



TOWN OF WESTON
MASSACHUSETTS

BOARD OF APPEALS

COMPREHENSIVE PERMIT UNDER M.G.L. Chapter 40B

APPLICANT: 269 North Ave, LLC, c/o Polymath Development, LLC, 590 Main Street, Suite 500, Watertown, MA 02472

LANDOWNER: 269 North Ave, LLC

SUBJECT PROPERTY: 269 North Avenue, Weston, Massachusetts 02493, Assessors' Map 8, Lot 63 (the "Site")

DISPOSITION: The Application for a Comprehensive Permit for the Project is granted, conditioned by the findings, conclusions, conditions, requirements and statements contained throughout this Decision read in its entirety.

RECORD OF PROCEEDINGS:

There having been presented to the Zoning Board of Appeals (the "Board" or the "ZBA") a petition for a Comprehensive Permit dated March 1, 2016, by 269 North Ave, LLC, (the "Applicant") the Board decided to hold a public hearing on said petition on Monday, April 4, 2016 at 7:30 p.m., the date for the opening of the hearing having been extended by agreement between the Applicant and the Board, and caused the following notice to be published in The Town Crier, a newspaper of general circulation in Weston:

TOWN OF WESTON
MASSACHUSETTS
BOARD OF APPEALS
Hearing Notice

Notice is hereby given that the Board of Appeals of the Town of Weston will hold a public hearing on Monday, April 4, 2015 [sic] at 7:30 p.m. in a conference room at the Weston Town Hall, on an application by 269 North Ave, LLC c/o Brian Levey, Esq., 15 Walnut Street, Suite 400, Wellesley, MA as to 269 North Avenue (Map 8, Lot 63), requesting a Comprehensive Permit under M.G.L. Chapter 40B for 16 rental housing units (4 of which will be affordable) on 1.46 acres. The petition and plans on above application with said Board of Appeals are available

for public inspection in the office of the Board of Appeals on Monday through Friday, from 9 A.M. to 4:30 P.M. or on the Town website.

Board of Appeals of the Town of Weston
By: Winifred I. Li, Chair

The Board also mailed the foregoing notice postage prepaid to the parties in interest deemed by the Assessors Office to be all of the persons affected by said petition as they appear on the most recent tax list, Board of Appeals Members Li, Carlson, and Larocque, plus the Planning Boards of Lincoln, Natick, Newton, Waltham, Wayland and Wellesley.

On March 8, 2016, the Board of Appeals issued a letter to the Board of Selectmen, Board of Health, Building Inspector, Conservation Commission, Historical Commission, Housing Partnership, Planning Board, and Engineering, Fire and Police Departments, requesting them to consider and comment on the petition and plans.

Pursuant to the foregoing notice (and subject to the agreement extending the date for the opening of the hearing noted above), the Board of Appeals opened a public hearing on Monday, April 4, 2016 at 7:30 P.M. in the Weston Town Hall. The following members were present for all of the public hearing sessions listed in Section IV, below:

Winifred I. Li, Chair
Jane Fisher Carlson, Acting Secretary
Stephen J. Larocque

BACKGROUND

The development project proposed under this Comprehensive Permit application (the “Project”) is comprised of sixteen (16) rental units, four (4) of which will be restricted as affordable units (“Affordable Units”) for low or moderate income persons or families as required under the terms of the Comprehensive Permit Guidelines issued by the Massachusetts Department of Housing and Community Development (“DHCD”). The rental units, as most recently designed, are to be housed in five (5) buildings: two (2) buildings fronting on North Avenue, and three (3) townhouse-style buildings in the middle of the Site. North Avenue (MA Route 117) is one of Weston’s major roadways, and the Project is located approximately 0.9 miles from the Kendal Green commuter rail station and 0.3 miles from the Hastings commuter rail stop.

- I. The Applicant submitted to the Board the following plans and materials as prepared by the Applicant and its consultants, as revised through March 20, 2017, (herein collectively know as the “Plan of Record”):
 - A. 269 North Avenue Drawing List, prepared by Doyle Engineering, Inc. 14 Spring Street, Waltham, MA 02451 (“DEI”)
 1. Cover
 2. Drawing No. C0.00 “Existing Conditions,” dated 12.09.15, most recently revised 01.19.17

3. Drawing No. C1.00 "Site Preparation," dated 12.09.15, most recently revised 01.19.17
4. Drawing No. C2.00 "Site Layout Plan," most recently revised 01.19.17
5. Drawing No. C3.00 "Grading and Drainage Plan," dated 12.09.15, most recently revised 01.19.17
6. Drawing No. C4.00 "Utilities," dated 12.09.15, most recently revised 01.19.17
7. Drawing No. C5.00 "Details," dated 12.09.15, most recently revised 01.19.17
8. Drawing No. C5.10 "Details," dated 12.09.15, most recently revised 01.19.17
9. Drawing No. C6.00 "Vehicle Access Plan," dated 12.09.15, most recently revised 9.23.16
10. Drawing No. L-1.00 "Landscape Screening Plan," prepared by Terraink, 7 Central Street, Arlington, MA, dated 10.1.15, most recently revised 12.28.16
11. Drawing EX-1 "Building Setbacks and Offsite Trees," most recently revised 12.28.16
12. Drawing No. LL-1.0 Landscape Lighting Plan, prepared by Karen Sebastian, LCC, dated October 1, 2016, most recently revised November 14, 2016
13. Drawing No. A.N.G., "Average Natural Grade," dated January 11, 2017 and accompanying calculations for Buildings A, B, C, D, and E

B. 269 North Avenue, Weston Massachusetts List of Drawings, prepared by The MZO Group, 92 Montvale Ave., Stoneham, MA 02180, Andrew T. Azlewski, AIA

1. Sheet S-1 "Architect's Site Plan," dated September 23, 2016, most recently revised 3/20/17 (date entered by hand)
2. Sheet A-1 "Apartment House A Design Inspiration," dated January 28, 2016, most recently revised 1/18/17
3. Sheet A-2 "Apartment House A Elevation," dated January 28, 2016, most recently revised 1/18/17
4. Sheet A-3 "Apartment House A Elevations," dated January 28, 2016, most recently revised 1/18/17
5. Sheet A-4 "Apartment House A Elevation & Section," dated January 28, 2016, most recently revised 1/18/17
6. Sheet A-5 "Apartment House A Floor Plans," dated January 28, 2016, most recently revised 1/18/17
7. Sheet B-1 "Apartment House B Design Inspiration," dated January 28, 2016, most recently revised 1/18/17
8. Sheet B-2 "Apartment House B Elevations," dated January 28, 2016, most recently revised 1/18/17
9. Sheet B-3 "Apartment House B Elevations," dated January 28, 2016, most recently revised 1/18/17
10. Sheet B-4 "Apartment House B Elevation & Section," dated January 28, 2016, most recently revised 1/18/17
11. Sheet B-5 "Apartment House B Floor Plans," dated January 28, 2016, most recently revised 1/18/17
12. Sheet C-1 "Town Homes Design Inspiration," dated January 28, 2016, most recently revised 1/18/17
13. Sheet C-2 "Town Homes C Elevations," most recently revised 1/18/17

14. Sheet C-3 "Town Homes C Elevations & Section," most recently revised 1/18/17
 15. Sheet C-4 "Town Homes C Floor Plans," most recently revised 1/18/17
 16. Sheet C-5 "Town Homes C Floor Plans," most recently revised 1/18/17
 17. Sheet D-1 "Town Homes D Elevations," most recently revised 1/18/17
 18. Sheet D-2 "Town Homes D Elevations and Section," most recently revised 1/18/17
 19. Sheet D-3 "Town Homes D Floor Plans," most recently revised 1/18/17
 20. Sheet D-4 "Town Homes D Floor Plans," most recently revised 1/18/17
 21. Sheet E-1 "Town Homes E Elevations," most recently revised 1/18/17
 22. Sheet E-2 "Town Homes E Elevations & Section," most recently revised 1/18/17
 23. Sheet E-3 "Town Homes E Floor Plans," most recently revised 1/18/17
 24. Sheet E-4 "Town Homes E Floor Plans," most recently revised 1/18/17
 25. Sheet HP1 "HP Access Compliance," dated November 17, 2016, most recently revised 1/18/17
 26. "269 North Ave." Site Sections from North and South, dated 12/2/16, most recently revised 1/23/17
- C. "Subsurface Sewage Disposal System, New Construction," prepared by Goldsmith, Prest & Ringwall, Inc., 39 Main Street, Ayer, Massachusetts 01432 ("GPR")
1. "Site Plan," dated 9/22/16, stamped "approved" by Weston Health Department 11/7/16
 2. "Flow Profile, Construction Details & Specifications," dated 9/22/16, stamped "approved" by Weston Health Department, 11/7/16
 3. "Perc-Rite Construction Details and Specifications," dated 9/22/16, stamped "approved" by Weston Health Department, 11/7/16
 4. "Perc-Rite System Overview"
- D. "Existing Condition Plan 269-271 North Avenue, Weston, Massachusetts," dated February 18, 2010, revised March 14, 2011, prepared by CCR Associates, 40 Mears Avenue, Quincy, MA
- E. 269 North Avenue, Weston, Massachusetts "Post Construction Stormwater Management Report," prepared by DEI, dated March 2016, most recently revised January 2017
- F. Chart entitled "Sanitary Sewer Design," listing sewer velocities, prepared by DEI, submitted to the ZBA via letter dated January 19, 2017 from Brian C. Levey
- G. "Average Natural Grade Calculations," prepared by DEI, dated December 1, 2016, most recently revised January 11, 2017
- H. Tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage; initial chart undated; revised chart hand-dated 3/20/17
- I. "269 North Ave Supplemental Materials" as submitted by email dated 1/19/17, from Brian Levey to the ZBA
- J. "Kendal Village—Tree Protection," and two (2) plans attached thereto, submitted in a memorandum from Brian Levey to Kenneth Staffier, VHB, dated December 13, 2016
- K. "Kendal Village—Proposed Tree Protection Condition," submitted in a memorandum from Brian Levey to the ZBA, dated January 19, 2017

L. "24x48 Culvert and Supplemental Table," submitted in an email from DEI to the ZBA dated March 6, 2017

II. Town department documents, letters, and emails submitted to the ZBA include:

- A. Letter dated November 20, 2015 from the Weston Board of Selectmen to the Massachusetts Housing Finance Agency ("MassHousing"), with attachments from the Weston Department of Public Works (11/9/15); the Weston Board of Health (11/5/15); Weston Planning Board (11/12/15); Noreen Stockman, (11/3/15); and "Town of Weston, Policies and Preferences for Affordable Housing" (2/25/10)
- B. Emails dated November 9, 2015, March 14, 2016; March 29, 2016; April 1, 2016; September 27, 2016 (2 emails); October 19, 2016; October 25, 2016; November 8, 2016; January 4, 2017; and January 20, 2017 from the Weston Department of Public Works ("DPW"), Town Engineer Stephen Fogg, and/or Assistant Town Engineer/Stormwater Engineer Richard Sweeney, Jr. to the ZBA
- C. Memorandum dated March 8, 2016 from Michele Grzenda, Conservation Administrator, Weston Conservation Commission to the ZBA
- D. Email dated March 11, 2016 from David Soar, Chief of the Weston Fire Department, to the ZBA
- E. Email dated March 17, 2016 from Michael J. Goulding, Weston Chief of Police, to the ZBA
- F. Emails dated March 21, 2016, March 26, 2016, April 1, 2016, February 15, 2017, and March 13, 2017 from Weston Board of Health, Public Health Director Wendy Diatolevi to the ZBA
- G. Memorandum dated March 28, 2016 from the Weston Historical Commission to Weston Housing Partnership, the ZBA, and the Board of Selectmen
- H. Email dated November 1, 2016 from Board of Selectmen to the ZBA re: "269 North and Town's Drainage System"
- I. Email dated November 20, 2016, from Town Manager Donna VanderClock to the ZBA re: "269 North Avenue Drainage"
- J. "Affordable Housing Data for Weston," dated 12/2016, prepared by N. Stockman
- K. Memorandum dated December 21, 2016 from the Weston Planning Board to the ZBA re: 269 North Avenue "Kendall [sic] Village—40B Comprehensive Permit"
- L. Email from Stormwater Engineer Richard Sweeney, Jr. to the ZBA, dated December 29, 2016, re: "Current review comments for 269 North Avenue"
- M. Email from Stormwater Engineer Richard Sweeney, Jr. to the ZBA, dated January 9, 2017, re: Drainage Connection Permits"
- N. Email dated January 11, 2017 from Weston Board of Health Director Wendy Diatolevi to the ZBA re: 269 North Ave Waiver List"
- O. Email dated January 11, 2017 from Weston Board of Health Director Wendy Diatolevi to the ZBA re: "269 North Ave Utility Plan"
- P. Letter from Weston DPW to the ZBA, dated 1/20/17, re: "DPW comments in response to DEI's 'Responses to all outstanding comments'"
- Q. Email from DPW (Richard Sweeney, Stormwater Engineer) to the ZBA, dated March 20, 2017, re: "269 North Ave." regarding "previous existing drainage pipe"

- R. Email from DPW (Richard Sweeney) to the ZBA, dated March 20, 2017, re: “268 [sic] North Ave.—Monday ZBA Meeting” regarding “remaining concerns” with regard to stormwater management system

III. Additional documents in the file include, but are not limited to:

- A. Documents submitted by the Applicant, the Applicant’s consultants, the Board’s peer reviewers, neighborhood consultants, and others:
 - 1. Copy of Quitclaim Deed for 269 North Avenue, Weston Massachusetts from Polymath Development, LLC to 269 North Ave, LLC, dated 22 December, 2015 and recorded in Middlesex South Registry of Deeds, Book 66597, Page 144
 - 2. Certificate of Organization, 269 North Ave, LLC, dated Dec. 17, 2015
 - 3. “Stormwater Best Management Practices (BMP’s) Operation and Maintenance Plan,” dated December 7, 2015, most recently revised January, 2017 prepared by DEI
 - 4. “Traffic Impact and Access Study, Proposed Apartment Development, Weston, Massachusetts,” dated January 27, 2016, prepared by Ron Muller & Associates, 56 Teresa Road, Hopkinton, MA 01748
 - 5. Housing Eligibility Letter for “Kendal Village—Weston, MA,” MA ID No. 795, dated February 12, 2016, issued by MassHousing, 1 Beacon Street, Boston, MA
 - 6. Application by 269 North Ave, LLC to the Zoning Board of Appeals for Comprehensive Permit, dated March 1, 2016, date stamped by the Weston Town Clerk on March 4, 2016, containing a binder of original documents in support of Comprehensive Permit
 - 7. Waiver List of Exceptions and Permits Under Local Requirements, Version 1, dated March 3, 2016; most recent Version 7, dated 3/15/17
 - 8. Letter from City of Cambridge Water Department to the ZBA, dated April 21, 2016
 - 9. Letter from MDM Transportation Consultants, Inc. 28 Lord Road, Suite 280, Marlborough, MA 01752, the Board’s Peer Traffic Consultant, to the ZBA, dated August 15, 2016, re: “Transportation Peer Review Comments 269 North Avenue 40B Development, Weston, MA”
 - 10. Letter from Vanasse Hangen Brustlin, Inc., 101 Walnut Street, Watertown, MA (“VHB”), the Board’s Engineering Peer Reviewer, to the ZBA dated August 18, 2016, re: “Engineering Review, 269 North Avenue”
 - 11. Letter from Ron Muller & Associates to the ZBA, dated August 23, 2016, re: “Kendal Green Traffic Review, 269 North Avenue 40B Development, Weston”
 - 12. Memorandum from Brian C. Levey, Esq. (Counsel to 269 North Ave, LLC) to the ZBA, dated August 24, 2016, re: Kendal Village—Response to Peer Review Comments”
 - 13. Letter from DEI to Polymath Development, LLC, dated September 11, 2016, with attachments re: “Soil Testing Results”
 - 14. Letter from GPR to Town of Weston Board of Health, dated September 21, 2016 re: “Groundwater Mounding Analysis, Subsurface Disposal System, Kendal Village, 269 North Avenue, Weston, MA”
 - 15. Letter from VHB to the ZBA, dated September 28, 2016, re: Engineering Review, 269 North Avenue,” containing original VHB comments on the Project, responses from the Applicant, and further VHB comments.
 - 16. Memoranda dated September 30, 2016 and October 26, 2016 from Tetra Tech, Engineering Reviewer for Project neighbors, re: “Engineering Review Comments,

- Proposed ‘Kendal Village’ Residential Development, 269 North Avenue, Weston, Massachusetts”
17. Letters from Daniel C. Hill, Esq., Hill Law, 43 Thorndike Street, Cambridge, Massachusetts, dated October 7, 2016; October 28, 2016; November 20, 2016; and November 23, 2016
 18. Color renderings of Project (two sheets) dated October 11, 2016, revised November 14, 2016
 19. Letter from City of Cambridge Water Department to the ZBA, dated November 1, 2016 re: “269 North Ave. 40B Development”
 20. Letter to Weston Board of Selectmen dated November 9, 2016 from Brian C. Levey re: “Kendal Village—Connection Permit”
 21. Letter dated November 11, 2016 from Brian C. Levey to the ZBA re: Kendal Village—Comprehensive Permit Application,” containing Landscape Screening Plan (L.1.0); Landscape Lighting Plan (LL-1.0); and three (3) cut sheets for outdoor lighting fixtures
 22. Memorandum dated November 18, 2016 from Tetra Tech to the ZBA re: “Engineering Review Comments, Proposed ‘Kendal Village’ Residential Development, Weston, MA”
 23. “Town of Weston, Stormwater Permitting Authority, Application for Stormwater Management Permit,” for 269 North Avenue, signed and dated 11/16/16, attached to “Stormwater Management Permit Submitted Plan(s) Checklist, dated November 14, 2016 and presented for the record on March 15, 2017
 24. “Town of Weston, Commonwealth of Massachusetts, Department of Public Works, Application for Permit to Connect to Town of Weston Drainage System,” dated November 14, 2016, signed and dated 11/16/16, and presented for the record on March 15, 2017
 25. “Application for Installation of Service Pipe Larger than 1” in Diameter” with Project’s Utilities Plan, submitted in an email dated November 17, 2016 from Brian C. Levey to the ZBA
 26. Memorandum from Tetra Tech dated November 18, 2016, re: further “Engineering Review Comments”
 27. Letter dated November 20, 2016 from Hill Law to the ZBA re: “Application for Comprehensive Permit—269 North Ave., Weston”
 28. Letter dated November 23, 2016 from Hill Law to the ZBA re: “Application for Comprehensive Permit—269 North Ave., Weston”
 29. “Current Condition” (12/10/16) and “Proposed Condition” (12/11/16), submitting drainage information with and without connection to Town drainage system by DEI
 30. Memorandum from DEI (Bill Doyle, PE) to VHB (Kenneth Staffier, PE, Board’s peer engineering reviewer) and Tetra Tech (Sean Reardon, PE, neighbors’ reviewer), dated December 13, 2016 re: “Kendal Village 40B—269 North Avenue, Weston, MA—‘Sensitivity Analysis’”
 31. Memorandum from VHB (Kenneth Staffier) to Tetra Tech (Sean Reardon), dated December 13, 2016 re: “Sensitivity Analysis”
 32. Memorandum from VHB (Kenneth Staffier) to DEI (Bill Doyle) dated December 13, 2016, revised 12/14/16 re: “Kendal Village 40B—269 North Avenue, Weston, Massachusetts—Sensitivity Analysis”
 33. Letter from Nitsch Engineering, 2 Center Plaza, Boston, Massachusetts (David M. Conway, PE) to the Weston Planning Board dated December 20, 2016 re: “Site Plan Comments, 269 North Avenue, Weston, MA”

34. Email from Brian Levey, Counsel to Applicant to the ZBA, dated December 29, 2016, re: “Kendal Village—Handicap Compliance”
 35. “DEI Response to Nitsch Engineering Comments of 12/20/2016,” and DEI Response to Outstanding VHB Comments
 36. Letter from Kathleen Lynch of VHB (Landscape Peer Reviewer) to the ZBA, dated December 30, 2016, re: “Landscape Architecture Review, 269 North Avenue”
 37. Memorandum from DEI to ZBA dated 1/3/17 entitled “DEI Response to Weston DPW Comments Forward [sic] by Email on 12/29/16”
 38. Email from DEI to the ZBA dated 1/4/17 re: “Revised HydroCAD Analysis
 39. Email from Terraink (Applicant’s Landscape Consultant) to VHB, dated January 10, 2017, re: “Comments provided by DEI and Terraink to VHB Letter of Dec. 30, 2016 re: ‘Landscape Architecture Review’”
 40. Email from DEI to the ZBA dated 1/14/17 re: “Revised Grading and Drainage Plan” (see Section I.A.5, above)
 41. Letter dated January 16, 2017 from VHB to the ZBA re: “Engineering Review, 269 North Avenue”
 42. Email from DEI (Bill Doyle, PE) to VHB (Kenneth Staffier, PE) dated January 17, 2017 re: “Pipe Calculations,” containing HydroCAD run
 43. “DEI’s Response to All Outstanding Comments,” with “Appendix D, Mounding Analysis,” dated 1/19/17
 44. Email from DEI to VHB, dated January 23, 2017, re: HydroCAD runs
 45. Letter dated January 23, 2017, from City of Cambridge Water Department to the ZBA, re: “269 North Ave 40B Development”
 46. Memorandum dated January 23, 2017 from Tetra Tech to the ZBA re: “Engineering Review Comments, Proposed “Kendal Village” Residential Development, 269 North Avenue, Weston”
 47. “Kendal Village Pro Forma,” submitted by memorandum , dated February 13, 2017 from Michael Jacobs of MHJ Associates, 41 Coolidge Street, Brookline, MA 02446
 48. “Kendal Village—Supplemental Pro Forma,” dated February 21, 2017, from Michael Jacobs, MHJ Associates
 49. Letter from VHB (Kenneth Staffier) to the ZBA dated March 8, 2017, re: “Engineering Review, 269 North Ave”
 50. “Financial Peer Review, Kendal Village, 269 North Avenue, Weston, MA,” prepared by David J. Levy, Community Square Associates, LLC, Arlington, Massachusetts (Board’s Financial Peer Reviewer), dated March 15, 2017, submitted by email dated March 13, 2107
- B. Correspondence and other communications from Project neighbors and other Weston residents
1. Emails from Project neighbor Bryan Johnson of 277 North Avenue, Weston, Massachusetts to the ZBA and others, dated as follows: March 15, 2016; April 1, 2016 to Traffic and Sidewalk Committee; April 1 to Steve Fogg, Weston DPW; April 18, 2016; January 19, 2017; March 14, 2017; March 17, 2017 (attaching “Kendall Village 16 vs 12 Unit Pro Forma Analysis”; and March 20, 2017
 2. Letter from Christopher M. Scott, 90 Concord Road, Weston, Massachusetts to the ZBA, dated April 2, 2016

3. Emails from Karen Levin of 51 Hallett Hill Road, Weston, Massachusetts to the ZBA, dated August 25, 2016, March 1, 2017, and March 16, 2017
4. Emails from David Friend of 64 Spruce Hill Road, Weston, Massachusetts to the ZBA dated as follows: October 25, 2016; November 22, 2016; December 2, 2016; December 18, 2016; January 16, 2017; February 8, 2017; and March 9, 2017
5. Email from Weston resident James Steedle dated November 16, 2016, re: handicap access
6. Memoranda from Concerned Weston Citizens for the Environment to the ZBA, dated as follows: December 20, 2016 (8 pages); January 16, 2017 (4 pages); January 21, 2017 (16 pages); March 15, 2017 (4 pages); March 19, 2017 (2 pages); March 19, 2017 (12 pages); and March 20, 2017 (4 pages)
7. Letter from Nayiri Baljian of 256 North Avenue, Weston, Massachusetts to Timothy C. Sullivan, Executive Director, MassHousing, dated March 18, 2017
8. Four (4) photographs presented by Maxine Breen of 266 North Avenue, Weston, Massachusetts at the session on March 20, 2017, to show flooding near the Project on North Avenue

IV. The Weston Zoning Board of Appeals held a public hearing comprised of fourteen (14) sessions, duly advertised, on the following dates: April 4, 2016; May 18, 2016 (opened solely to continue the hearing to June 21, 2016 at the request of Applicant's counsel); June 21, 2016 (opened solely to continue the hearing to August 25, 2016 at the request of the Applicant's counsel); August 25, 2016; October 5, 2016 (opened solely to continue the hearing to November 1, 2016, at the request of the Applicant's counsel); November 1, 2016; November 21, 2016; December 5, 2016 (opened to continue the hearing to January 3, 2017, at the request of the Applicant's counsel and to review and vote on the minutes of previous sessions); January 3, 2017; January 23, 2017; February 13, 2017 (opened to continue the hearing to February 27, 2017 and to review and vote on the minutes of previous sessions); February 27, 2017 (opened to continue the hearing to March 15, 2017 and to review and vote on the minutes of previous sessions); March 15, 2017; and March 20, 2017. On March 20, 2017, the public hearing was closed.

The Applicant and the Board executed one (1) agreement to extend the time for opening the public hearing to April 4, 2016 and four (4) agreements extending the time for closing the public hearing until March 20, 2017. The Applicant and the Board executed one (1) agreement to extend the time to file the Board's Decision on the Comprehensive Permit until the close of business on May 3, 2017.

V. DECISION

Following the close of the public hearing and after due and open deliberation, the Board voted 2-1 to grant with Conditions, as set forth herein, the requested Comprehensive Permit under M.G.L. Chapter 40B for the development of a project consisting of a maximum of sixteen (16) rental units, four (4) of which would be affordable, as defined by the Massachusetts Housing Finance Agency ("MassHousing" and/or "Subsidizing Agency"), all to be housed in a maximum of five (5) buildings to be located at 269 North Avenue, Weston, Massachusetts (the "Site"), on the basis of the following Findings, and subject to the following Conditions and as set forth in the plans provided to the Board as set forth herein. Revised plans reflecting all of the Conditions

of this Permit shall be prepared and submitted to the Board for review and approval. Accordingly, the Board acts on the requested Waivers, as set forth below. Any Waiver not expressly granted herein is hereby denied.

Findings:

After hearing and carefully considering the concerns raised by abutters and others during the course of the public hearing and reviewing the documents, plans and other evidence submitted both in favor of, and in opposition to, this Project, the Board makes the following Findings:

1. The Site contains 1.46 acres (approximately 63,419 square feet) of land and is located in Single Family Residence Districts A and D.
2. The Site is located near two MBTA Commuter Rail stations; it is approximately 0.9 miles from the Kendal Green Station and 0.3 miles from the Hastings commuter railway stop. It is within a quarter mile of a small shopping area containing the Weston Market, Weston Cleaners, and a gas station. North Avenue (Massachusetts Route 117) is a major commuter route into Waltham and Boston.
3. The Site is currently unimproved, as a dwelling formerly located there was destroyed by fire. The area surrounding the Site is primarily developed with single-family dwellings. The Applicant proposes a higher density development than surrounding single-family house lots.
4. The front half of the site, nearest North Avenue, is relatively flat (elevation 130'-132') meadowland with some trees. The rear portion of the Site is partially forested and slopes upward from elevation 132' to elevation 170'. There are no known wetlands on the site, and it is not located within any defined environmental resource area.
5. According to the "Architect's Site Plan," as most recently revised (see Section I.B.1 under "Background," above), and Tabulation of proposed buildings (see Section I.H under "Background," above) Building A will consist of four (4) one- or two-bedroom units and will have a Residential Gross Floor Area ("RGFA"; incorrectly referred to on the plan as "GRFA") of 3,902 SF and a footprint of 2,053 SF; Building B will consist of four (4) 2-bedroom units and will have an RGFA of 4,860 SF and a footprint of 2,462 SF; Building C will consist of three (3) two- or three-bedroom units and will have an RGFA of 5,461 SF and a footprint of 1,957 SF; Building D will consist of three (3) two- or three-bedroom units and will have an RGFA of 5,461 SF and a footprint of 1,957 SF; and Building E will consist of two (2) 2-bedroom units and will have an RGFA of 3,694 SF and a footprint of 3,958 SF. The units will contain a maximum of 32 bedrooms.
6. 269 North Ave, LLC has control over the Site, as evidenced by a Quitclaim Deed to the Applicant from Polymath Development, LLC dated 22 December, 2015 and recorded with the Middlesex South Registry of Deeds, Book 66597, Page 144.
7. The Applicant obtained a Project Eligibility Letter within the meaning of M.G.L. ch. 40B dated February 12, 2016 from MassHousing, pursuant to 760CMR 56.00 for the proposed Project (see Section III.A.5 under "Background," above).

8. As a condition of any approval hereunder, at least 25% of the sixteen (16) rental units shall remain permanently affordable and shall be marketed and rented to eligible households whose annual income may not exceed 80% of area median income (“AMI”), adjusted for household size, as determined by the United States Department of Housing and Urban Development (“DHCD”), and, subject to the approval by DHCD, all of the units in the Project, not only the Affordable Units, shall be eligible to be included in the Town’s Subsidized Housing Inventory, as maintained by DHCD.
9. Based upon information published by DHCD regarding the Subsidized Housing Inventory (“SHI”) as of April 30, 2013, 3.6% of Weston’s housing inventory is considered low or moderate for purposes of M.G.L. ch. 40B. According to the Weston Housing Needs Assessment draft dated August 5, 2015, “[o]f the 3,952 year-round housing units in Weston, 149 or 3.77% meet the Chapter 40B requirements and thus have been determined to be affordable by the Commonwealth of Massachusetts as part of . . . SHI.” As such the Town of Weston does not satisfy any of the statutory and regulatory exemption thresholds outlined in Chapter 40B and 780 CMR 56.00.
10. Traffic - The Applicant submitted a Traffic Impact and Access Study prepared by Ron Muller & Associates, Inc., referenced in Section III.A.4 under “Background,” above; MDM Transportation, the Town’s peer review traffic consultant, has commented thereon, noting, in its letter of August 15, 2016 (Section III.A.9 under “Background,” above), “[the Applicant’s] Traffic and Access Study (TIAS) has been prepared in general conformance with industry standards and reasonably quantifies existing/baseline traffic conditions for Route 117, traffic generation characteristics for the site, and traffic impacts/operations at the site driveway and nearby street intersections.”
11. Stormwater Management - The Applicant submitted (1) a “Post Construction Stormwater Management Report,” referenced in Section I.E under “Background,” above and (2) a “Stormwater Best Management Practices (BMP’s) Operation and Maintenance Plan,” referenced in Section III.A.3 under “Background,” above. Both documents were revised as of January, 2017 in response to comments by VHB, the Board’s peer engineer reviewer, and the Town of Weston’s DPW. The Applicant’s consultants also conducted a Mounding Analysis (Section III.A.14 under “Background,” above), and a Sensitivity Analysis (Section III.A.30 under “Background,” above) in response to reviewer comments. Tetra Tech, a consultant for some of the Project’s neighbors, also submitted comments reaching conclusions that were different from those of the Applicant and VHB, the Board’s peer engineering reviewer.
12. Landscaping - The Applicant submitted a “Landscape Screening Plan,” prepared by Terraink, most recently revised on December 28, 2016, referenced in Section I.A.10 under “Background,” above, in response to comments from the Board’s peer landscape reviewer, VHB. The Board found that the proposed screening was not adequate, due to the limited space available for plantings.
13. Tree Protection – The Applicant submitted a memorandum titled, “Kendal Village— Proposed Tree Protection Condition,” dated January 19, 2017; see Sections I.J and I.K under “Background,” above.

14. Septic – The Applicant submitted a report entitled ““Subsurface Sewage Disposal System New Construction,” prepared by Goldsmith, Prest & Ringwall, Inc., proposing the non-conventional Perc-Rite sewage disposal system for the Project, see I.C under “Background,” above. The Weston Health Department has approved the three (3) septic system plans contained in that report, also see Section I.C, above.
15. The Weston Planning Board submitted two memoranda referenced above in Sections II.A and II.K under “Background,” above, commenting on specific Project details.
16. The Weston Board of Selectmen submitted a letter, dated November 20, 2015, to Mass Housing, Comprehensive Permit Program, referenced in Section II.A under “Background,” above, expressing opposition to several aspects of the Project.
17. The Weston Board of Selectmen also submitted an email, dated November 1, 2016, to the ZBA entitled “269 North and Town’s Drainage System,” referenced above in Section II.H, under “Background,” above, which outlined the Selectmen’s opposition to the Applicant’s proposed connection to a Town drainage pipe formerly located near the Project. Town Manager Donna VanderClock also submitted an email, dated November 20, 2016, regarding the Project’s proposed connection, referenced in Section II.I under “Background,” above.
18. The Weston Historical Commission submitted a memorandum dated March 28, 2016, referenced in Section II.G under “Background,” above, expressing opposition to the Project.
19. The Weston Conservation Commission issued a memorandum from Michele Grzenda, Conservation Agent, dated March 8, 2016, referenced in Section II.C under “Background,” above, stating that Conservation Commission review and approval were not required.
20. Weston Police Chief Michael J. Goulding submitted an e-mail dated March 17, 2016, referenced in Section II.E under “Background,” above, stating that he agreed with the recommendations made in the Traffic Impact Study “with regard to crosswalks, stop signs, etc.” and had no other public safety concerns.
21. The Weston Fire Chief David Soar submitted an email dated March 11, 2016, referenced in Section II.D under “Background,” above, regarding the original plans for the Project with several comments. The Fire Department approved the Project’s Vehicle Access plans, referenced in Section I.A.9 under “Background,” above, stamped by the Fire Department: #2016-113.
22. The Site Layout Plan (see Section I.A.4 under “Background,” above) provides for 36 parking spaces, in compliance with Zoning By-law Section VIII.A(i), which requires 2 spaces per multiple dwelling unit.
23. Many neighbors and town residents attended the public hearings on this Project and expressed their concerns about, and opposition to, the Project through letters, emails, and oral presentations at the public hearings.

24. In accordance with Board regulations, the Board determined that it required technical advice unavailable from municipal employees. As a result, the Board employed the following outside consultants:

- a. Kenneth Staffier, PE, of Vanasse Hangen Brustlin, Inc. (“VHB”), the Board’s Engineering Peer Reviewer
- b. Kathleen Lynch of VHB, the Board’s Landscape Peer Reviewer
- c. MDM Transportation Consultants, Inc. 28 Lord Road, Suite 280, Marlborough, MA, the Board’s Peer Traffic Consultant
- d. David J. Levy, Community Square Associates, LLC, Arlington, Massachusetts, the Board’s Financial Peer Reviewer

These outside consultants provided assistance to the Board in plan review, impact analysis, project feasibility and other technical matters necessary to ensure compliance with relevant laws and regulations prior to action by the Board. In addition, the Board employed Town Counsel, KP Law, P.C., 101 Arch Street, Boston, Massachusetts, for necessary legal assistance including, but not limited to, analyzing the Application and providing legal counsel for the Decision. All consultants were selected and retained by the Board, with the actual and reasonable costs for the services paid by the Applicant.

25. The Project does not comply with certain zoning bylaw provisions. As provided in Chapter 40B, the Applicant has requested waivers from these provisions.

On April 28, 2017, the Board voted unanimously to adopt the above-stated findings of fact.

Conditions for 269 North Ave, LLC (“Kendal Village”) Comprehensive Permit:

A. General Conditions

1. This Comprehensive Permit is issued for the Project with the Conditions as set forth herein.
2. This Permit is issued to the Applicant or an affiliate of the Applicant and as otherwise provided by 760 CMR 56.05(12)(b) et.seq.
3. This Comprehensive Permit is based upon a Project Eligibility Letter issued to the Applicant from Mass Housing and dated February 12, 2016. No grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until the Project receives final approval from the subsidizing agency and evidence of said approval is provided to the ZBA.
4. The Project shall be limited to a maximum of five (5) separate buildings containing a maximum of sixteen (16) rental units, all of which shall be eligible for inclusion in the Town’s subsidized affordable housing inventory under M.G.L. Chapter 40B as maintained by DHCD or any successor agency, with a maximum of thirty-two (32) bedrooms, as proposed by the Applicant on the plans referenced the Plan of Record. As a condition of any approval hereunder, at least 25% of the sixteen (16) units shall remain affordable and shall be

marketed and rented to eligible households whose annual income shall not exceed 80% of AMI, adjusted for household size, as determined by the DHCD and, subject to the approval by DHCD, all rental units, not only the Affordable Units, shall be eligible to be included in the Town's Subsidized Housing Inventory, as maintained by DHCD. Any increase in the number of bedrooms is a violation of the Zoning Bylaw and this Comprehensive Permit

The Applicant shall notify the Town Manager of Weston when building permits and occupancy permits are issued for the Affordable Units and shall cooperate with the preparation of request forms to add all of the rental units to the Town's SHI as provided for under 760 CMR 56.03(2). The four (4) Affordable Units shall remain permanently affordable for so long as the Project is not in compliance with the Town's Zoning Bylaw, or for the longest period allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under M.G.L. ch. 40B, §§20-23.

To the extent allowed by the Subsidizing Agency as provided for under M.G.L. ch. 40B, an affordable restriction and regulatory agreement shall be signed with the Subsidizing Agency and the Town and shall be recorded at the Middlesex Registry of Deeds. As required by law and the Subsidizing Agency, the Applicant shall be a limited dividend organization and comply with the limited dividend requirements of M.G.L. ch. 40B, §20 and otherwise limit its profits as required under M.G.L. ch. 40B (as determined by the Subsidizing Agency) and any excess profits shall be paid by the Applicant and distributed as required by the Subsidizing Agency and in accordance with applicable law, regulations and/or guidelines.

5. No grading, land disturbance, or construction shall commence until the Applicant or MassHousing has supplied the ZBA with written evidence indicating availability of qualifying program funds or conventional financing to complete the Project. The responsibilities of this condition are non-transferable and non-assignable. The Permit granted by this Decision shall lapse and become void and shall be considered without force or effect if the Applicant or MassHousing does not supply the ZBA with such written correspondence.
6. This Decision shall be recorded at the Middlesex South Registry of Deeds. This Decision shall become effective upon recording. Proof of recording shall be forwarded to the ZBA and the Building Inspector prior to issuance of a building permit or the start of construction.
7. The Applicant shall copy the ZBA and the Building Inspector on all testing results, official filings and other permits issued for the Project, including, but not limited to, any orders of conditions issued by the Weston Conservation Commission, the Massachusetts Department of Environmental Protection ("DEP"), and the Massachusetts Environmental Policy Act ("MEPA").
8. All units proposed as part of the Application, including both market-rate and Affordable Units, shall be built in conformity with the Plan of Record, as revised to conform with the Conditions of this Permit, and renderings submitted and revised as part of the Application for a Comprehensive Permit to the ZBA. Revised plans reflecting all of the Conditions of this Permit shall be prepared and submitted to the ZBA for review and approval. Such approval

shall include all aspects of the Project within the ZBA's jurisdiction under Chapter 40B. Building permits for the Project shall not be issued until: the revised plans have been approved by the ZBA for consistency with the Conditions of this Permit; final building plans have been submitted to the Building Inspector for review to confirm the consistency of such plans with all aspects of the Massachusetts Building Code; and the Applicant receives Final Approval, pursuant to 760 CMR 56.04(7), from the Subsidizing Agency and submits evidence of same to the ZBA and the Building Inspector. To the extent the ZBA determines additional peer review is necessary, the Applicant shall bear the reasonable cost of the reviewer.

9. The Applicant shall allow the Building Inspector, members of the ZBA, and Town staff (acting in their capacity as a member of the ZBA or other Town official) to enter and inspect the Project at will during construction upon reasonable notice to the Applicant.
10. The Applicant shall not enter onto anyone else's property without obtaining the necessary permission or legal right to do so, in advance.
11. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns.
12. This Decision permits the construction, use, and occupancy of a maximum of five (5) buildings containing a maximum of sixteen (16) rental units on the Site. The construction or renovation and occupancy of the Project shall be in substantial conformity with the Plan of Record, as modified to be consistent with this Decision, and there shall be no further division or subdivision of the Site, or the creation of additional housing units or any other structures or infrastructure except that which is shown on the Plan of Record (as required to be revised by this Decision) without further approval of the ZBA in the form of an amendment to this Decision and pursuant to statutory requirements applicable at the time and in accordance with the terms and conditions of this Decision.
13. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by the regulations governing MEPA to the extent that MEPA review is required, compliance with which shall be a condition precedent to the commencement of work authorized under this Comprehensive Permit, and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until any applicable requirements of MEPA have been complied with in full.
14. The Project shall comply with all applicable rules, regulations, filing and permit requirements and certifications required by regulations issued pursuant to the Massachusetts Wetlands Protection Act and the Massachusetts Endangered Species Act, compliance with which shall be a condition precedent to the commencement of work authorized by this Comprehensive Permit, and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until any applicable requirements of both Acts have been complied with in full.
15. The Project shall comply with all applicable rules, regulations, filing and permit requirements

and certifications of DEP, compliance with which shall be a condition precedent to the commencement of work authorized by this Comprehensive Permit, and no grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure shall commence until the requirements of DEP have been complied with in full.

16. Prior to the issuance of any building permit, the Applicant shall:

- a. To the extent it is a public record, deliver to the ZBA a certified copy of the financing contract between Applicant and the federal or state agency or conventional financing commitment providing the funding for construction of low or moderate income housing required by the Chapter 40B for a Comprehensive Permit for the Site.
- b. Deliver to the ZBA final architectural drawings for all buildings shown on the Plan of Record providing a scaled depiction of the front, rear and side elevations, duly sealed and signed by an architect registered in the Commonwealth of Massachusetts.
- c. Deliver to the ZBA full and detailed landscaping plans duly sealed and signed by a Landscape Architect registered in the Commonwealth of Massachusetts that show suitable on-site landscaping and screenings, shade trees as well as the type and number, size and location of all proposed landscaping materials.
- d. Deliver to the ZBA and the Building Inspector final and detailed utilities plans and profiles including properly labeled drainage components and all site utilities; electric, gas, water supply wells, water supply lines, wastewater disposal systems and appurtenances and dwelling unit connections thereto, and to the detail required to obtain a building permit in accordance with the State Building Code.
- e. Deliver to the ZBA and the Building Inspector final and detailed plans and profiles prepared and duly sealed and signed by a structural engineer. Final plans shall be delivered to the Building Inspector for review to determine if they are in conformance with this Decision and after any necessary peer review paid for by Applicant prior to issuance of building permits. Copies of the final approved plans shall be filed with the ZBA.
- f. Deliver to the ZBA a written submission describing all easements and covenants affecting the use of the Site, referring to such covenants and locating such easements on a site plan. The Applicant shall submit any written or recorded instruments granting or agreeing to such easements and covenants.
- g. Deliver to the Town of Weston Fire Department a fire access plan for review and approval by the Fire Department as required under 527 CMR 18. A copy of the fire access plan shall be delivered to the ZBA.

17. Prior to the occupancy or use of any building constituting a part of the Project, the Applicant shall submit to the ZBA "As-Built Plans" showing all pavement, buildings, drainage structures, landscaping, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The As-Built Plans shall be duly sealed and signed

by a registered land surveyor or civil engineer certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit. Nothing herein shall prohibit the issuance of an occupancy certificate for one or more buildings constituting a portion of the Project, subject to the approval of the Building Inspector.

18. Prior to the occupancy or use of any building constituting a part of the Project, the Applicant shall submit to the ZBA and the Town Engineer accurate as-built utilities plans and profiles, showing actual in-ground installation of all utilities, copies of which shall be submitted to the Weston Department of Public Works after completion of construction.

B. Site Development/Construction Conditions

1. The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the construction of the Project. Parking during construction shall be prohibited along North Avenue. No vehicle associated with the construction of the Project shall remain standing or idling on adjacent public roadways.

2. The Applicant shall submit a construction and permitting schedule to the Building Inspector prior to the start of construction and regular reports as appropriate or upon request by the Town with copies to the architect designated by the Building Inspector to review and control project status.

3. The Applicant shall forward final signed and sealed architectural plans to the ZBA and the Building Inspector at the time of applying for building permits. All construction shall be inspected by the Building Department and shall be in compliance with all Massachusetts State Building Code Requirements, and all other state and federal requirements that apply, including all local requirements that are not waived below.

4. The Applicant shall be responsible for ensuring that nuisance conditions do not exist in and around the Site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area and to maintain security at the Site during construction.

5. Hours: The hours of operation for any construction activities on-Site shall be consistent with Article III, Section 13 of the Town of Weston General By-laws. Specifically, construction activity shall be permitted Monday through Friday, from 7:00 am to 6:30 pm. Construction activity shall also be permitted on Saturdays from 7:00 am to 5:00 pm; provided however that such activity shall be limited to interior work only, and may be undertaken only when the building or structure is constructed to the point where such activity cannot be heard outside the building or structure. No outside construction activity shall take place on Saturdays except between the hours of 8:00 am and 3:00 pm. No outside construction activity shall take place outside the specified permitted hours or on Sunday or New Years' Day, Memorial Day, July Fourth, Labor Day, Thanksgiving, Christmas, or other legal holiday, except as may be permitted on a case by case basis by the Chief of Police, or his designee, based on unusual circumstances.

These limits shall not apply in the event any public agency requires emergency work to remediate/mitigate a hazardous situation.

6. Noise: The Applicant shall implement measures to ensure that noise from Project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies. The Applicant shall cease any excessively loud activities when directed by the Building Inspector.

7. Roads: The Applicant shall be responsible for maintaining, repairing and sweeping North Avenue and the Project's interior roadway, and for the removal of snow and sanding of the Project's internal walkways and roadway during construction of the Project. All public ways shall be maintained and kept free from construction debris. The Applicant and its contractors, employees and agents shall perform cleanup of all construction debris, including soil caused by Site construction activity, on adjacent public streets and within 100 yards from the entrance to the Project, as needed. The Applicant is responsible for obtaining an accurate pre-construction survey of the surrounding roadways to the Site, shall be responsible for any repairs to such roadways necessitated by Applicant's construction activities, and shall review the same at the preconstruction meeting referenced in Paragraph 8, below. The Applicant shall monitor damage to public streets and shall promptly repair any damage to public infrastructure caused by any Site construction activities undertaken by the Applicant's contractors, employees, or agents.

8. Prior to starting any work under this Comprehensive Permit, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Inspector, Town Engineer, and Department of Public Works representative to review the requirements in order to ensure compliance with this Decision.

9. Prior to starting any work under this Comprehensive Permit, the Applicant shall provide to the Building Inspector:

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

In addition, the Applicant shall provide the Building Inspector with at least 48 hours written

notice prior to restarting work if activity on the Site ceases for longer than one month.

10. Utilities: Utilities within the Site, including but not necessarily limited to electric, cable and telephone, shall be located underground. A final utility plan approved by the applicable public utility companies shall be submitted to the Town Engineer and Building Inspector at such time as required.

11. The Applicant shall install and maintain sedimentation control devices during construction to prevent movement of sediments from the construction site to off-site areas, into the adjacent right-of-way, into adjacent water bodies via surface run-off or into underground drainage systems. Sedimentation and erosion control shall be accomplished on and/or adjacent to the following work areas:

- a. Earthwork stockpiles and on-site storage and staging areas.
- b. Cut and fill slopes and other stripped and exposed graded areas.
- c. Constructed and existing swales and ditches.
- d. Unestablished lawns and seeded embankments or other open areas.

Periodic maintenance of all sediment control installations shall be provided to ensure the intended purposes are accomplished. Sediment control measures shall be in working condition at the end of each day. After any significant precipitation or wind event, sediment control devices shall be inspected for integrity. Any damaged device shall be corrected immediately.

12. No areas shall be left in an open, unstable condition longer than sixty (60) days. Bare ground that cannot be permanently stabilized within sixty (60) days shall be stabilized by annual rye grass following U.S. Natural Resource Conservation Service procedures. Final stabilization shall be accomplished by loaming and seeding exposed areas. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable.

13. At such times as any building or other structure remains in an open or unstable condition, the Applicant shall provide additional site security as needed.

14. No blasting shall be conducted on the Site without a modification of the Permit.

15. Prior to issuance of building permits, the Applicant shall:

- a. Provide to the Building Inspector a final Stormwater Pollution and Prevention Plan to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system.

- b. Obtain a National Pollutant Discharge Elimination System General Permit (NPDES)

from the United States Environmental Protection Agency, as necessary for construction of the Project at the Site.

c. Provide procedures that outline the specific operation and maintenance measures for all stormwater/drainage facilities, including any temporary facilities that shall be employed to minimize or eliminate the threat of transmission of mosquito-born diseases to the residents of the Project and nearby residents.

16. During construction, no run-off shall be directed down the driveway onto North Avenue or onto abutting properties. The following conditions shall be implemented by the Applicant during construction:

- a. Maintain the construction site free of dust that would create a hazard or nuisance to adjacent properties.
- b. Trucks hauling debris shall be covered and wet down as required to minimize dust. Spillage on roads shall be cleaned up immediately, and overloading trucks, which may contribute to spillage on haul roads, is prohibited.
- c. Maintain any drainage or sediment controls in good working order (hay bales, silt fencing, etc.). Inspect all drainage and sediment controls prior to and immediately after, any storm event.
- d. North Avenue shall be swept clean of dirt, sediment, construction debris, etc., at the end of each workday.

17. Covered dumpster(s) shall be used during construction to keep debris within the Site, and the Applicant shall be responsible for the prompt removal of any debris which escapes enclosure. Use of the dumpster(s) shall be limited to the duration of the active construction period.

18. All fill used in connection with this Project shall be clean fill, as approved by the applicable Town of Weston department or official with jurisdiction. No fill shall contain any trash, refuse, rubbish or debris, including, but not limited to: lumber, brick, asphalt, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, appliances, motor vehicles or any part of the foregoing. Any fill subject to specialized disposal in conformance with current environmental criteria shall not be used.

19. Prior to issuance of building permits, the Applicant shall conduct a hydrant flow test to determine available flow and pressure to fight a fire, and provide the results of such test to the Water Superintendent and Fire Chief. In the event that there is insufficient water pressure or volume for fire protection, plans shall include on-site improvements such as a fire pump or off-site improvements to the municipal water distribution system as required to maintain a residual pressure of 20 psi in the municipal water distribution system. If any such additional site improvement proves necessary, the Applicant must obtain the Board's approval for a modification of the Permit and the Plan of Record. The procedure for flushing, disinfecting and pressure testing of the water mains shall be approved by the Town's Water Superintendent.

20. The following conditions must be adhered to prior to any construction activities and during construction:

- a. The Applicant shall stake the perimeter every ten feet a few inches inside the property line.
 - i. No part of the stakes along the perimeter shall be on abutters' properties.
 - ii. Trees straddling the property line shall be assumed to be jointly owned by the Applicant and the abutter. The perimeter stakes shall be installed on the Applicant's side of jointly owned trees, entirely on the Applicant's property.
- b. The Limit of Work is the limit of grading and general excavation. No construction staging or stockpiling of equipment or materials shall be placed outside the Limit of Work.
- c. The Applicant shall install a Limit of Work fence at the limit of grading and excavation as shown on the Plan of Record, as revised to conform with the Conditions of this Decision. The fence shall prevent debris from exiting the Site and shall prevent trespassers from entering the Site. The fence shall be inspected and approved by the Building Inspector prior to construction for conformance with the Plan of Record, as so revised.
- d. No grading or excavation shall disturb, or undermine the ground of, the adjacent properties. The ZBA requires that the Applicant adjust plant locations whenever existing roots are encountered during excavation for root balls.
- e. No work of any kind shall be permitted outside of the Limit of Work line, either above or below ground.
- f. Any excavation within ten (10) feet of the property line that might affect trees on the property line or on the adjacent properties shall be performed using an air spade, either directly by or under the guidance of a Certified Arborist. The air spade should be used to determine and define the limit of excavation.
- g. During construction of the Project, any exposed roots within ten (10) feet on either side of the property line shall be protected as directed by a Certified Arborist.
- h. Any required root pruning of abutters' trees, if necessary, shall be performed either directly by or under the guidance of a Certified Arborist. Any such root cutting shall occur only on the Applicant's property (unless there is permission or legal right to enter onto abutting property) and shall occur only in accordance with all of the requirements of Massachusetts state law.
- i. The Applicant shall use an air spade to excavate for plant pits for any plantings proposed within ten (10) feet of the property line where existing trees abut it. In the event roots are encountered, applicant shall adjust planting locations in the field to minimize existing root disturbance.

- j. The Applicant shall comply with the provisions of the following memoranda: “Kendal Village—Tree Protection,” and “Kendal Village—Proposed Tree Protection Condition,” referenced in Sections I.J and I.K under “Background,” above. The escrow sum left blank in Paragraph 5 of the “Offsite Trees” section of the “Kendal Village—Proposed Tree Protection Condition” memorandum shall be \$25,000.

21. All exterior lighting at the Site shall be dark sky compliant and shall not allow spillover of light onto adjoining properties, in accordance with the Plans and the Town’s Bylaws

22. With respect to the work to be done by the Applicant on the private way within the Site, no Certificates of Occupancy shall be issued by the Town until the Applicant has fully completed all site drainage and utility work appurtenant to any portions of the Site for which an occupancy permit is to be issued and has installed a binder course of pavement on driveways and parking areas within the Site.

Prior to the issuance of the first Building Permit, a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, shall be provided to the Town, in an amount to be reasonably determined by the Town Department of Public Works, in an amount sufficient to ensure the completion of the top coat of paving. Requests to reduce the surety may be submitted as the work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the satisfactory completion of the work in question as voted by majority vote of the ZBA.

C. Legal Requirements

1. The Applicant shall be bound by all conditions and requirements set forth in this Comprehensive Permit.

2. The internal roadways, utilities, drainage systems, wastewater collection, and all other infrastructure shown in the Plan of Record shall remain private, and the Town of Weston shall not have, now or ever, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and trash collection.

3. No changes to the Plan of Record, as amended to comply with this decision, including renderings or drainage plans, shall be made without prior approval by the ZBA, after such notice and hearing, if any, required under 760 CMR 56.05(11).

4. Any modifications to this Permit shall be subject to the provisions of 760 CMR 56.05(11), or any successor regulation thereto.

5. The following conditions must be satisfied prior to issuance of a Certificate of Occupancy:

- a. Utilities and Infrastructure compliance: All utilities (water, septic/force main, electrical,

cable and gas) shall be installed as shown on the Plan of Record, as amended to comply with this Decision, and in accordance with Town standards.

- b. Utility Easements: All easements for private systems within a public way shall stay secured via license agreement or other action from the Town. Cross easements from all property owners in the area shall be secured to clarify legal rights for various existing and proposed utilities to be located on the site to the extent required.
- c. Roadway Improvements: The Applicant shall install a stop sign on the Site at the North Avenue entrance.
- d. As-Built Plan for New Utilities: The Applicant shall prepare an “As-Built” plan of any new utilities and roadway improvements, indicating location and depth of any new utilities, layout of roadway and other features, as constructed. This plan shall be provided to the ZBA and the Building Inspector prior to the final coat of asphalt being installed on the roadway.
- e. Delineation of Town Layout: The Applicant shall set two (2) granite bounds to delineate the Town layout, at the end of the interior drive facing North Avenue.
- f. Fire Hydrant: There shall be a single fire hydrant at a location approved by the Weston Fire Department.

6. This Comprehensive Permit shall lapse if the Applicant does not commence construction within three (3) years of the date it becomes final (which is the date this Decision is filed with the Town Clerk if no appeal is filed, or the date the last appeal is decided or otherwise terminated favorably to the Applicant in the event of an appeal). The ZBA may authorize an extension of the three (3)-year period under the applicable state regulations. Construction shall be completed within five (5) years of this Permit taking effect. No phasing of this Project shall take place without the prior approval of the ZBA.

7. The provisions of this Comprehensive Permit shall be binding upon the Applicant and its successors and assigns, and the authorizations and obligations hereunder shall run with the land. Any instrument for sale or transfer of rights or interests in all or any part of the Site shall include a condition that all successors are bound by the terms and conditions of this Comprehensive Permit. This Permit is issued to 269 North Ave, LLC. Any subsequent transfer of this Comprehensive Permit to a person or entity other than 269 North Ave, LLC shall require notice to the Board and written confirmation from DHCD pursuant to 760 CMR 56.05(12)(b), that the transferee meets the project eligibility requirements in 760 CMR 56.04(1) and shall be confirmed to the Board in writing.

8. The Applicant shall not take any action, or fail to take action, such that the Project would be brought out of compliance with M.G.L. ch. 40B, this Comprehensive Permit, or the applicable DHCD Regulations and Guidelines.

9. The form of the proposed lease shall be provided by Applicant to the ZBA for review and approval by Town Counsel prior to issuance of Certificates of Occupancy. The Applicant shall

be required to pay for the reasonable cost of legal review of the post-approval documents. Copies of all final documents shall be filed with the Board.

10. The Applicant shall be responsible for maintaining landscaping and shall be responsible for trash removal, snow removal, biannual inspection and maintenance of catch basins, dry wells, annual pump out and inspection of septic systems, and other infrastructure maintenance

D. Traffic, Safety and Other Conditions

1. On-site traffic signage and pavement markings shall conform to the applicable standards of the current edition of the Manual for Uniform Traffic Control Devices (MUTCD).
2. Appropriate driveways, sidewalks and curbing, sufficient for the safe separation of pedestrians from moving vehicles, shall be provided throughout the Site as shown on the Plan of Record to allow safe vehicular and pedestrian access within the Site and between the proposed buildings.
3. Fire protection methods and systems shall meet all State Fire Code requirements and be approved by the Weston Fire Chief or his designee.

E. Affordability Requirements

1. The Affordable Units: At least twenty-five (25%) percent of the units within the Project (four (4) of the sixteen (16) rental units) shall be made available for sale to low and moderate-income individuals (those who earn 80% of AMI or households as defined by MassHousing).
2. Because of the acute need for additional affordable housing in Weston, the Applicant shall work diligently to provide local preference to Weston residents. To the extent allowed by the Subsidizing Agency, the Applicant shall provide a preference category to the extent allowed under State and Federal law. To the extent the Subsidizing Agency requires evidence be provided in support of the Local Preference, it shall be the responsibility of the Town to provide such evidence, but the Applicant shall assist the Town in the gathering of the necessary evidence. This condition shall become void if the Subsidizing Agency does not approve this Local Preference requirement prior to such time as the Affordable Units are ready to be marketed, or shall be voidable by the Board if the preference would preclude the Affordable Units from being included on the Town's SHI. Local preference shall be given to Weston residents to the extent allowed under State and Federal law. The Applicant and such other designee approved by MassHousing shall make a diligent effort to locate eligible persons who meet the necessary qualifications as well as the applicable income requirements. Any additional costs to the Town for establishing and monitoring a lottery system for the Affordable Units shall be borne by the Applicant.
3. Perpetual Affordability Restriction: Prior to the issuance of any building permits, a Regulatory Agreement shall be executed and recorded with evidence of recording provided to the Board. The Regulatory Agreement shall require that the Affordable Units in the Project will

be rented to income qualifying (i.e., 80% of AMI as defined above) individuals or households in perpetuity in accordance with this Decision.

In addition, as this Decision grants permission to build the Project under the Comprehensive Permit Statute, M.G.L. ch. 40B, §§20-23, and as the Applicant has obtained the benefits of a Comprehensive Permit, the Project shall remain subject to the restrictions imposed by this Decision and the affordability restriction required by Chapter 40B, for as long as the Project is not in compliance with the Town of Weston's zoning requirements that would be applicable to the Site and the Project "but for" this Comprehensive Permit. Accordingly, this Decision restricts all of the four (4) Affordable Units for as long as the Project is not in compliance with the Town of Weston's Zoning By-law, so that those units continue to serve the public interest for which the Project was authorized. It is the express intention of this Decision that the period of affordability shall be the longest period allowed by law.

A springing affordable restriction and regulatory agreement shall be signed with the Town and recorded at the Registry of Deeds.

If the Comprehensive Permit is modified, then the parties shall modify the Regulatory Agreement to conform the Regulatory Agreement to the modifications.

4. Regulatory Agreement: The Applicant must execute a Regulatory Agreement with the subsidizing agencies and submit copies of said agreement to the Board. In the event that MassHousing does not serve as the subsidizing agency for the Project, the Applicant will execute a Regulatory Agreement with the Town of Weston in substantially the same form used by MassHousing. The Regulatory Agreement shall also contain provisions governing the protection and administration of the Affordable Units covered by this Decision.

5. The Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Board and its Counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex County Registry of Deeds against the Property prior to issuance of any building permit for the Project, and the Town Regulatory Agreement shall only become effective if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency, and shall restrict or limit the dividend or profit of the Applicant only if and as required under M.G.L ch. 40B and 760 CMR 56.00, et seq., and no other, independent limitation on dividends or profits is imposed hereunder; and shall restrict the number of allowed buildings and units to not more than five (5) buildings containing no more than a total of sixteen (16) rental units: two (2) units with three (3) bedrooms; twelve (12) units with two (2) bedrooms; and two (2) units with one (1) bedroom, for a maximum of thirty-two (32) bedrooms. If the Comprehensive Permit is modified in the future, then the Applicant shall take steps to modify the Town Regulatory Agreement to conform to the Permit.

The Town Regulatory Agreement shall constitute a permanent restrictive covenant and shall be recorded against the Site and shall automatically take effect if and when the prior initial affordable housing restriction expires; once it takes effect, it shall be enforceable by the Town of Weston, and it shall require that the Affordable Units shall remain Affordable Units in perpetuity,

meaning, specifically, for so long as the Project does not conform to the Town of Weston Zoning By-laws and, otherwise, for the longest period allowed by law, whichever period is longer.

6. While the Regulatory Agreement with the Subsidizing Agency (or one with another subsidizing agency) is in effect, the Subsidizing Agency shall be responsible for monitoring compliance with affordability requirements pursuant thereto; however, the Town may request, and shall be provided by the Applicant with, all information that is provided to the Subsidizing Agency and may take any steps allowed under M.G.L. ch. 40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.

7. When and if the Town Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town of Weston or its designee to the full extent allowed by M.G.L. ch. 40B, §§ 20-23. However, this clause shall not be used or construed or otherwise exercised in conflict with the holdings in Board of Appeals of Amesbury v. Housing Appeals Committee, 457 Mass. 748 (2010), or any other relevant decisional law or amendment to M.G.L. ch. 40B, §§20-23, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant, or its successors in interest, shall provide the Town with a reasonable monitoring fee.

8. Monitoring Services Agreement: Unless responsibility for monitoring the Project is assumed by MassHousing, prior to commencing construction of the Project, the Applicant shall submit a fully executed copy of a Monitoring Service Agreement to the Board.

9. Audit Requirements: To ensure compliance with the Regulatory Agreement and the requirements of the Comprehensive Permit, the Applicant shall, concurrent with the requirement to provide an annual audit to MassHousing, provide a copy of its annual audit to the Board and the Assessors. To the extent allowed under M.G.L. ch. 40B, the Town and the Board may conduct an independent audit of the Project on an annual basis to ensure compliance with profit limitation imposed by applicable law and/or regulation. If so, the Applicant shall make its books and records available to the independent auditor and shall cooperate fully with the independent auditor's reasonable requests for information.

F. Surety and Covenants

1. Prior to the issuance of any building permit or the commencement of construction of the Project, the Applicant shall provide to the Board evidence of the security required to be provided to MassHousing for on-site improvements, including the installation of drainage and other common facilities (e.g. water and waste water disposal) shown on the Plan of Record as revised pursuant to this Decision. In addition, the Applicant shall provide security in a form approved by the Board with the advice of Town Counsel or special legal counsel, to secure performance of the construction of traffic, pedestrian, drainage and the other mitigation conditions required by the Comprehensive Permit. The sum of any such security held under this paragraph shall be acceptable to the Weston Department of Public Works and shall bear a direct and reasonable relationship to the expected cost, including the effect of inflation, necessary to complete the subject work, plus an additional amount of fifteen percent (15%) of such estimated costs. Such

amount or amounts shall from time to time be reduced by the Board upon the Applicant's written request, duly supported, so that the amount secured continues to reflect the actual expected cost of work remaining to be completed.

2. To the extent that landscaping for the Project is not completed prior to the issuance of the first certificate of occupancy, the Applicant shall provide the Town with a satisfactory surety, evidenced by a written agreement, that shall not expire unless and until it is satisfactorily replaced or released, and in an amount to be determined by the Board in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.

In addition, the Applicant shall provide surety sufficient to loam and seed any disturbed areas that are yet to be developed as per the plans. Such surety shall be held by the Town Treasurer until the Treasurer is notified by the Board to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the completion of the landscaping work.

G. Drainage Conditions

1. On-site stormwater disposal and management shall conform in all respects to the Massachusetts DEP Stormwater Management Program and all applicable provisions of DEP's Stormwater Management Policy, and to the Town of Weston Department of Public Works ("DPW") standards and requirements with regard to stormwater, whichever is the most restrictive and protective of the environment and abutting properties. A final drainage plan, duly sealed and signed, certified by an engineer licensed in the Commonwealth of Massachusetts shall be submitted to the Board prior to the issuance of any building permit. The plans shall contain certification by the engineer that the stormwater disposal and management system shall meet all requirements of DEP's Stormwater Management Policy and Town of Weston's Stormwater By-Laws and Regulations thereunder.

2. All stormwater drainage basins shall be located so as to facilitate the maintenance and operation of the basins and drainage utility.

3. Before any construction may begin, the Applicant shall drill two (2) groundwater monitoring wells in the locations determined by the Weston DPW. Each well shall be drilled to a depth of ten (10) feet below the groundwater level, or until refusal, whichever is reached first. Each well shall be monitored weekly for a total of four (4) weeks, and the results of the monitoring shall be reported to the Weston DPW. Upon receipt of this information, the DPW shall determine whether or not the design of the Applicant's drainage structures and stormwater management system must be modified before construction may go forward.

4. The Applicant, or its successors and assigns, as allowed by this Decision, shall maintain and repair the drainage structures and stormwater management system on the Site as shown on the Plan of Record, as amended to comply with this Decision. The stormwater management system includes, but is not necessarily limited to, detention basins, retention basins, sediment

forebays, and water quality swales. A plan for the maintenance of the stormwater management system shall be provided to the Board by the Applicant prior to issuance of any building permit. In the event that the Weston DPW determines at any time that the stormwater management system on the site is not being properly maintained or is in need of repair, the DPW shall provide notice to the Applicant or the Applicant's successor in interest. If the necessary work has not been completed within thirty (30) days of the date of such notice, the Town may, but shall not be required to, undertake the necessary maintenance and/or repairs, and the Applicant and its successors and assigns hereby agree to promptly reimburse the Town for any and all costs associated with these repairs.

5. The final site plans shall include a final design of the stormwater management system as well as an operation and maintenance plan therefor, and the design of the system shall comply with the Massachusetts DEP Stormwater Guidelines and the Weston Stormwater By-Laws. The system shall also comply with the following conditions:

- a. Construction: The stormwater infiltration facilities shall be constructed as shown on the Plan of Record, as amended to comply with this Decision.
- b. Inspection: Prior to the backfilling of the system, a representative of the Weston DPW shall inspect the construction of the stormwater infiltration facilities. It is the Applicant's responsibility to contact the DPW for inspection of the work.
- c. Ongoing Maintenance: All portions of the stormwater management system shall be inspected at a minimum of twice per year, following construction, to ensure that they are in proper working order. All sumps are to be cleaned once one quarter (1/4) of their working depth is full of sediment and debris. At a minimum, sumps shall be cleaned once each year, regardless of the depth of accumulated sediment and debris. These requirements shall be incorporated into the Operation and Maintenance Agreement following peer review.

On April 28, 2017, the Board voted 2-1 to adopt the above-stated Conditions.

Waivers:

The following Waivers requested by the Applicant are acted upon as set forth below:

General By-Laws:

Article VIII Zoning By-law

1. Zoning By-law Sections V.A.1 and V.A.4, regarding multi-family use, where the Site is located in Single Family Residence Districts A and D and multiple dwelling units on a single lot are proposed. VOTED 3-0: The request for a maximum of five (5) buildings containing a total of no more than sixteen (16) rental units within a single parcel of land is GRANTED as shown on the Plan of Record as conditioned above.

2. Zoning By-law Sections V.B.1-V.B.6, concerning Uses By Right, by Special Permit and by Site Plan Review. VOTED 3-0: GRANTED. The grant of the Comprehensive Permit above shall constitute the requested Special Permit and Site Plan Review relief.
3. Zoning By-law Sections VI.A. (General), VI.B.1 (Single Family Residence Districts A and D), VI.B.2 (Table of Conventional Dimensional Requirements—Single Family Residence Districts A and D and Notes), and VI.E (Height Limitations). Waivers for Lot Size, Street Centerline and Sideline setbacks, Lot Line setbacks, and Building Height Limitations are acted upon as follows:
 - a. Building E—Straddles Boundary of Residence Districts A and D; District A Minimum Lot Area is 60,000 SF; Applicant has 23,031 SF, as shown on the Plan of Record. VOTED 3-0: GRANTED. The waiver for the substandard lot area respecting Building E is granted.
 - b. Building E—Minimum Frontage and Minimum Lot Width at Street Setback; 190.55' frontage, as shown on the Plan of Record, where 250' is required. VOTED 3-0: GRANTED to the extent necessary. The waiver for the substandard frontage and lot width at the Street Setback is granted to the extent necessary for Building E.
 - c. Building E—14.2' minimum setback from Lot Line, as shown on the Plan of Record, where 45' is required in District A. VOTED 3-0: GRANTED.
 - d. Retaining Wall—25' minimum setback from Lot Line, as shown on the Plan of Record, where 45' is required in District A. VOTED 3-0: GRANTED.
 - e. Building E—height of 45' as measured from the average natural grade, as shown on the Plan of Record, where 37' is the maximum height allowed under the Zoning By-law. VOTED 3-0: GRANTED.
 - f. Building E—3 stories, as shown on the Plan of Record, where 2.5 stories is the maximum for pitched roofs allowed under the Zoning By-law. VOTED 3-0: GRANTED.
 - g. Building A—minimum setback of 35.3' from Street Centerline, as shown on the Plan of Record, where 55' is required in District D. VOTED 2-1: GRANTED IN PART, but only to the extent that Building A is a minimum of 40.3' from the Street Centerline.
 - h. Building B—minimum setback of 37.5' from Street Centerline, as shown on the Plan of Record where 55' is required in District D. VOTED 3-0: GRANTED IN PART, but only to the extent that Building B is a minimum of 42' from the Street Centerline.
 - i. Building B Portico—minimum setback of 33.2' from Street Centerline, as shown on the Plan of Record, where 55' is required in District D. VOTED 3-0: GRANTED IN PART, but only to the extent that the Building B Portico is a minimum of 37.7' from the Street Centerline.

- j. Building A—minimum setback of 12.3’ from Street Side Line, as shown on the Plan of Record where 30’ is required in District D. VOTED 2-1: GRANTED IN PART, but only to the extent that Building A is a minimum of 17.3’ from the Street Side Line.
 - k. Building B—minimum setback of 17’ from Street Side Line, as shown on the Plan of Record, where 30’ is required in District D. VOTED 3-0: GRANTED IN PART, but only to the extent that Building B is a minimum of 21.5’ from the Street Side Line.
 - l. Building B Portico—minimum setback of 12.5’ from Street Side Line, as shown on the Plan of Record, where 30’ is required in District D. VOTED 3-0: GRANTED IN PART, but only to the extent that the Building B Portico is a minimum of 17’ from the Street Side Line.
 - m. Building A—minimum setback of 18.9’ from Lot Line, as shown on the Plan of Record, where 20’ is required in District D. VOTED 2-1: GRANTED.
 - n. Building B—minimum setback of 15.6’ from Lot Line, as shown on the Plan of Record, where 20’ is required in District D. VOTED 2-1: GRANTED.
 - o. Building C—minimum setback of 14.5’ from Lot Line, as shown on the Plan of Record, where 20’ is required in District D. VOTED 3-0: GRANTED.
 - p. Building D—minimum setback of 14.8’ from Lot Line, as shown on the Plan of Record, where 20’ is required in District D. VOTED 3-0: GRANTED.
 - q. Shed—minimum setback of 13.7’ from Lot Line, as shown on the Plan of Record, where 20’ is required in District D. VOTED 3-0: GRANTED.
 - r. Building C—height of 43’ as measured from the average natural grade, as shown on the Plan of Record, where 37’ is the maximum height for pitched roofs under the Zoning By-law. VOTED 3-0: GRANTED IN PART, but only with respect to the portion of Building C that is at least 20’ from the Lot Line (i.e., the height of the portion of Building C that is within 20’ of the Lot Line shall not exceed 37’ as measured from the average natural grade).
 - s. Building D—height of 39.5’ as measured from the average natural grade, as shown on the Plan of Record, where 37’ is the maximum height for pitched roofs under the Zoning By-law. VOTED 3-0: GRANTED IN PART, but only with respect to the portion of Building D that is at least 20’ from the Lot Line (i.e., the height of the portion of Building D that is within 20’ of the Lot Line shall not exceed 37’ as measured from the average natural grade).
 - t. Building C—3 stories, as shown on the Plan of Record, where 2.5 stories is the maximum for pitched roofs under the Zoning By-law. VOTED 3-0: GRANTED.
4. Zoning By-law Section VI.F.2: number and location of dwellings where each house is not on a conforming lot. VOTED 3-0: GRANTED as shown on the Plan of Record as

amended to comply with this Decision. No relief is granted beyond what is shown on the revised Site Layout Plan C2.00 dated 01.19.17, as amended to comply with this Decision.

5. Zoning By-law Section VI.F.3 gross floor area ratio and conformity to dimensional requirements of the residential district. VOTED 3-0: GRANTED to the degree shown on the Plan of Record, as amended to comply with this Decision.
6. Zoning By-law Sections XI(A)-XI(J) Site Plan Approval from Planning Board for projects over a certain threshold. VOTED 3-0: GRANTED. The grant of the Comprehensive Permit shall constitute the requested Site Plan Approval relief.

Article XXVII Stormwater and Erosion Control By-law

Sections I-X; Stormwater and Erosion Control. Local procedural requirements. VOTED 3-0: GRANTED. The Board has acted in place of the Stormwater Permitting Authority to grant the necessary relief as shown on the Plan of Record, as amended to comply with this Decision.

Town of Weston Stormwater and Erosion Control Regulations

Sections 1.0-11.0. Local procedural and substantive requirements. VOTED 3-0: GRANTED. The Board has acted in place of the Stormwater Permitting Authority to grant the necessary relief as shown on the Plan of Record, as amended to comply with this Decision.

Town of Weston Board of Health Regulations:

Chapter VI – Sewage Disposal Systems

Section 2 Requirements for Designing Sewage Disposal Systems. VOTED 3-0: GRANTED. The Applicant has obtained Weston Board of Health approval for a non-conventional Perc-Rite septic system, as shown on the Plan of Record, as amended to comply with this Decision, referenced in Section I.C under “Background,” above.

Section 2.4 Garbage Grinders. VOTED 3-0: GRANTED with the following conditions: The system is and shall be designed in accordance with Title V requirements, but need not be designed to be 150% of that required by Title V, as Section 2.4 provides. Installation and use of garbage grinders is prohibited. This prohibition shall be contained in the rental documents and presented to all potential renters.

Local Permits and Approvals

Permit to Connect to Town of Weston Drainage System. VOTED 3-0: DENIED. The Applicant has indicated that such a connection is not necessary in order to comply with all standards and requirements of the Massachusetts DEP’s Stormwater Management Policy and the Town of Weston’s DPW Stormwater and Erosion Control regulations; the Town of Weston has indicated that the drainage system in question is not available for private use and is available only to serve the public way.

Application for Installation of Drinking Water Service Pipe Larger than One (1) Inch in Diameter from Town’s Main Line to Street. VOTED 3-0: GRANTED, as shown on the Plan of Record, as amended to comply with this Decision.

Any other waivers necessary to allow construction of the Project, as approved by the Zoning Board of Appeals, are denied without prejudice to specific waivers being requested in the future.

Dissenting Statement

Stephen J. Larocque, the Board member who dissented from the Decision, provided the following reasons for his vote:

In my opinion, the following concerns, both individually, and certainly when combined, outweigh the regional need for affordable housing:

- Density—Site Constraints & Inaccuracies: There does not appear to be a definition of the standard to be met, that is, of a “conceptual design.” I would argue that the standard for conceptual design appears to be fluid, and is therefore subject to opinion. In my opinion, there is not a direct link between the site/civil plans and the architectural elevations of buildings A and B for example, and therefore does not meet the required standard of care, as previously discussed. I would argue that the architectural components of the Plan of Record are a pre-concept and do not show a direct correlation to the site/civil plans. I also believe that Code-related matters, such as compliance with 780 CMR’s egress requirements and 521 CMR’s accessibility requirements, will require that the buildings be enlarged, which will further constrain the Site, access, and setbacks.
- Massing and Setbacks: I have serious concerns about setbacks and the mass of buildings, and about Buildings A and B in particular. This Project is within the North Avenue Area Historical District, and the architecture, material selection, scale, and massing of these buildings, particularly those located directly on North Avenue, are completely out of character, and in direct conflict, with the Town’s designation of this area as a Historical District.
- Site Drainage Issues: I don’t believe that several critical issues that were raised during this hearing have been addressed; most notably, the infiltration and exfiltration of the drainage structures as referenced in item #3 of Richard Sweeney’s March 20, 2017 memorandum to the Board (referenced in Section II.R under “Background,” above). Also, the conclusion of item #2 of Mr. Sweeney’s memo is disconcerting (“If groundwater is found during the construction of the system, it will be too late to make any changes, as most of the project will likely be complete.”). Again, the horse has left the barn, and these matters have not been addressed. These issues were addressed by Tetra Tech in their January 23, 2017 memorandum (referenced in Section III.A.46 under “Background,” above). Replies to the Applicant’s Stormwater Report, Sensitivity Analysis, and the DEI/DPW responses to these documents, listed in Section III, above, all raise serious concerns about the design of the Applicant’s stormwater management

system. Moreover, there are issues related to disturbance during construction and to the control of runoff.

- Screening is totally inadequate for a development of this size: Also, the nature of the planting process will have disturbances well within the root limit of adjacent trees on adjacent properties.
- Snow storage areas and emergency vehicle access: In a snow emergency, with the snow storage areas engaged, it will be very difficult for emergency vehicles to enter and perform their task, and exit to a hospital.
- Financial Pro Forma (revised): Issues include: incomplete due diligence, comparatives were too low, additions of the Hard Cost Contingency and Capitalized Reserve, and reference to the fact that the construction cost estimate by the Applicant's consultant was based on RSMeans software.

I hereby certify that the foregoing is a True Record of the Board's vote taken on April 28, 2017, to grant the Comprehensive Permit, with Conditions.

Attest: _____
Jane Fisher Carlson, Acting Secretary
Weston Zoning Board of Appeals

Date of Decision: April 28, 2017

Filed with Town Clerk on: May 3, 2017

Sent to Applicant, certified mail, on: May 4, 2017

Notices to interested parties, first class mail, on: May 4, 2017