. 8-9.

B. The Town's Net Zero Policy

44. In February 2021, the Town adopted a Net Zero Action Plan (to reduce greenhouse gas emissions as much as possible and remove or offset any remaining pollution by 2050) after more than a year of study by the Clean Energy Future Committee and extensive public input. The Plan was endorsed by the Select Board on August 9, 2021. Because buildings account for a large portion of the town's greenhouse gas emissions, eliminating on-site fossil fuel consumption is an important town objective under the plan.

45. In a 2021 Special Town Meeting, Arlington's Town Meeting adopted Article 5 - Home Rule Legislation / Bylaw Amendment / Fossil Fuel Infrastructure by a vote of 225-18. Article 5 "authorize[s] and request[s] the Select Board to file Home Rule Legislation to allow the Town of Arlington to regulate fossil fuel infrastructure in new construction and/or major renovation and rehabilitation projects in Arlington for the purposes of reducing greenhouse gas emissions and encouraging renewable energy production and use". Representative Sean Garbally and Senator Cindy Friedman have cosponsored the appropriate bill (H3750), which has been referred to the Joint Committee on Municipalities and Regional Government. The bills were heard by the committee on July 27, 2021. At that hearing, Arlington's Town Manager stressed the importance that the Town attached to fighting climate change in general and to discouraging on-site consumption of fossil fuels in particular.

46. The Applicant has committed to all electric construction for the senior housing building (see Condition C.1(i)(v)), which is responsive to the Town's strong local concern for reducing greenhouse gas emissions and encouraging the use of renewable energy.

47. The Applicant has not taken a position on electrification of the duplex units. The Board hopes, however, that Applicant will approach the duplexes with the same enlightened perspective as it has for the senior housing.

Traffic and Transportation

48. The Approved Project enjoys relatively convenient access to the Alewife MBTA station (0.7 mi), the Minuteman Bikeway (0.4 mi), and to several bus routes (0.3 mi to Route 2, 0.6 mi to Mass. Ave.). 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 relatively short walk from the project to the Minuteman Bikeway and thence to the MBTA station and other destinations. The Applicant presented prior

proposals to the Board as a transit-oriented development.

49. In some respects, however, the Approved Project is not pedestrian friendly. While shopping opportunities exist in Fresh Pond and along Massachusetts Avenue, each of those destinations would be a substantial walk, especially for 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. While that is a service to the residents and staff, it will only reduce vehicle trips to the extent that the jitney vehicles are occupied by multiple travelers.

50. The Board has heard a great deal of testimony raising concerns about the traffic that would be generated by the Project. While the final Approved Project is smaller than previous proposals, it is still large in comparison with the relatively low density residential neighborhood in which it would be located. Traffic generation raises two important local concerns: (a) the operation of the already stressed transportation network, and (b) more broadly, the quality of life in the neighborhood.

Effect on the Road Network

51. The Applicant concedes that the Approved Project will have some negative impact on the road network. The Applicant contends, however, that the impact is so small as to be de minimis, and that the Approved Project is in any event, better than earlier proposals.

52. It is plausible, but not certain, that peak-hour traffic generation from the Approved Project would be less than peak hour traffic from the Applicant's prior proposal to build a 172 unit apartment building on this site. The Board's peer-review consultant thought that traffic generation, while a little less on the basis of VAI's projections, would in general be "comparable." The Board, however, is not deciding between one proposal and the other; it is evaluating the Approved Plan, which is the only proposal before it. Thus, the Board must consider whether the Approved Project's impact on the road network is acceptable measured [only] against the "no-build" alternative. This question was addressed by both the Applicant's traffic engineer, Vanasse & Associates, Inc. (VAI), and the Board's peer review consultant, BETA Group (BETA).

53. Predicting the impact of the project on the operation of the road network has three basic steps: (i) defining a study area, (ii) deciding what would happen in the study area if the Approved Project is not built, and (iii) deciding what would happen if the Approved Project is built. In short, the Board must consider background traffic conditions at some point in the future when the project is expected to be operational and then evaluate how much difference the project

makes.

54. While VAI analyzed a number of locations outside the immediate vicinity of the Approved Project, the Board's primary concern with respect to peak hour traffic is Lake Street between Concord Turnpike (Route 2) and Massachusetts Avenue. This is true for several reasons.

- Lake Street, though classified as a "minor arterial," is in fact a major commuting route between those major arteries. Lake Street also provides access to the Hardy School, a K-5 elementary school serving residents of East Arlington, and to Thorndike Field, a heavily used field for sports and recreation activities. The use of Thorndike Field overlaps with the evening commute.

- During the morning and evening rush hours, Lake Street in the direction of the commuting flow is seriously congested. Additional burdens on already over-burdened Lake Street can be expected to cause additional inconvenience, which will affect commuters, neighboring residents, students and their families, and the users of Thorndike Field.

- Lake Street is also the major road that would be most affected by traffic generated by the Approved Project. All automobile traffic accessing the Project site must travel on Lake Street. Leaving the neighborhood requires a left or right turn on Lake Street, sometimes under very difficult conditions.

- Lake Street congestion generates cut-through traffic as drivers hope to bypass some stop-and-go traffic by using local streets. 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. These regulations are only partially effective as evidenced by testimony from local residents and VAI's traffic counts at those intersections.

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. BETA and VAI mutually agreed on the methodology utilized by VAI to adjust the traffic data to account for the presumably temporary traffic decrease associated with the coronavirus pandemic. The method used by VAI to account for the pandemic and seasonal variations in traffic is consistent with professional standards and is credible.

56. Having constructed an estimate of traffic conditions as of 2020, adjusting for the pandemic, VAI needed to go one step further. The Approved Project will not be built and operational for several years. During that time, traffic on

Lake Street is likely to increase, as a result of the general trend of traffic in the region and traffic generated by specific projects nearby that came on line after 2020. To address the expected increase in background, VAI projected traffic volumes to the year 2027.

The No-Build Scenario

57. Lake Street has extensive traffic congestion during morning and evening rush hours, and frequently backs up bumper to bumper during evening rush hour from Massachusetts Avenue onto the Route 2 eastbound off-ramp as well as west of Route 2 on Lake Street back to Cross Street in Belmont.[7]

58. Lake Street carries 1,662 vehicles in the weekday morning peak hour, and 1,351 vehicles in the weekday afternoon peak hour.[8] Cited volumes represent data collected prior to the coronavirus pandemic, adjusted for growth to an assumed baseline 2020 condition.

59. Intersections along Lake Street experience serious existing operational deficiencies. Lake Street has three traffic signals between Route 2 and Massachusetts Avenue -- at the Minuteman Commuter Bikeway, at Brooks Avenue (by the Hardy School), and at Massachusetts Avenue. Under existing baseline conditions, all of them operate at Level of Service ("LOS") E or F for the critical movement in the morning and evening peak hour.[9] Thus, for example, in the morning, westbound traffic on Lake Street at the Minuteman Bikeway operates at LOS E, with an average delay of 68 seconds per vehicle. According to VAI, LOS E "describes operations with high control delay values. Individual cycle failures are a frequent occurrence."[10] At Brooks Avenue, again in the morning, westbound traffic on Lake Street operates at LOS F. LOS F "describes operations with high control delay values that often occur with oversaturation. Poor progression and long cycle lengths may also be major contributing causes to such delay levels."[11] At Massachusetts Avenue, the critical movement in the morning peak is the northbound left turn onto Lake Street

[7] TAC report dated 9/26/16.

[8] VAI TIA dated November 2020.

[9] VAI Response to Peer Review Comments (January 15, 2021) Table 12R. Level of Service (LOS) for Signalized and Unsignalized intersections is described in the TIA dated November 2020 at pages 22-24. Level of Service ranges along a spectrum from A (the best) to F (the worst). Defined simply, LOS D refer to a situation where operating conditions are approaching unstable flow: LOS E, to unstable flow, and LOS F, to forced or breakdown flow. See AASHTO, A Policy on Geometric Design of Highways and Streets, 7th ed. 2018, Table 2-2.

[10] VAI TIA dated November 2020 at p. 24.

[11] Id.

headed west, in the direction of Route 2. That movement also operates at LOS F.

60. The situation at unsignalized intersections on Lake Street is also unsatisfactory. For unsignalized intersections, Level of Service measures delay on the "minor," side street.[12] From west to east, in the baseline situation, Wilson Street operates at LOS F in the morning and LOS E in the evening. Littlejohn Street is the same. Homestead Street operates at LOS F in the morning but LOS D in the evening. At Burch Street / Alfred Road, both Burch Street (northbound) and Alfred Road (southbound) operate at LOS E, morning and night. At Margaret Street / Lakehill Avenue, Margaret Street (northbound) is LOS F both morning and evening, while Lakehill Avenue (southbound) operates at LOS D in the morning and LOS F in the evening. All this translates to frustrating queues as cars from the side streets try to make their way onto Lake Street during peak hours. VAI reports calculated queuing lengths of one to four vehicles. Residents testify to much longer queues, and have submitted to the Board photographs showing long lines to get from the side streets onto Lake Street. According to testimony and written statements from residents, entering Lake Street from the neighborhood side streets is especially difficult in the evening rush due to bumper-to-bumper eastbound traffic and the lack of adequate sight lines.

61. While it is possible to argue over details, there's no serious debate about the big picture. Service on Lake Street is degraded in the peak direction during both morning and evening peak periods, and the side streets experience significant queuing delays as residents try to get out of their neighborhoods and onto the only major street they can access. This situation is generally experienced by everyone concerned as exasperating and unacceptable. The Board finds that Lake Street will be failing or near failing in 2027 whether the Approved Project is built or not.

62. It would be possible to stop here and say that adding any more traffic to a failing situation is wrong, however small the increment might be. The Board is not, however, feel free to take that position in a 40B case, where it must, as a matter of law, give heavy weight to the regional need for affordable housing.

63. Thus, the principal issue before the Board is how much worse than baseline the situation will be when the Approved Project is built. There are two separate questions here. The first involves the impact of the Approved Project on the functioning of Lake Street itself. This question may be addressed by looking at the wait-times and queuing at the signalized intersections on Lake Street. The second question has to do with access to Lake Street from the neighborhood streets. Here it is necessary to look at the delays and queuing at unsignalized

[12] VAI Transportation Impact Assessment dated November 2020 at p. 23.

intersections, which measure the frustration of motorists attempting to get onto Lake Street during rush hour.

Incremental Impact of the Approved Project

64. At the outset, the Board notes that, according to VAI's calculations, the weekday peak hour trips generated by the project as a whole (including both the duplexes and the senior residential building) is estimated to be 23 in the morning and 28 in the afternoon. These estimates include both entering and exiting traffic. As noted above, Lake Street carries 1,662 vehicles in the morning and 1,351 in the afternoon peak hours, respectively. It would be surprising if an increase in trips in the range of 2% had a large impact on the Lake Street's operations.

65. VAI's Signalized Intersection Capacity Analysis Summary confirms that the Approved Project will have a small effect.[13] The only decline in level of service at any of the Lake Street signalized intersections is at Lake Street eastbound at Brooks Avenue, which declines from LOS D to LOS E. The incremental delay associated with this decline is three seconds, from 53 to 56. The median queue increases from 246 to 249 feet, while the 95th percentile queue increases from 442 feet to 448 feet. This incremental impact is similar to the impact observed for other movements at the Lake Street signalized intersections, even though they do not affect the level of service category. In essence, Lake Street is so severely impaired that the additional traffic generated by the Approved Project has little additional impact.

66. The situation is somewhat different at unsignalized intersections. There, the critical issue is access to Lake Street, which, it bears repeating, is the only way out of the neighborhood. VAI's analysis, shown in part in Table 1, below, indicates that the Approved Project would not cause the "level of service" (LOS) of an unsignalized intersection to change. This is not reassuring, however, in the case of LOS F, because there is no level worse than that. Wherever there is an LOS F situation, the amount of delay shown is >50 seconds.[14] LOS F conditions can deteriorate a lot despite nominal delays remaining the same at >50 seconds. It is helpful therefore to look at queueing estimates, which provide a rough indication of how much deterioration there may be within the LOS F category.

    a. The queueing data show that the intersection of Littlejohn Street and Lake Street would be most heavily impacted by the Approved Project. In the

[13] VIA, Revised Traffic Impact Assessment (2021) at pp. 11-12, Table 7.

[14] At unsignalized intersections, a delay greater than 50 seconds is sufficient for LOS F; an a signalized intersection, the cut-off point is 80 seconds.

morning peak hour, the queue at that intersection increases from 60 feet to 95 feet, or a little less than two additional car lengths. In the evening, it increases from 18 feet to 30 feet. Since this intersection operates at LOS E in the evening, the data on delay are meaningful. The increase in queueing goes along with an 8 second increase in delay (from 39 seconds to 47 seconds).

b. The other unsignalized intersection where the Approved Project would have a noticeable impact is at Margaret / Lakehill Avenue. There, the increase in queueing on Margaret Street in the morning peak is from 83 to 95 feet, while the increase in the evening peak is from 113 feet to 123 feet. This increase is less than the similar increase on Littlejohn Street – a bit under a car length – but it occurs at a somewhat more congested intersection.

67. The foregoing discussion assumes that VAI's trip generation estimates for the Approved Project are reasonable. Despite considerable uncertainty, the Board finds that they are.

a. There are two main sources of uncertainty. First, it is generally accepted practice to rely on data published by the Institute of Traffic Engineers (ITE) to estimate the trip generation associated with different land uses. However, there is no category in the ITE Manual that corresponds to the use of the proposed senior residential building – "independent living with services." To be conservative, VAI used ITE's land use category (LUC) 252 ("senior adult housing – attached") for its trip generation estimate. This is a category for seniors 55 years old and up and may include many people still in the workforce. The Approved Project would include housing for seniors 62 years and older and expects to appeal to a cohort in their 70s and 80s. Thus, the population in the senior housing surveyed by ITE was probably younger, healthier, and more likely to be working than the residents in the Approved Project. That population would probably generate more peak hour trips.

b. BETA suggested that ITE LUC 253 (congregate care facility) might be nearer the mark.[15] This category would include relatively fewer peak hour trips by residents and relatively more by employees, as some of the public comment on the application suggested. Overall, however, predicted trip generation from congregate care facilities generates fewer peak hour trips than senior adult housing – attached. VAI's choice of the latter category (LUC 252) is therefore conservative.

c. The second source of uncertainty is mode split. The ITE surveys that are used

[15] Letter from Tyler de Ruiter (BETA) to Jennifer Raitt, Director of Planning and Community Development re Development Changes – Traffic Considerations Review (September 8, 2021), Comment No. 1.

to calculate trip generation tend to be done in suburban areas where virtually all trips are by car. Where other modes of transportation are significant, as they are here, it is important to adjust the trip generation estimate to take into account trips by transit, bicycling, walking, and more. VAI and BETA agree on the appropriateness in principle of doing this.[16]

d. The difficulty in this case is deciding how mode split should work for a senior residential community. The best guide to predicting mode split is census data on Journey to Work for the census tract in which the Approved Project is located. BETA notes, however, that that this "summarizes the mode split of all working adults to a place of work. This may not be representative of the population of an Independent Living with Services facility, whose residents may not be working and / or may have aged in place such that the respective mode is no longer viable. While the Arlington Council on Aging transport van and jitney service are adequate measures to reduce on-site parking, these services would still generate personal / shared vehicle trips to / from the Site at an on-demand rate that otherwise do not travel through the neighborhood under existing conditions." [17]

e. BETA's observation poses a quandary. Assuming an all-automobile peak-hour mode split in this transit-friendly location is clearly unrealistic. At the same time, the Census Bureau's Journey to Work data likely overestimate the percentage of transit and other non-automobile trips (and underestimates the proportion of automobile trips) in this particular location. VAI addresses this dilemma by reducing in half its estimate of non-automobile trip generation based on the Journey to Work data. The Town's Department of Planning and Community Development endorsed this solution in its August 23, 2021, memorandum to the Zoning Board of Appeals. (p.2).

f. The Board agrees with the DPCD that VAI's proposed mode split is a reasonable if imperfect approach. In any event, the mode split assumption has only a modest impact on estimated trip generation and would not significantly change the overall capacity analysis discussed above.

TABLE 1: UNSIGNALIZED INTERSECTION CAPACITY ANALYSIS SUMMARY								
	2027 No-Build Scenario				2027 Build Approved Project			
Unsignalized intersection/Critical Movement, Peak Hour	V/C	Delay	LOS	Queue (feet)	V/C	Delay	LOS	Queue (feet)

[16] Ibid., Comment 2.

[17] Letter from Tyler De Ruiter, BETA, to Jennifer Raitt, Director of Planning and Community Development, Town of Arlington, August 10, 2021, at 2.

Lake Street at Wilson Avenue								
Weekday Morning: Wilson Avenue NB LT/RT	0.13	>50	F	10	0.14	>50	F	13
Weekday Evening: Wilson Ave. NB LT/Rt	0.15	40	E	13	0.15	42	E	13
Lake Street at Littlejohn Street								
Weekday Morning: Littlejohn Street NB LT/RT	0.56	>50	F	60	0.81	>50	F	95
Weekday Evening: Littlejohn Street NB LT/RT	0.20	39	E	18	0.31	47	E	30
Lake Street at Homestead Road								
Weekday Morning::Homestead Road NB LT/RT	0.16	>50	F	13	0.16	>50	F	13
Weekday Evening: Homestead Road NB LT/RT	0.09	31	D	8	0.09	31	D	8
Lake Street at Burch Street/Alfred Road								
Weekday Morning: Burch St. NB LT/TH/RT	0.27	>50	F	25	0.27	>50	F	25
Weekday Morning: Alfred Rd.SB LT/TH/RT	0.15	44	E	13	0.15	45	E	13
Weekday Evening: Burch St. NB LT/TH/RT	0.28	>50	F	25	0.28	.50	F	25
Weekday Evening: Alfred Rd. SB LT/TH/RT	0.06	48	E	5	0.06	48	E	5
Lake Street at Margaret Street/Lakehill Avenue								
Weekday Morning: Margaret Street NB LT/TH/RT	0.80	>50	F	83	0.87	>50	F	95
Weekday Morning: Lakehill Avenue SB LT/TH/RT:	0.20	40	E	18	0.20	41	E	18
Weekday Evening Margaret Street NB LT/TH/RT	0.90	>50	F	113	0.96	>50	F	123
Weekday Evening: Lakehill Avenue SB LT/TH/RT:	0.40	>50	F	38	0.46	>50	F	43
Source: VAI Letter to Arlington Board of Appeals August 3, 2021, Table 6.								

Effect on Quality of Life

68. Beyond the effects of the project on highway performance lies a broader question of the effect of increased traffic on neighborhood streets on the quality of life in the community. The Executive Committee of the Arlington Traffic Advisory

Committee put the issue well in its January 6, 2021, memorandum to the Board:

> The Executive Committee believes the traffic impacts on Littlejohn Street, Dorothy Street and Burch Street may result in a significant percentage increase in neighborhood traffic volumes. This is a quality of life issue rather than a roadway capacity issue. The Executive Committee recommends a post-development monitoring study be included in the TDM program. The study may identify traffic calming measures which are needed to mitigate impacts on the neighborhood streets.

Although the Executive Committee's comments were addressed to an earlier proposal, they are equally applicable to the Approved Plan. Indeed, the issue of neighborhood impact was frequently raised by neighborhood residents in connection with the final proposal as the public hearing drew to a close. The quality-of-life dimension of traffic is a local concern of no less importance than the highway capacity analysis discussed above.

69. In addition to peak hour trips, the ITE surveys collect data on weekday daily trip generation. Here, VAI has calculated that the project (including both the duplexes and the senior residence building) would generate 412 additional trips each weekday. Daily trip generation would be modestly less on the weekends. The question before the Board is what impact daily trips of this magnitude would have on the neighborhood.

70. Testimony before the Board indicates a general sense that the neighborhood is relatively quiet and secluded. The Board received testimony from some witnesses that on the weekends children play pickleball in the street, with little interference from traffic. Other witnesses, however, lamented that the neighborhood was already under pressure from increased traffic generated by Thorndike Field and other sources. Regardless of their assessment of the current situation, neighbors expressed trepidation at the impact on their neighborhood of the increased level of traffic that they feared the project would generate. The Board credits the unanimous testimony of neighbors that substantially increased traffic on a daily, as opposed to peak hour basis, would have a significant impact on the nature of the community. As the Executive Committee points out, this is a quality of life rather than a network capacity issue. In this regard, it is closely akin to the issues discussed below regarding compatibility with the project's surrounding neighborhood.

71. In an effort to give a context to the estimated increase in trip generation attributable to the project, Tyler De Ruiter, BETA's traffic engineer, compared the daily trip generation attributable to the project to the trip generation that would

be expected from the present neighborhood. Mr. De Ruiter assumed that the neighborhood was evenly composed of single family and two family dwellings and excluded dwellings directly fronting on Lake Street. Using ITE trip generation factors, he calculated that the daily traffic generated by the current neighborhood was 2,276 trips. The additional traffic expected from the project would be 412 trips, or approximately 18% more. Mr. De Ruiter did this calculation as a rough indication of the scale of the likely impact. He did not invite the Board to put too much weight on it, because its accuracy may be affected by simplifying assumptions and because traffic in the neighborhood may be generated by centers other than residences in the neighborhood, such as Thorndike Field. The calculation does, however, present an approximate picture of the increased traffic within the neighborhood.

72. There is room for disagreement on how substantial an increase in daily traffic on the order of 18% is. An abutter argued that Mr. De Ruiter's calculation showed a tremendous increase in traffic that would certainly impair the quality of life in the neighborhood. The Board is sure that some and perhaps many residents in the neighborhood would consider the impact significant, as the TAC Executive Committee anticipated. The Executive Committee's recommendation of post-construction monitoring and consideration of traffic calming measures has much merit, both for the comfort of the community and the safety of the residents of the senior housing facility.

Proposals to Address Traffic Impact

73. The Applicant proposes to address traffic impacts in several ways.

a. 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 Zipcar for possible car-share options. The Applicant also proposes to provide a transit information packet to residents and staff at the senior residential building.

b. Many of the Applicant's proposed solutions to the traffic problem involve moving trips around so that they do not occur during peak traffic times. This is fundamentally important for addressing traffic capacity issues. Other solutions, like the jitney service, are convenient to residents (and reduce parking demand) and support employee commuting by mass transit. However, to the extent that this service merely replaces a trip by personal automobile with a trip by jitney, trip generation is not necessarily reduced.

74. As recommended by the Arlington Transportation Advisory Committee in its report dated January 6, 2021, the Board finds that due to the traffic impacts on the neighborhood streets between Lake Street and the project location, particularly Littlejohn Street, Dorothy Road, and Burch Street, a post-development monitoring study is necessary to identify whether future traffic calming measures are needed to mitigate impacts on the neighborhood streets and what measures would be desirable.

Neighborhood Compatibility

75. The existing neighborhood adjacent to the Project site bounded by Lake Street, Route 2, and the Minuteman Bikeway encompasses approximately 39.3 acres of developed land (excluding the Property). The land west of Littlejohn Street is zoned for single-family residences, and the land to the east is zoned for two-family residences. The Town's abutter list indicates 289 dwelling units in this neighborhood.

76. 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.

77. The six (6) duplex structures along Dorothy Road are generally compatible with the size and scale of adjacent residences along Dorothy Road, Littlejohn Street, and throughout the neighborhood.

78. 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 senior living building would be among the largest apartment developments in Arlington, and one of the few, if not the only one not connected to a collector or arterial street without the need to access a local residential street network.) 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.

79. The Property is located within the Planned Unit Development (PUD) Zoning District. In this District, duplexes are allowed as of right and a multifamily housing building is conditionally allowed. The height of the proposed buildings would be within the limits allowed in the PUD district. The duplexes, at 3 stories and 38.13 feet from the first floor elevation to the ridge, are a little taller than the buildings on neighboring properties (especially those on the other side of Dorothy Road), which are subject to height limits of 2.5 stories and 35 feet. The duplexes were reintroduced to the project plan at the request of the Select Board. The duplexes serve as a buffer between the lower density residential neighborhood and the higher density senior residential building. Their height, by better concealing the senior residences, actually makes the duplexes more effective in their buffering function.

80. The neighborhood's concerns include not only the size of the proposed structures but the activities that will be associated with those structures. In Finding 71, Tyler De Ruiter, BETA's traffic engineer, calculated that the daily traffic generated by the current neighborhood was 2,276 trips, and the additional traffic expected from the project would be 412 trips, or approximately 18% more. The home owner at the corner of Dorothy and Littlejohn noted his front door camera recorded around 50 vehicle trips past his house on an average day. The additional anticipated trips would increase that number eight-fold. The Board has received testimony that the neighborhood today is very quiet and that children can safely play in the streets. (A pickleball court was created on Littlejohn Street adjacent to Dorothy Road.) 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.

81. 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 for the senior living building: 84 garage parking spaces and 11 surface parking spaces. The parking garage will include 10 Electric Vehicle (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.

82. The Applicant did not originally propose bicycle parking. The Applicant's final proposed project design includes 28 covered, secured bicycle parking spaces accessible from the front of the senior living building. There is a possible

expansion area for eight (8) additional bicycle parking spaces within the senior residential parking garage. Outside the main entrance of the senior living building, the Applicant will provide an additional two (2) bike racks, capable of securing six (6) bikes apiece.

Construction Impacts

83. The Applicant has proposed to use modular construction for the senior residential building, which entails assembling the building with a number of "modular units" or "boxes". Modular units are pre-fabricated elements of building structure that are 62 feet long, 13 feet wide, and 11 feet high, and will be delivered to the Project site via flat-bed trailers. The Applicants believe this construction technique could shorten the project schedule by up to five months, and reduce the amount of waste generated on site.

84. However, this technique requires trucking large sections of building structure down Littlejohn Street, a residential road that is 24-25' wide, curb to curb. The Applicant provided turning plans for delivery vehicles and stated that deliveries will be coordinated with the Arlington Police Department, Arlington Fire Department, and Department of Public Works (as necessary). Abutters remained concerned about the delivery driver's ability to navigate roadways along the delivery route, traffic obstruction, and impediments to emergency vehicle access.

85. Construction staging, specifically for the modular units, but applicable to all other aspects of construction, pose a high risk of disturbance to the residential neighborhood. The 25-foot width of the local streets make navigation of the neighborhood challenging, especially in the presence of parked cars and pedestrians. The Applicant has repeatedly informed the Board that staging would take place offsite at several miles distance from the Project. The Applicant has also advised the Board that offloading would take place on the subject Property. The Board finds that these measures are important in reducing the construction impact on the neighborhood.

86. Construction of the Project is expected to take 12-18 months, which will certainly be a disruptive time for local residents. Construction disruptions were frequently raised as areas of concern, including (but not limited to): noise, dust, construction vehicle parking, vibration, damage to street trees, damage to foundation of nearby homes, and rodent control. The Board recognizes these as significant quality of life concerns for local residents, and has endeavored to address them through the imposition of appropriate conditions.

87. In addition to the delivery of modular units, the board anticipates that construction of the project will entail a variety of other heavy vehicles and construction

machinery being brought to the site. Residents expressed concern about the potential for severe wear and tear and damage to local roadways, as a result of heavy vehicle traffic.

88. The Project site being surrounded by single- and two-family residences poses challenges not usually encountered by large construction projects in Arlington. Other recent residential developments were either in predominantly commercial or industrial districts, or they were accessed by arterial streets. This site has no such advantages; all construction deliveries and activities must travel down local roads in a residential district. The neighbors expressed significant concern about construction noise impacting their quality of life.

89. The Town's Noise Abatement Bylaw (Title V, Article 12) allows construction activities between 8:00am and 6:00pm on weekdays and 9:00am and 5:00pm on Saturdays, Sundays, and holidays. The local residents expressed considerable concern regarding what could be relentless construction without any quiet days. There was considerable interest in eliminating weekend work, even at the expense of a longer work schedule. The Applicant was interested in starting weekday work earlier than allowed by the bylaw. This would provide the opportunity to have the workers arrive on site early, before traffic would make commuting difficult. They were amenable to no Sunday or holiday hours if they could start weekdays earlier. The Board found this compromise acceptable and has incorporated these hours into the Conditions.

90. In the course of the public comment period, many abutters and local residents expressed their significant concerns in regards to the effects the construction activities would have on their neighborhood. These concerns included blockage of streets by construction vehicles, traffic made worse by construction vehicles, contractor parking, storage of construction materials, and the unloading of construction materials. Additional concerns included what specific routes the contractors and construction delivery vehicles would take to the site, and at what time those deliveries would occur so as to minimize impacts on local traffic. There were also concerns raised in regards to noise, dust, and vibration emanating from the site during construction, construction causing damage to their homes, damage to street trees, damage to local roadways, damage to the wetlands, and damage to local wildlife. Other construction related issues that were raised involved pest control, light emanating from the site during construction, what dates construction would begin and end, along with what would be the days of the week and times work on the site would be allowed. Several parties were anxious about the safety of the neighborhood children during construction, especially on the weekends. The abutters and local residents made it known they need to be informed and receive satisfactory responses to these questions and concerns. Furthermore they expressed the need to know whom to contact if they require further information involving the

construction or whom to contact if they observe issues and wish to notify someone or make a complaint.

Open Space and Management of Conservation Parcel

91. While remaining undeveloped, it is important to note the Property as it currently exists is in quite poor 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.

92. More recently, an encampment of homeless people had been established on the Property, which had resulted in sanitation and other issues. The Town and the Owner have taken action to re-house / relocate this population within the recent past, but left unmanaged, the possibility of return encampments is likely. The Board finds that any debris or waste left on the site by prior dumping and / or encampment needs to be identified and remediated.

93. 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.

94. 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.

95. 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.

96. 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."

97. 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 Approved 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.

98. The Property provides significant wildlife habitat. On a number of occasions members of the public have articulated their view of the critical importance of not only maintaining habitat, but of enhancing and creating additional habitat, particularly in the Open Space parcel. They described the diversity of wildlife that they have observed and provided photographs, including, of waterfowl and deer. In its August 5, 2020 letter to the Department of Planning and Community Development (DPCD), BETA stated that wildlife habitat is of significant interest to the Town. They indicated that the Property would be expected to support numerous urban species such as common resident birds, raccoons, fox, squirrels, chipmunks, skunk, opossum, deer and rabbits. They recommended that the Applicant conduct a wildlife habitat evaluation. Applicant's consultant, BSC Group, performed an evaluation on October 27, 2020. BSC observed several species including rabbit, squirrel, (presumed) coyote and a variety of passerine birds. BSC's report entitled *Wildlife Habitat and Vegetation Evaluation*, dated November, 2020, confirmed BETA's assessment that the Property would be expected to serve as habitat for other human-adapted or human- tolerant species. BSC also noted that the habitat, especially in the Open Space parcel, had been degraded by dumping of waste, including concrete and macadam and the accumulation of trash and debris, as well as from the encampment of homeless people. The inference may be drawn that the clean-up of the area and the cessation of human habitation will significantly improve the wildlife habitat.

99. In alignment with prior attestations, 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 Conservation Parcel as open space. The Town has expressed significant concern regarding the existing condition of the proposed Conservation Parcel, which will require extensive environmental testing and clean-up relating to years of illegal dumping and

habitation. Through the terms of a proposed 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. The Applicant has committed $100,000 towards this initial effort.

c. Working together with the Somerville Homeless Coalition and the Arlington Police Department, the Applicant has been responding to the community issue of finding housing for unhoused persons on the property.

d. The Applicant recognizes that additional funds will be required to perform environmental testing, 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 an 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 offered to 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 offered to accept a condition to include a $25,000 annual maintenance budget for ten years upon issuance of the final certificate of occupancy.

f. 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.

As a part of the initial submission, the Applicant had proposed donating the land of the Conservation Parcel to the Town. Over the course of the hearings, the Applicant has proposed passing the property onto a third party non-profit or holding

the property. This has not been uniformly viewed by the Town or the public as being in alignment with the initial proposal for the property. While the ownership of the land may be different, the Board notes that a firm Conservation Restriction on the Conservation Parcel is of utmost importance in the preservation of the land, its wetland resources, its wildlife, and its function as a buffer against future flooding and climate change impacts.

General

100. The Board finds that the conditions imposed in Section IV of this Decision are necessary in order to address Local Concerns. At no time during the public hearings did the Applicant contend that the cost of the project rendered it uneconomic. As such, the Board finds that such conditions will not render the project uneconomic. 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.

101. 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.

102. 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.

103. The Board finds that the construction of the Project, as conditioned, will be consistent with local needs.

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
--	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) ownership units, contained within six (6) duplex buildings together with a 124-unit senior living residential apartment units located within a single residential building, and other related residential amenities, all as shown on the Approved Plans. The Project shall consist of no more than twelve (12) four-bedroom ownership units in the duplex buildings and 58 studio rental units, 23 one-bedroom rental units, and 43 two-bedroom rental units in the senior living apartment building, 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, 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. 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 for areas not under the jurisdiction of Section 24 in the Wetlands Bylaw 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. Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;
vi. Tree protection and preservation plans
vii. Construction fencing along abutting property lines, if any; and
viii. Specifications for site amenities such as benches, trash cans, lighting fixtures.

All plantings shall consist of native, non-cultivar, 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 or the issuance of the Certificate of Occupancy, whichever is later, the Applicant shall remove and replace any dead, failing, or diseased plantings and trees serving as screening. The contract with the Management Company shall address ongoing maintenance of landscaping features.

e. Submit to the Board for its administrative approval, a Landscape Plan for areas under the jurisdiction of Section 24 in the Wetlands Bylaw. As stated in Section 24. A. of the Commission's Wetland Regulations, an adequate quantity of vegetation must be maintained so that resource areas protected by the Bylaw can provide the resource area values protected by the Bylaw. Section 24.B. further states no vegetation in a resource area protected by the Bylaw shall be damaged, extensively pruned, or removed without written approval by the Commission and in-kind replacement. Given the extent of vegetation proposed to be removed within a resource area (here, BLSF and AURA), the Applicant's plan should include the elements described in Section 24.E. and as follows:

   i. Narrative describing existing conditions, proposed plantings, list of existing and proposed species, size of existing species and proposed species, quantity of plants before and after revegetation, and the rationale behind the removal and maintenance plan.
   ii. Affirmation of the proposed Revegetation Activities - all plans must be accompanied by written testimony and scale diagram from a certified arborist or wetland scientist or landscape architect saying vegetation removal is necessary, the surface area of vegetation to be removed, and the number of plants to be removed by species.
   iii. 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 in square feet of the area shaded by the canopies.
   iv. Existing species list - including number and type of trees and other vegetation (Latin names).
   v. Replacement species list - including number and type of trees and other vegetation (Latin names).
   vi. Rationale for Removal.

vii. Maintenance Plan, which may also reference the ISMP.
viii. The Plan shall include monitoring reports submitted annually in June during the 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.

f. The Applicant shall submit for review and administrative approval by the Board a Compensatory Flood Storage Mitigation Plan (CFSMP) 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. The goal of the CFSMP is to provide a temporary storage area for floodwater as well as provide important wildlife habitat functions including important food source, shelter, migratory or overwintering areas, and breeding areas for wildlife. This flood storage area shall rectify the current adverse impact of the floodplain by providing a better replacement resource area. Said Mitigation 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 an 80% survival rate.
iii. Only native non-cultivar species shall be planted on the site to establish a diverse community of ground cover and native woody shrubs and trees.
iv. Plants shall be installed and maintained in accordance with 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.
v. A monitoring report shall be submitted to the ZBA annually in June during 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 80%, the dead, failing, or diseased plantings will be replaced. The Applicant must submit proposed recommendations for replacement to the Board for its review and administrative approval. The Applicant shall submit the contact information of the party responsible for monitoring and maintaining the planted vegetation within the Compensatory Flood Storage area to the ZBA. Should any changes be made to this party, the ZBA shall be notified.

vii. If monitoring shows that plant survivorship and health is less than 80% in the third-year report, annual monitoring and replanting will continue until target plant survivorship and health goals are achieved.

viii. Maintenance of the compensatory flood storage area shall be a continuing condition in perpetuity that survives the expiration of this permit.

g. The Applicant shall submit to the Director of Planning and Community Development an Invasive Species Management Plan (ISMP) for work within the AURA, BLSF, and other resource areas and including floodplain compensation areas that exist within the project's work limit. The ISMP shall identify outlining all locations for invasive management, the species and quantities of invasive plants to be managed, and the methods of removal and control of each species. Monitoring reports shall be submitted to the ZBA detailing any invasive species and recommendations for control and removal. The invasive species certified specialist shall evaluate the restoration areas for evidence of colonization by invasive species during prescribed monitoring site visits. Monitoring Reports submitted to the ZBA shall include a listing of any invasive species, and recommendations for control/removal. Invasive Species Management shall be a continuing condition in perpetuity that survives the expiration of this permit.

h. The Applicant shall 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. This requirement is separate from the Construction Management Plan required by Condition D.2.

i. 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 Director of Inspectional Services 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.

i. The Final Plans shall be in substantial compliance with the Approved Plans.

ii. 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.

iii. The Final Plans shall show designated snow storage areas, consistent with the area shown on the Approved Plans

iv. The location of all utilities to all buildings, 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.

v. The Applicant has committed to using all electric service for the senior residential building. If any gas service is to be provided for an emergency generator or other similar facility, or to the duplexes, the gas service location(s) shall be included on the Final Plans.

vi. 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.

vii. The Final Plans shall include sign elevations and details, consistent with the sign information shown on the Approved Plans including an entry ground sign at the main access drive, a canopy sign above the entrance to the senior residence building, and additional site directional signage for residents and guests.

j. The Applicant must provide notification to the Arlington Assessor's Office for address and unit numbering.

k. In the absence of a signed Memorandum of Understanding (M.O.U.) between the Applicant and the Town of Arlington, the Applicant shall provide a report to the Board indicating the extent of site cleanup operations and the cost of the cleanup operations to date. If there is a signed M.O.U., the terms of that M.O.U. shall supersede this condition.

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 Director of Inspectional Services 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 Director of Inspectional Services may request pursuant to the State Building Code.

e. Submit to the Director of Inspectional Services and Director of Fire Prevention automatic sprinkler system plans conforming with NFPA 13 and fire alarm system plans conforming to NFPA 72 for the senior rental building. Both systems shall be designed to be monitored by a UL

approved central station monitoring service. The plans shall be submitted in such form as the Director of Inspectional Services and/or Director of Fire Prevention may request pursuant to the State Building Code.

f. Obtain and file with the Director of Inspectional Services 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. It is understood that compliance with this requirement is part of the building permit process, rather than required prior to the issuance of building permits.

h. The Applicant will be responsible for all applicable sewer permit, capacity impact, and privilege fees. Notwithstanding the foregoing, the Applicant shall not be responsible for any infiltration and inflow ("I/I") fees.

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 foregoing, the Applicant shall not be responsible for any infiltration and inflow ("I/I") fees.

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. Utilizing the methods detailed in Condition I.17, 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 Department of Planning and Community Development for review prior to the issuance of building permits.

l. In the absence of a signed Memorandum of Understanding (M.O.U.) between the Applicant and the Town of Arlington regarding the final disposition of the Conservation Parcel, the Applicant or its agents shall perform a Phase I Environmental Assessment of all parcels consistent with the requirements of M.G.L. c 21E and EPA standards for Phase I

assessments. Copies of the report are to be submitted to the Board and the Department of Planning and Community Development. In addition, the Applicant shall place $100,000 in an escrow account under the control of the Department of Planning and Community Development to remove items identified in the report from the Conservation Parcel and dispose of them under state law. If there is a signed M.O.U., the terms of that M.O.U. shall supersede this condition.

m. In the absence of a signed Memorandum of Understanding (M.O.U.) between the Applicant and the Town of Arlington regarding the final disposition of the Conservation Parcel, should the Phase I Environmental Assessment indicate the possible presence of oil or other hazardous materials on site as defined under M.G.L. c. 21E, the Applicant or its agents shall also perform a Phase II Environmental Investigation of all parcels consistent with the requirements of M.G.L. c 21E to identify oil or other hazardous materials in the soil or groundwater. Copies of the report are to be submitted to the Board and the Department of Planning and Community Development. The costs associated with the Phase II Environmental Investigation and subsequent site cleanup shall be borne solely by the Applicant. If there is a signed M.O.U., the terms of that M.O.U. shall supersede this condition.

D. Project Design and Construction

D.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. Written notice of such meeting shall be provided to parties in interest (pursuant to M.G. L. c. 40A, § 11) at least fourteen (14) days prior to such meeting. Additionally, the Applicant shall prepare a list of additional parties interested in notice, and shall provide notice to such parties.

D.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 be made available to those receiving notice of the meeting open to the public at least five (5) days prior to such meeting. 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, pest 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, posting on dedicated municipal website, and email notification to registered email addresses.

D.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.

D.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.

D.5 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.

D.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.

D.7 During construction, the Applicant shall conform to all local, State, and Federal laws and provide advance notice to abutters of the site and abutters to local public ways servicing the site from Lake Street 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.

D.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. Applicant shall prepare a preconstruction survey of the adjacent houses and shall utilize a geotechnical engineer to perform daily vibration monitoring with seismographs during ground improvement construction to limit peak particle velocity (i.e. vibration level) adjacent to the above-grade existing buildings to frequencies that reduce the probability of structural damage to the adjacent houses to generally acceptable levels specified by the geotechnical engineer. 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.

D.9 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 at each construction entrance for the duration of construction operations. The sign must be legible and able to be read from Dorothy Road.

D.10 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.

D.11 Utilities, including but not limited to telephone, electric, and cable, shall to the greatest extent feasible be located underground. The general contractor shall be responsible for coordinating all subsurface work with Dig Safe prior to the commencement of any excavation.

D.12 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Geotechnical Engineer to the Director of Inspectional Services as meeting design specifications, as applicable.

D.13 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.

D.14 Construction activities shall be conducted between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday and between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays. No construction activities shall be conducted on 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 Inspectional Services 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.

D.15 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 on site 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.

D.16 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.

D.17 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.

D.18 All retaining walls visible from a public way or direct abutters, as determined by the Director of Inspectional Services 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.

D.19 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. Snow within the resource area may be relocated per the requirements of Condition I.5.

D.20 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, except as specifically waived in this decision. 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.

D.21 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. The Applicant is responsible for the sweeping, removal of snow and sanding of the public sidewalk along Dorothy Road per local bylaws.

D.22 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. The Applicant shall abide by the requirements of Title III, Article 4 *Damage to Ways, Liability Bond* in the Town Bylaws.

D.23 The Applicant shall comply with DPW requirements regarding curb-cut permits.

D.24 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. A copy of the plan will be kept on file at the jobsite.

D.25 Prior to commencing any earth removal, the Applicant shall provide the Board with the results of a Phase I Site Assessment pursuant to M.G.L. c. 21E.

D.26 All catch-basins shall have oil/water separators as shown on the Approved Plans.

D. 27 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").

D. 28 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 Inspectional Services 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.

D.29 The Applicant shall survey the existing public shade trees along the proposed access routes to the site with the Tree Warden to develop a plan for minimizing impacts to public shade trees in the neighborhood. Any damage to public shade trees shall be reported to the Tree Warden, and the responsible party shall be held accountable under M.G.L. Chapter 87, § 12.

D.30 Basement and garage portions of the Project which extend below the seasonal maximum high groundwater elevation shall be sealed and waterproofed to protect against the infiltration of groundwater.

D.33 Construction staging, specifically for the modular units, but applicable to all other aspects of construction such as concrete trucks, shall occur off-site, in a location acceptable to the Director of Inspectional Services. All deliveries to the site shall be offloaded on the Property. Delivery vehicles shall not be permitted to idle. Delivery and construction vehicles shall not block any driveways, private ways, or public ways. The intent of this condition is to prevent traffic congestion and reduce the impact of construction vehicles on the local neighborhood.

E. Construction Completion / Certificate of Occupancy

E.1 Prior to issuance of any 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 Director of Inspectional Services.

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 (AFD) of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the structure. Obtain acceptance from the AFD for the emergency access drive around the senior living building.

d. Obtain a sewer connection sign-off from the Arlington Department of Public Works for the structures.

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 Memorandum of Understanding (M.O.U.) between the Applicant and the Town of Arlington regarding the final disposition of the Conservation Parcel, following the completion of any remediation identified by the Chapter 21E site assessments, the Applicant shall enter into a Conservation Restriction (CR) under M.G.L. Chapter 184, Sections 31-33 for the portion of the site identified as the Conservation Parcel on the plan entitled "Potential Conservation Parcel" dated August 27, 2021. Such CR shall be in effect in perpetuity and shall limit the use of said parcel to conservation purposes and to a lesser extent, limited passive recreation by the general public.

g. Regardless of the status of a M.O.U. between the Applicant and the Town, the proposed CR is to be submitted to the Board for Administrative Review.

h. In the absence of a signed Memorandum of Understanding (M.O.U.) between the Applicant and the Town of Arlington regarding the final disposition of the Conservation Parcel, the Applicant endorses an agreement to provide an annual contribution of $25,000 to an escrow account under the control of the Department of Planning and Community Development for a period of ten years for improvements / maintenance of the Conservation Parcel for passive recreation by residents of the Town of Arlington. If there is a signed M.O.U., the terms of that M.O.U. shall supersede this condition.

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

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 both AutoCAD Drawing Format (DWG) and Portable Document Format (PDF). DWG file shall include full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, subsurface features, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, flood 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.

E.3 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.4 Within three years after the issuance of a certificate of occupancy, the Applicant shall participate in a post-development monitoring study designed to determine the local traffic on neighborhood streets and to make recommendations regarding traffic calming measures that may be necessary and desirable to mitigate impacts on the streets on and between Lake Street and the project location, which include Lake Street, Wilson Avenue, Littlejohn Street, Homestead Road, Burch Street, Margaret Street, Mary Street, Mott Street, Dorothy Road, and Parker Street.

The study shall be submitted to the Town of Arlington Transportation Advisory Committee ("TAC") for review and approval by TAC and the Arlington Select Board in accordance with the procedure set forth in the Town of Arlington Transportation Advisory Committee Traffic Calming Guideline approved by TAC December 8, 2010 ("Traffic Calming Guidelines"). The Applicant shall cooperate with the Town in implementing all such measures.

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 small, non-articulated delivery vehicles (i.e. no tractor-trailers or similar heavy vehicles). The operator shall use all reasonable efforts to schedule vendor deliveries during off-peak hours. Vendors are to adhere to all local traffic requirements.

F.3 The senior living residence will provide a 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. The service shall operate for such sufficient operating hours or mode of operation (i.e. on demand or set schedule) to provide reliable transportation service for residents and staff to reduce the demand for parking and vehicle trip generation.

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. Bicycle storage fixtures requiring the lifting of a bicycle off the ground shall be provided with mechanical lift assistance.

F.6 The Applicant shall provide two (2) outdoor short-term bicycle parking racks, each capable of parking up to six (6) bicycles. These parking racks shall be in the proximate area as shown on the Approved Plans, near the main entrance of the senior residence building. Bike racks shall be capable of securing a standard bicycle frame and one wheel using a common U-type security lock without the need to remove either wheel.

F.7 The Applicant shall provide new residents with transportation information packets including, but not limited to, the following information:

a. Information on getting around Arlington and surrounding communities sustainably,
b. Information regarding the existing weekday peak hour turn restrictions from Lake Street,
c. Information regarding local parking requirements and bylaws, including without limitation restrictions on overnight parking,
d. Information on the jitney service,
e. Information on the Council on Aging shuttle service,
f. Information on the Minuteman Commuter Bikeway,
g. Information on the MBTA and pass services.

F.8 The Applicant shall provide 95 total parking spaces for the senior residence building, inclusive of 84 garage parking spaces and 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 meeting the requirements of the ADA and AAB.

F.9 Parking for senior residence apartment units shall be subject to an additional monthly fee at market rates, separate from rent, in order to discourage motor vehicle ownership in the Project.

F.10 The Applicant shall provide electric vehicle charging stations for at least 10 garage parking spaces and shall provide wiring and amperage as needed to allow for an expansion of at least 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 Parking for residents, staff, and guests of the senior residence building is to be accommodated primarily on site. The property manager shall review requests for parking quarterly, and shall adjust parking space allocations as required to properly allocate available parking between residents, staff, and guests to minimize impacts on the adjacent neighborhood.

G. Police, Fire, and Emergency Medical Conditions

G.1 The Applicant shall provide professional senior housing operator / property management and maintenance personnel on the premises during typical business hours and provide an emergency contact name and number for tenants and the Arlington Police Department and Fire Department.

G. 2 Stairwells and garages must be a minimum two-hour fire rated, and residential units must be a minimum one-hour fire rated or as required by State Building Code.

G.3 The four-story residential structure shall be fully sprinklered per NFPA and State Fire Code regulations.

G.4 Compliance with all State Building Code and NFPA requirements relating to fire access, safety, and egress shall be met.

G.5 All elevators must have emergency generator or battery backup per State Elevator Code.

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 exterior lighting to ensure safety of the residents of the Project. Exterior 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 control system and shall have staff on-site to address access and security concerns.

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. For the purposes of this set of conditions (Section H), "Utilities" shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like.

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. The Applicant shall request a Grant of Location from the Select Board for any relocation of existing utility poles or 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, recycling, and yard waste collection.

H.8 Fire hydrants on the Property shall remain private, and shall be maintained by the Applicant.

H.9 The Applicant shall allow access to the Town to all easements during the period of construction, and shall not unreasonably deny temporary access to property adjacent to the easement to provide suitable room for the Town 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. Sewer service to the senior residence building should utilize an 8" service line and shall discharge into a sewer manhole when entering the Town sewer collection system. Sewer service to the duplex buildings should utilize a 6" service line and discharge into the street main or as directed by the Water and Sewer Division. Upon completion of construction, the Applicant shall notify the Arlington Water and Sewer Division to conduct a post-construction evaluation of the sewer main.

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 pursuant to the Wetlands Protection Act 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 non-approved de-icing materials are used, and the snow is clear of all foreign debris. An alternative de-icing product such as magnesium chloride (MgCl) may be used as recommended in the Winter Parking Lot and Sidewalk Maintenance Manual published by the Minnesota Pollution Control Agency, https://www.pca.state.mn.us/sites/default/files/p-tr1-10.pdf.

I.6 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.7 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 within seven days 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 Applicant's SWPPP inspection reports, as appropriate and necessary.

I.8 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.9 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 Applicant shall notify the Board and Arlington DPW and also the qualified Environmental Monitor.

I.10 There shall be no sedimentation into wetlands or water bodies located on or off-site from point or non-point source discharges.

I.11 The Board or its duly appointed agent (which may by 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.12 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 or 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, said security may be accessed by the Board to pay expenses for replacement, repair or maintenance of erosion controls. 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.13 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.14 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.15 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.16 The Applicant shall submit for review and administrative approval to the Town Engineer design details confirming that the rooftop stormwater 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.17 In addition to 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.18 The site shall be graded to ensure that no increase in peak runoff rate or volume is directed toward Dorothy Road and Littlejohn Street consistent with the analysis provided in the Stormwater Report dated August 2021 (revised).

I.19 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 throughout the Property).

I.20 The Applicant shall treat planted areas within resource areas and buffer zones only with slow release nitrogen fertilizer once during the initial planting year. Application of this fertilizer is not permitted within two days before and after 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. This shall be a continuing condition in perpetuity that survives the expiration of this permit.

I.21 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. This shall be a continuing condition in perpetuity that survives the expiration of this permit.

I.22 Except as specifically noted in Condition I.5, the application of sand and / or salt within one hundred feet (100') of resource area is prohibited.

I.23 The Applicant shall conduct a thorough catch basin sump cleaning at all protected catch basins at the end of construction of the Project.

I.24 All mitigation plantings and all plantings with resource areas shall be native, non-cultivar species, 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.25 All plant species planted and invasive species removed through the Project shall be monitored for three years. A survival rate of eighty percent (80%) must be maintained for the approved plantings at the end of the third year of monitoring. If the survival rate is less than eighty percent (80%) 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. The Applicant shall submit the contact information of the party responsible for monitoring and maintaining the planted vegetation to the ZBA. Should any changes be made to this party, the ZBA shall be notified. This shall be a continuing condition in perpetuity that survives the expiration of this permit.

I.26 No work shall be allowed in or within twenty-five feet (25') of any resource area except as shown on the Approved Plans.

I.27 No disturbance shall be allowed in or within fifty feet (50') of any resource area, except as shown on the Approved Plans.

I.28 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), Sections 4 and 25.

I.29 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 and cleaning of the compensatory flood storage areas to ensure these remain functional and will provide the anticipated flood storage.

I.30 Any building or site dewatering operations shall conform to the following:

1. The Applicant shall notify the Conservation Commission and DPW 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. Discharges are to be set back at least fifty feet (50') from BVW and IVW.
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 express written consent of that property owner.

I.31 The Applicant is to ensure that the proposed rain garden(s) will function as intended pursuant to the stormwater management plan.

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 and other obstructions per local ordinance.

J.7 Notwithstanding any provisions of the previous condition (J.6), the Town shall have no obligations relating to the restoration and maintenance 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

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(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 5-0, at its public meeting on November 22, 2021, to grant a Comprehensive Permit subject to the above-stated Conditions, with this Decision as attested by the signatures below.

DocuSigned by:
05A6A488BAB14C5...
Christian Klein, Chair

DocuSigned by:
Pat Hanlon
341538B701324C9...
Patrick Hanlon, Vice Chair

DocuSigned by:
Roger Dupont
CF4FFF487D8A4F1...
Roger DuPont

DocuSigned by:
Kevin Mills
EBF67067FB44493...
Kevin Mills

DocuSigned by:
Shawn O'Rourke
A8356F7DD129499...
Shawn O'Rourke

Dated: November 22, 2021

Filed with the Town Clerk on ~~November~~ December 1, 2021.

Town Clerk

Final Decision

DocuSigned by:
Richard Vallarelli
A3AA5E2A476F4R1

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, Arlington, 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. The Project is providing habitat restoration in the location of the 2:1 floodplain compensation area and also some grading / re-vegetation of the outer AURA. Such restoration and re-vegetation efforts should follow the guidance provided by the Regulations in Section 24 for protection of resource areas. Establishment of a healthy diversified native plant community within the 2:1 floodplain compensation area will provide a resilient habitat within a resource area that protects the interests it must replicate including protection of flood control, groundwater, and wildlife habitat. The guidance found in Section 24 Vegetation Removal and Replacement is critical to the long term success of this mitigation area, whereby providing important public benefit.

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 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.

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.

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 as unnecessary. The comprehensive permit doesn't take away the Conservation Commission's ability to review the application under the Wetlands Protection Act.

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: Waiver Denied as unnecessary. Because all local permitting processes are subsumed into the comprehensive permit application, no waiver of this provision is required.

10. Town of Arlington Bylaws, Title V, 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. The Tree Plan shall be submitted as a part of the Final Plans.

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 to allow construction as shown on the Approved Plans.

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 yard setback waiver.

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

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 to allow construction as shown on the Approved Plans.

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 permanents 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 24 sq. ft and (1) Canopy Sign not to exceed the size of the face of the proposed entry canopy. Directional and other signs are to be limited to 2 sq. ft. per sign. Sign locations to be as shown on Approved Plans.

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 two end units in the row of duplex buildings along Dorothy Road can only accommodate one parking space each.

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

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 to allow construction as shown on the Approved Plans.

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 M. 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. The 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. The 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.

32. Arlington Town Bylaws, Title V, Article 12, Section 3.A "Noise Abatement": This Section prohibits operation of heavy equipment outside of the hours of 8:00 a.m. Monday through Friday, and from 9:00 a.m. to 5:00 p.m. on Saturdays, Sundays, and legal holidays. The Applicant requests a waiver to allow for construction hours of 7:30 a.m. to 4:30 p.m. on Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays.

Board Action: Waiver Granted as Conditioned by the Board. Waiver Granted as Conditioned by the Board. This waiver to allow hours of operation beginning at 7:30 a.m. on weekdays is contingent on the limitation prohibiting work on Sundays or legal holidays contained in Condition D.16. If the prohibition against work on Sundays or legal holidays is subsequently stricken from this decision, this waiver shall cease to be operative.

END OF DECISION