



CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

To: Zoning Board of Appeals Members
From: Adrianna Henriquez, Clerk
Date: June 17, 2020
Subject: Materials for **June 17, 2020** Public Hearing

Hello,

Please see the following materials for the upcoming hearing on June 17, 2020 Public Hearing. The following board members are scheduled to sit: **Brooke Lipsitt (Chair), William McLaughlin, Barbara Huggins Carboni, Michael Rossi, Stuart Snyder, and Treff LaFleche**

1. Memo from the Law Department
2. Final List of Waiver Requested by the Applicant
3. A Waiver Key Plan submitted by the Applicant
4. Revised Zoning Memorandum

Thank you,

Adrianna Henriquez

ahenriquez@newtonma.gov | (617) 796 1133

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: June 12, 2020

TO: Brooke K. Lipsitt, Chairman
Zoning Board of Appeals

FROM: Jonah Temple, Assistant City Solicitor
Neil Cronin, Chief Planner for Current Planning

RE: Comprehensive Permit #01-20
15 Riverdale Avenue

Attached for your review is a draft Comprehensive Permit Decision. This Decision includes proposed findings and conditions.

The following additional documents are also attached to assist your review: (1) a final revised list of waivers requested by the Applicant; (2) a Waiver Key Plan submitted by the Applicant; and (3) a revised Zoning Review Memorandum.

We look forward to discussing the Decision at the Board's next meeting on June 17, 2020.

Thank you.

15 RIVERDALE AVENUE/LIST OF REQUESTED WAIVERS

ZONING ORDINANCE

1. Use

The Applicant seeks a comprehensive permit in lieu of special permits, variances, licenses, and/or approvals to allow the property to be used for the Project, including without limitation:

- (a) Special Permit pursuant to Section 4.3.2.B.1 to permit a development of over 20,000 square feet.
- (b) Waiver of the requirements of Section 5.11 to conform the provisions for affordable housing to the terms of the application, if and to the extent necessary.
- (c) Use variance to allow residential, live/work space, retail, personal services, and restaurant uses in a Manufacturing District under Section 4.4.1.

2. Density and Dimensional Controls

The Applicant seeks a comprehensive permit in lieu of such special permits, variances, licenses, and/or approvals as may be required from or under Section 4.3 for construction of the project in a Manufacturing District, including without limitation the following waivers from the dimensional requirements of Section 4.3.3, as follows:

Zoning Category	Required/Allowed	Existing	Proposed	Waiver (Y/N)
Minimum Lot Area	0.23 acres (10,000 square feet)	3.41 acres (148,563 square feet)	3.48 acres (151,944 square feet)	N
Lot Frontage (Los Angeles Street)	N/A	225.0'	225.0'	N
Lot Coverage	N/A	0.37	.53	N
Front Setback	Greater of 15 feet or ½ building height (28.09')	109.7' (Bldg 1 Riverdale) 29.8' (Bldg 1 Midland) 91.3' (Bldg 2 LA Street) 0.4' (Bldg 2 Midland)	26.5' (Bldg 1 Riverdale) 5' (Bldg 1 Midland) 6.9' (Bldg 2 LA Street) 4.1' (Bldg 2 Midland)	Y
Side Yard Building Setback	Greater of 20 feet or ½ building height (28.09')	19.5' (Bldg 1) 6.9' (Bldg 2)	21.3' (Bldg 1) 5.0' (Bldg 2)	Y

Side Yard Parking Setback	5.0'	230+/-' (Bldg 1) 1.0' (Bldg 2)	24.0' (Bldg 1) 2.0' (Bldg 2)	Y
Rear Yard Building Setback	Greater of 20 feet or ½ building height (28.09')	1.0' (Bldg 1) 3.6' (Bldg 2)	17.8'(Bldg 1) 10.0" (Bldg 2)	Y
Rear Yard Parking Setback	5.0'	1.0'(Bldg 1) 3.6' (Bldg 2)	18.5'(Bldg 1) 10.0' (Bldg 2)	N
Building Height	36'	21.5'	56.2'	Y
Maximum Number of Stories	3 stories	2 stories	5 stories	Y
Floor Area Ratio	1.50	0.37	2.20	Y
Minimum Open Space	N/A	20.5%	28.8%	N
Lot Area Per Unit	N/A	N/A	711 square feet/unit	N

3. Parking Requirements

The Applicant seeks a comprehensive permit in lieu of a special permit pursuant to Section 5.1.13 in order to permit a parking facility in accordance with the submitted plans and to deviate from *inter alia* the following requirements:

- (a) To the extent Section 5.1.3.E prevents assignment of parking spaces to unit owners, a waiver is sought from that provision.
- (b) Requirement that no parking stall be located within the required side setback or within 5 feet of a street pursuant to Section 5.1.8.A.1 [note: relates to all stalls on the eastern property line adjacent to Building 2 as identified with a pink box on Waiver Key Plan as well as the four parallel spaces on Midland Avenue.]
- (c) Requirement that two parking stalls be provided for each dwelling unit in an apartment house, garden apartment, or attached dwellings under Section 5.1.4.A.
- (d) Parking requirement of 242 stalls pursuant to Section 5.1.4.A.¹
- (e) Application for parking and loading facility permit under Section 5.1.5.
- (f) Requirement that parking stalls may not be located within 5 feet from any building containing dwelling units under Section 5.1.8.A.2. [Note: relates to all podium and garage stalls, and all exterior spaces abutting Buildings 1A, 1B & 2.]

¹ Consistent with Section 5.1.4.C of the Zoning Ordinance, the ZBA could elect to reduce this waiver request to 84 stalls, or reduce the waiver request to 89 stalls in accordance with Section 5.1.4.A of the Zoning Ordinance.

- (g) Requirement that parking stalls have a minimum stall width of at least nine feet pursuant to Section 5.1.8.B.1 and a minimum stall depth of at least nineteen feet pursuant to Section 5.1.8.B.2.
- (h) Requirement that handicapped stalls have a width of at least 12 feet and a minimum stall depth of at least nineteen feet for all angled parking under Section 5.1.8.B.4. [Note: with respect to the stall width, every handicapped stall has a five foot wide minimum access aisle adjacent to it.]
- (i) Requirement under Section 5.1.8.B.3 as to number of HC stalls for one lot with multiple buildings. [Note: the development has three distinct parking areas, one each for Building 1A, Building 1B, and Building 2. If those parking areas are viewed as parking area serving the entire project then we meet the requirement for total number of parking stalls (i.e., 8 within the three distinct areas plus one on the street). If, however, the parking areas are each viewed independently then we are short one stall on each of Building 1A and 2.]
- (j) Requirement that end stalls restricted on one side by curbs, walls, fences, or other obstructions shall have maneuvering space at the aisle end of at least five (5) feet in depth and nine (9) feet in width under Section 5.1.8.B.6. [Note: applies to one stall in Building 1B garage as identified in mustard yellow on Waiver Key Plan.]
- (k) Requirement under Section 5.1.8.C.1 and C.2 that 90 degree parking stalls in a two way traffic aisle shall have minimum maneuvering width of 24 feet. [As shown in light yellow on Waiver Key Plan]
- (l) Requirement of minimum and maximum driveway widths under 5.1.8.D. [As shown in blue on Waiver Key Plan]
- (m) Requirement under Section 5.1.8.E.1 that parking facilities be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other vehicle. The applicant seeks a waiver of this provision to allow 4 tandem parking spaces within the access-controlled garage spaces in Building 1A which will accommodate 8 vehicles. It is intended that the spaces will be available for rent to residents of units with more than one vehicle.
- (n) Requirement under Section 5.1.9.A as to screening for outdoor parking facilities of 20 stalls or more.
- (o) Requirement under Section 5.1.9.B. for interior landscaping for outdoor parking facilities of 20 stalls or more if necessary.
- (p) The 1-foot candle lighting requirements under Section 5.1.10.A.1. [Note: waiver is only needed for the eastern edge of Building 2 where lighting is reduced to avoid light spillage onto adjacent property as shown in periwinkle blue on Waiver Key Plan].
- (q) Any other relief which may be necessary or appropriate and may be granted by the City Council under Section 5.1.13 in order to conform the waivers sought to the plans submitted.

4. Other

- (a) Under Section 5.13.4, a waiver of the requirement that the facility will be designed under one of the three listed green building rating systems identified in Section 5.13.5. Building 2 will meet this requirement by pursuing Passive House Certification. Building 1 will pursue a LEED Silver certifiable level rather than a Gold level standard.
- (b) A waiver of the I and I payment of more than 25% of the I and I calculation.

NON-ZONING ORDINANCES

1. Demolition Delay (Revised Ordinances Chapter 22)

§22-50 et seq. provides for a review by the Newton Historical Commission and the possible imposition of a demolition delay for demolition of historically significant buildings. To the extent any elements of the property are deemed to fall within the jurisdiction of the Newton Historical Commission under §22-50 and such elements will be demolished, the Applicant seeks a comprehensive permit in lieu of demolition review or a determination that such structures are preferably preserved.



Ruthanne Fuller
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 12, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: Legacy the River, LLC
Stephen Buchbinder, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request for a Comprehensive Permit to construct a mixed-use development with 204 residential units, 1,177 square feet of commercial space, a 12-seat restaurant and 236 on-site parking stalls

Petitioner: Legacy the River, LLC	
Site: 15 Riverdale Avenue	SBL: 11002 0007
Zoning: MAN	Lot Area: 128,887 square feet
Current use: Vacant office space and distribution	Proposed use: Residential and mixed commercial

BACKGROUND:

A Comprehensive Permit under MGL Chapter 40B is requested for a development of a 2.96-acre parcel along the Charles River. The parcel is divided by Midland Avenue, a private way. The proposed development consists of two buildings with a total of 204 dwelling units, 1,177 square feet of retail, a 12-seat restaurant and 236 parking stalls. The site was used for the manufacture of computer parts until 2002, when it was converted into office space and a distribution center for the Boston Globe. The office space is now vacant but the newspaper distribution center is still operational. The petitioner intends to raze the existing structures and construct two mixed use buildings and surface parking. The section of Midland Ave from the western property boundary with 8 Midland Ave to the westernmost property boundary will be abandoned and will operate as an internal driveway.

The following review is based on plans and materials submitted to date as noted below.

- Comprehensive Permit Application, prepared by Stephen J. Buchbinder, attorney, dated 9/12/2019
- Zoning Analysis, submitted 8/21/2019

- Existing Conditions plan, prepared by Allen & Major Associates, Inc, dated 8/15/2019
- Schematic Layout and Materials Plan, prepared by Allen & Major Associates, Inc, dated 8/15/2019, revised 5/21/2020
- Schematic Drainage Plan, prepared by Allen & Major Associates, Inc, dated 8/15/2019
- Layout Plan Building A, prepared by Icon Architecture, submitted 11/21/2019
- Layout Plan Building B, prepared by Icon Architecture, submitted 11/21/2019
- Materials Plan Building A, prepared by Icon Architecture, submitted 11/21/2019
- Materials Plan Building B, prepared by Icon Architecture, submitted 11/21/2019
- Grading and Drainage Plan, prepared by Icon Architecture, submitted 11/21/2019
- Spot Grade Plans, Buildings A and B, prepared by Icon Architecture, submitted 11/21/2019

ADMINISTRATIVE DETERMINATIONS:

1. The subject site is located in the Manufacturing zoning district. The petitioner proposes to construct two buildings (to be known as Buildings "1" and "2") to be used for 204 residential dwellings, 1,177 square feet of retail, a 12-seat restaurant and 2,659 square feet of community space. The residential and retail uses are prohibited in the Manufacturing district. The petitioner seeks relief from the requirement of a use variance through a Comprehensive Permit.
2. The petitioner proposes to construct a 245,770 square foot (gross floor area) mixed use development. Per section 4.3.2.B.1, a special permit is required for any development in the Manufacturing district of 20,000 square feet or more of new gross floor area. The petitioner seeks relief from the special permit requirements through a Comprehensive Permit.
3. The required front setback in the Manufacturing district is the greater of 15 feet or half the building height, or the average of the buildings on either side per section 4.3.3. Building 1 has no abutting structures from which to average, and is proposed at 56.2 feet in height, creating a front setback requirement of 28.1 feet. The building is proposed with a front setback of 5 feet from Midland Avenue and 26.5 feet from Riverdale Avenue, requiring a Comprehensive Permit in lieu of a variance.

Building 2 is across Midland Avenue from Building 1, and is proposed with a height of 44.5 feet, creating a 22.25-foot front setback requirement. The building is proposed at 6.9 feet from Los Angeles Street, and 4.1 feet from Midland Avenue, requiring a Comprehensive Permit in lieu of a variance.

4. Per section 4.3.3, the side setback requirement is the greater of one-half the building height or 20 feet when abutting a residential or public use district. Building 1 is bordered on each side and the rear by land owned by the City of Newton or the State of Massachusetts, thus zoned Public Use. Building 1 is proposed at 56.2 feet in height, and therefore has a required side yard setback minimum of 28.1 feet. The building is proposed at 26.5 feet from the western property line, requiring relief from section 4.3.3 through the Comprehensive Permit in lieu of a variance.

Building 2 is abutted by properties zoned Manufacturing and is required to have a side setback of half the building height. Building 2 is proposed at 44.5 feet in height resulting in a side setback of 22.25 feet. The building is proposed with a side setback of 5 feet, requiring relief through the Comprehensive Permit.

5. Per section 4.3.3 the required rear setback in the Manufacturing district is the greater of half the building height or 20 feet when abutting a residential or Public Use district. Building one is proposed with a rear setback of 14.3 feet where 22.25 feet is required. The portion of the property with the proposed Building 2 is abutted at the rear by a parcel zoned Manufacturing, resulting in a rear setback requirement of 22.25 feet. The proposed rear setback is 12.6 feet, requiring relief through the Comprehensive Permit in lieu of a variance.
6. The maximum height allowed in the Manufacturing district is 24 feet by right and 36 feet by special permit per section 4.3.3. The proposed height of Building 1 is 56.2 feet, and the proposed height of Building 2 is 44.5 feet. Both buildings require relief from the height requirements of section 4.3.3 through the Comprehensive Permit in lieu of a variance.
7. Building 1 is proposed with five stories, and Building 2 is proposed with four. Per sections 4.3.2.B.3 and 4.3.3, the maximum number of stories allowed in the Manufacturing district is two by right, and three by special permit. The petitioner's requested five stories in Building 1 and four stories in Building 2 require relief from the maximum number of stories through a Comprehensive Permit in lieu of a variance.
8. The maximum allowed FAR in the Manufacturing district per section 4.3.3 is 1.50 for a building with three stories. The petitioner proposes an FAR of 2.20. To exceed the allowable FAR of 1.50 requires relief from section 4.3.3 through the Comprehensive Permit in lieu of a variance.
9. Section 4.3.3 requires that no parking stall be located within 5 feet of a rear or side lot line. The petitioner proposes parking as close as 2 feet from the side lot line at Building 2, requiring a Comprehensive Permit in lieu of a variance.
10. The petitioner proposes residential, live/work, retail and personal services, and restaurant uses. Per section 4.4.1, these uses are prohibited in the Manufacturing district, requiring relief through the Comprehensive Permit in lieu of a variance.
11. Section 5.1.3.E requires a special permit to allow for assigned parking stalls. To the extent that parking stalls will be assigned to individual dwelling units, a waiver through the Comprehensive Permit is required in lieu of a special permit.
12. The petitioner proposes to construct 236 parking stalls, available for use between the two lots. Parking areas are located at ground level, in facilities that are open at the sides or completely uncovered. There are 204 residential units proposed, as well as commercial and community space. While no commercial tenants have been confirmed, based on the available information included in the application, the following parking calculation is presumed.

Use	Parking Regulation	Parking Required
204 Residential units	2 stall per unit	408 stalls
Restaurant 12 seats 3 employees	1 stall per 3 seats 1 stall per 3 employees	5 stalls
Retail/Personal Service 1,177 square feet 3 employees	1 stall per 300 square feet 1 stall per 3 employees	5 stalls
Community Use Space 2,659 square feet	1 stall per 45 square feet	60 stalls
TOTAL		478 stalls

There are 236 parking stalls proposed for the site. The petitioner anticipates a requirement of 478 parking stalls based on the calculation above without any special permit exceptions allowing for reductions. Per section 5.1.4, a waiver of 242 stalls is required through the Comprehensive Permit in lieu of a special permit.

Section 5.4.1.A allows for a reduction in the residential requirement to 1.25 stalls per unit from two per unit, which would reduce the requirement from 408 to 255 stalls. Section 5.1.4.C allows the Council to grant a special permit to reduce the total stalls required in a development with three or more uses by up to 1/3, which would reduce the commercial requirement from 70 to 47 stalls. By special permit, the total parking requirement could be reduced from a total of 478 to 302 stalls, which would require a reduced waiver of 66 stalls.

13. Section 5.1.5 requires that parking facilities with more than five stalls and any loading facility provide to the Commissioner of Inspectional Services an off-street parking and loading plan for review. The petitioner seeks to waive the provisions of this section through the Comprehensive Permit in lieu of a special permit.
14. Section 5.1.8.A.1 states that no parking space may locate within any required setback distances from a street or side lot lines, and must be a minimum of five feet from the street. The petitioner proposes parking within the required setback from Los Angeles and Midland Avenue, and\ as close as 2 feet from the side lot line at Building 2, requiring a Comprehensive Permit in lieu of a special permit per section 5.1.13.
15. Section 5.1.8.A.2 requires that no outdoor parking located within five feet of a building containing dwelling units. The petitioner proposes surface parking within five feet of the residential buildings, requiring a Comprehensive Permit in lieu of a special permit per section 5.1.13.
16. Per section 5.1.8.B.1 and 2 require that parking stalls measure 9 feet in width by 19 feet in depth for angle parking and 21 feet for parallel parking. The petitioner proposes several reduced angled parking stalls with the smallest measuring 8 feet wide by 16 feet deep, and parallel stalls with 18 feet in depth. To reduce the parking stall dimensions requires relief through the Comprehensive Permit in lieu of a special permit.

17. Section 5.1.8.B.4 requires a minimum depth of 19 feet for a handicapped parking stall. This requirement is particular to the Newton Zoning Ordinance and not a requirement of Massachusetts Architectural Access Board. The petitioner seeks a waiver of section 5.1.13 through the Comprehensive Permit in lieu of a special permit.
18. Section 5.1.8.B.6 end stalls restricted on one or both sides by curbs, walls, fences or other obstructions must have maneuvering space at the aisle end of the at least 5 feet in depth and 9 feet in width. A waiver through the Comprehensive Permit is required in lieu of a special permit.
19. Section 5.1.8.C.1 requires 24-foot wide two-way access aisles in parking facilities. The petitioner proposes aisles as narrow as 20 feet at Building 2, requiring relief through the Comprehensive Permit in lieu of a special permit.
20. Section 5.1.8.E.1 requires that parking stalls be designed so that each vehicle can proceed to and from the space without requiring another vehicle to move. The petitioner proposes tandem parking under Building 1 for residents, requiring a Comprehensive Permit in lieu of a special permit per section 5.1.13.
21. Section 5.1.9.A requires screening of outdoor parking facilities containing more than five stalls. While the bulk of the parking stalls are covered by the buildings, 38 parking stalls are partially or completely exposed. No screening for these parking stalls from abutting properties is shown on any plan, requiring relief through the Comprehensive Permit in lieu of a special permit.
22. Per section 5.1.9.B, outdoor parking facilities with more than 20 stalls must contain interior landscaping. No interior landscaping is proposed in the outdoor parking, requiring relief through the Comprehensive Permit in lieu of a special permit.
23. Section 5.1.10.A requires that outdoor parking facilities provide security lighting that maintains a minimum of one-foot candle on the entire surface of the facility and does not spill onto other properties. Where appropriate, the petitioner seeks relief from this section through the Comprehensive Permit in lieu of a special permit.
24. Section 5.11 of the Zoning Ordinance provides requirements for providing inclusionary units for private residential developments. To the extent that Section 5.11 of the Zoning Ordinance is applicable to the project, a comprehensive permit is requested from Section 5.11 to conform to the affordability elements of the proposed development to the requirements of the Zoning Ordinance.
25. Section 5.13 requires that any development in excess of 20,000 square feet must be designed to meet the three listed green building rating systems standards found in section 5.13.4. Building 2 will meet this requirement by pursuing Passive House Certification. Building 1 will pursue a LEED Silver certifiable level rather than a Gold level standard. The petitioner seeks a Comprehensive Permit in lieu of a special permit waiving this requirement.
26. Section 7.3.1.B requires that a petitioner submit a 3D computer-generated model of a proposed multi-family project with more than 20,000 square feet. The petitioner requests a waiver from this provision through the Comprehensive Permit.

- 27. The petitioner requests a Comprehensive Permit in lieu of site plan approval required under section 7.4 in connection with special permits granted under section 7.3.
- 28. Revised Ordinances Sections 20-23 to 20-28 provide limitations on installation of light sources which do not conform to the criteria of the Ordinances. Section 20-26 provides for waivers to be granted by the Planning Board to the extent that any light source does not conform to the requirements of Section 20-24. The Petitioner seeks a waiver from these provisions through the Comprehensive Permit.
- 29. The Petitioner seeks a permit to cross the sidewalk under the provisions of General Ordinances Section 26-65 Construction of Sidewalks, Driveways and Driveway Entrances.
- 30. The Petitioner seeks a permit to connect to the public water supply, per General Ordinances Section 29, Article II of the Newton City Ordinances.
- 31. Per General Ordinances Section 29, Article III, the Petitioner seeks a permit for connection to the public sewer system.
- 32. The Petitioner seeks a permit for the storm sewer connection under General Ordinances Section 29, Article IV, or otherwise for the project’s overflow discharge of storm water to the City’s storm drain system.
- 33. The Petitioner seeks a waiver of the Infiltration and Inflow Mitigation payment of more than 25% of the infiltration and inflow calculation per General Ordinances Section 29-167.
- 34. To the extent necessary, the petitioner seeks a Comprehensive Permit in lieu of meeting the provisions of section 5-30, Article III pertaining to fences.
- 35. The Petitioner seeks any relief from local rules and regulations, and any additional required local approvals as may be necessary for approval for the Comprehensive Permit plans as may be amended prior to the termination of the public hearing.
- 36. The petitioner seeks a Comprehensive Permit in lieu of all other permits, licenses, variances and approvals as may be issued by the City of Newton as necessary to conform the relief sought to the plans filed with this application.

Zone: MAN	Required	Existing	Proposed
Lot Size	10,000 square feet	148,563 square feet	151,944 square feet
Setbacks – Building 1			
• Front (Midland)	½ building height (28.1 feet)	29.8 feet	5 feet
• Front (Riverdale)	½ building height (28.1 feet)	109.7 feet	26.5 feet
	½ building height (28.1 feet)	19.5 feet	21.3 feet

<ul style="list-style-type: none"> • Side • Rear 	½ building height (28.1 feet)	1.0 feet	17.8 feet
Setbacks – Building 2	½ building height (22.25 feet)	91.3 feet	6.9 feet
<ul style="list-style-type: none"> • Front (Los Angeles) • Front (Midland Ave) • Side • Rear 	½ building height (22.25 feet)	0.4 feet	4.1 feet
	½ building height (22.25 feet)	6.9 feet	5 feet
	½ building height (22.25 feet)	3.6 feet	10 feet
Building Height			
<ul style="list-style-type: none"> • Building 1 • Building 2 	24 feet	21.5 feet	56.2 feet
		9 feet	44.5 feet
Max number of stories	2		
<ul style="list-style-type: none"> • Building 1 • Building 2 		2	5
		1	4
Parking stalls	478		236

37. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§4.3.2.B.1 §7.3	Waive the special permit requirement for a development with more than 20,000 square feet	C.P. per MGL c 40B
§7.3.1.B §7.6	Waive requirement for a 3D model	C.P. per MGL c 40B
§4.3.3 §7.6	Waive required front setback	C.P. per MGL c 40B
§4.3.3 §7.6	Waive required side setback	C.P. per MGL c 40B
§4.3.3 §7.6	Waive required rear setback	C.P. per MGL c 40B
§4.3.2.B.3	Waive maximum height	C.P. per MGL c 40B

4.3.3 §7.6		
§4.3.2.B.3 §4.3.3 §7.6	Waive maximum number of stories	C.P. per MGL c 40B
§4.3.3 §7.6	Waive maximum FAR	C.P. per MGL c 40B
§4.3.3 §5.1.13 §7.3	To allow parking within 5 feet of a setback	C.P. per MGL c 40B
§4.4.1 §7.6	To allow residential, live/work, retail, personal services, and restaurant uses	C.P. per MGL c 40B
§5.1.3.E §5.1.13 §7.3	To allow assigned parking	C.P. per MGL c 40B
§5.1.4.A §5.1.13 §7.3	To allow a waiver of 242 parking stalls	C.P. per MGL c 40B
§5.1.5 §5.1.13 §7.3	Waive the requirement to provide an off-street parking and loading plan	C.P. per MGL c 40B
§5.1.8.A.1 §5.1.13 §7.3.3	To allow parking within the front and side setbacks	C.P. per MGL c 40B
§5.1.8.A.2 §5.1.13 §7.3	To allow outdoor parking to locate less than five feet from a structure containing dwelling units	C.P. per MGL c 40B
§5.1.8.B.1 and 2 §5.1.13 §7.3	Waive minimum parking stall dimensions	C.P. per MGL c 40B
§5.1.8.B.4 §5.1.13 §7.3	To waive the local regulation for minimum stall depth for an accessible parking stall	C.P. per MGL c 40B
§5.1.8.B.6 §5.1.13 §7.3	To allow end stalls to be restricted by curbs, walls or other obstructions	C.P. per MGL c 40B
§5.1.8.C.1 and 2 §5.1.13 §7.3	Waive minimum maneuvering aisle dimensions	C.P. per MGL c 40B
§5.1.8.E.1 §5.1.13 §7.3	To allow tandem parking	C.P. per MGL c 40B
§5.1.9.A §5.1.13	Waive perimeter landscaping requirements	C.P. per MGL c 40B

§7.3		
§5.1.9.B §5.1.13 §7.3	Waive the interior landscaping requirements	C.P. per MGL c 40B
§5.1.10.A.1 §5.1.13 §7.3	Waive lighting requirements for outdoor parking	C.P. per MGL c 40B
§5.1.10.A.2 §5.1.13 §7.3 §20-26	Waive lighting requirements for outdoor parking regarding light spill onto neighboring properties	C.P. per MGL c 40B
§5.11 §7.6	Waive inclusionary zoning	C.P. per MGL c 40B
§5.13 §7.6	Waive sustainable development design standards	C.P. per MGL c 40B
§7.4 §7.3 §7.6	Waive site plan approval procedures	C.P. per MGL c 40B
§20-23 §20-28	Waive Light Trespass provisions	C.P. per MGL c 40B
§26-65	Permit to cross the sidewalk and connect to the street	C.P. per MGL c 40B
§29, Article II	Permit to connect to public water supply	C.P. per MGL c 40B
§29, Article III	Sewer connection permit	C.P. per MGL c 40B
§29, Article IV	Storm drain connection permit	C.P. per MGL c 40B
§29-167-174	Waiver of the Infiltration and Inflow payment	C.P. per MGL c 40B
§5-30 Article III	Waive fence provisions	C.P. per MGL c 40B



Ruthanne Fuller
Mayor

CITY OF NEWTON, MASSACHUSETTS

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ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

DECISION

15 Riverdale Avenue, Newton, Massachusetts Comprehensive Permit

Decision Number: #01-20

Date Application Filed: January 6, 2020

Applicant: CPC Land Acquisition Company, LLC

Premises Affected: 15 Riverdale Avenue (SBL 11002 0007)

Relief Requested: Comprehensive Permit, G.L. c. 40B, §§ 20-23

Public Notice: January 22, 2020 and January 29, 2020

Public Hearing Dates: February 5, 2020; April 1, 2020; May 6, 2020; June 3, 2020; June 17, 2020

Decision of the Board: Approved with Conditions

Members Voting: Brooke K. Lipsitt, (Chair); Bill McLaughlin (Vice-Chair); Mike Rossi; Barbara Carboni; Stuart Snyder; Treff LaFleche (Alternate)

Date of Decision: June __, 2020

PROCEDURAL HISTORY

1. On October 29, 2019, Massachusetts Housing Finance Agency (“MassHousing”) issued a Project Eligibility Letter (“PEL”) to CPC Land Acquisition Company, LLC (the “Applicant”).
2. On January 6, 2020, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, §§ 20-23 (the “Act”) to construct a mixed use development with 204 residential rental units, 627 square feet of retail space and 2,046 square feet of tenant/neighborhood amenity space, and 1,790 square feet of community space, known as “Residences on the Charles,” (the “Project”) on approximately 3.4 acres of land located at 15 Riverdale Avenue in Newton, Massachusetts (the “Site”).
3. The materials submitted by the Applicant in the application and/or entered into the record during the public hearing include:
 - a. Application for Comprehensive Permit dated December 19, 2019 and submitted January 6, 2020 including the following plans for Residences on the Charles, 15 Riverdale Avenue, Newton, MA
 - i. Site Development Plan dated December 11, 2019 consisting of 25 sheets;
 - ii. Landscape Plan dated August 2, 2019, consisting of 3 sheets;
 - iii. Utilities Plan dated December 11, 2019, consisting of 1 sheet;
 - iv. Existing Conditions Site Plan dated December 11, 2019, consisting of 1 sheet;
 - v. Architectural Plans dated November 20, 2019, consisting of 20 sheets;
 - vi. Aerial Photograph undated, consisting of 1 sheet; and
 - vii. Context Photographs undated, consisting of 2 sheets;
 - b. Correspondence from Schlesinger and Buchbinder LLP dated January 14, 2020 and a full-sized plan set;
 - c. Letter from Fair Housing Committee to the Zoning Board of Appeals dated February 5, 2020;
 - d. Letter from Green Newton to the Zoning Board of Appeals dated January 28, 2020;
 - e. Public Hearing Memorandum from City of Newton Department of Planning and Development to the Zoning Board of Appeals dated January 31, 2020;
 - f. Correspondence from Schlesinger and Buchbinder LLP dated March 13, 2020 including a summary of changes to the project, sustainability measures and the following plan sets: Site Development Plans for Residences on the Charles 15 Riverdale Avenue Newton MA dated March 13, 2020 consisting of twenty-one (21) sheets; Plan set entitled 15 Riverdale Avenue Newton, MA CPC Land Acquisition Company, LLC” dated March 13, 2020 consisting of thirty (30) sheets;
 - g. Public Hearing Memorandum from City of Newton Department of Planning and Development to the Zoning Board of Appeals dated March 26, 2020;
 - h. Correspondence from Schlesinger and Buchbinder LLP dated April 22, 2020 including a summary of changes to the project and the following plan sets: Architectural Plans dated April 21, 2020 by ICON Architecture consisting of twenty-seven sheets; Civil Engineering Plans dated April 17, 2020 by Allen & Major Associates consisting of twenty-five sheets; Memorandum from Criterion

Development Partners dated April 22, 2020 responding to the comments raised in Horsley Witten's March 25, 2020 Peer Review and the Planning Department's report dated March 26, 2020; and Sustainability Report prepared by Lambert Sustainability and dated April 22, 2020;

- i. Letter from the Building Standards Committee of Green Newton, dated February 5, 2020;
 - j. Letter dated from Councilor Maria Scibelli Greenberg, dated January 31, 2020;
 - k. Letter dated April 24, 2020 from Councilor Andreae Downs, Council President Susan Albright, Councilor Jake Auchincloss; Councilor Alicia Bowman; Councilor Victoria Danberg; Councilor Alison Leary, Councilor Brenda Noel and City Councilors;
 - l. Letter dated April 28, 2020 from Green Newton;
 - m. Planning Department Public Hearing Memorandum dated April 30, 2020;
 - n. Correspondence from Schlesinger and Buchbinder LLP dated May 21, 2020 including a summary of changes to the project and the following: Memorandum from MDM Transportation Consultants dated May 19, 2020 responding to the comments raised in Green, International's April 30, 2020 Peer Review and the Planning Department's report dated April 30, 2020; Memorandum from ICON Architecture dated May 20, 2020 responding to issues raised by the Planning Department's report dated April 30, 2020; Parking Summary and Plans from Criterion Development Partners dated May 18, 2020; 15 Riverdale Avenue Conceptual Signage Plan dated May 21, 2020 and prepared by Criterion Development Partners;
 - o. Correspondence from Schlesinger and Buchbinder LLP dated May 29, 2020 including a summary of changes to the project and the following: Memorandum from Criterion Development Partners, dated May 28, 2020, responding to the Horsley Witten Group's peer review dated March 25, 2020 and revised to May 22, 2020; Memorandum from Criterion Development Partners, dated May 28, 2020, outlining the mitigation measures which the applicant is offering as part of the pending Comprehensive Permit Application; Revised Waiver List;
 - p. Letter dated May 28, 2020 from Newton Transportation Advisory Group (TAG);
 - q. Letter dated May 29, 2020 from Bike Newton;
 - r. Letter dated June 7, 2020 from Peter Barrer;
 - s. Letter dated June 10, 2020 from GreenNewton;
4. The Zoning Board of Appeals for the City of Newton (the "Board") opened a duly noticed public hearing on February 5, 2020. A second session of the public hearing was held on April 1, 2020 via Internet video conferencing, pursuant to Massachusetts executive order, *Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, Section 20* (March 10, 2020), and Chapter 53 of the Acts of 2020, an *Act To Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19* (April 3, 2020). Additional sessions of the public hearing were held on May 6, 2020, June 3, 2020, and June 17, 2020, all via Internet video conferencing pursuant to the aforementioned Executive Order and Act.
5. On June 17, 2020, the Board closed the public hearing.

6. The Board deliberated on the Application at a public hearing held on June 17, 2020, and voted to grant a Comprehensive Permit subject to the Conditions listed below.
7. As required by the Act, the Board notified all applicable local boards, commissions and departments of the filing of the Application by sending a copy thereof to such local boards, commissions and departments for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
8. During the course of the public hearing, City staff, boards/commissions, peer reviewers, local residents, and technical experts submitted extensive oral and written testimony with respect to the Project on issues of site design, open space, massing, scale, pedestrian scale, streetscapes/public realms, feasibility of the parking plan; geotechnical studies including but not limited to foundation method, construction means and methods, groundwater impact, soil conditions and testing for hazardous materials, groundwater impacts; construction management planning, protection of abutters' properties during construction, emergency access during construction; parking demand, parking design and management, and parking ratios; studies to assess intensity of use related to the mixed use program; shadow impacts, traffic and pedestrian safety, rubbish and recycling management; site circulation, access/egress, stopping site distance, and integration and coordination of functions occurring in the ground plane including but not limited to truck deliveries, trash/recycling pickup, ride share drop-off and pick-up, snow removal; and stormwater management.
9. The following consultants and independent peer reviewers assisted the Board in its review of the Application:
 - a. Transportation
Corrine Tobias
Green International Affiliates, Inc.
 - b. Site Design, Open Space, Civil Engineering
Janet Bernardo and Jon Ford
The Horsley Witten group
10. The following representatives and members of the Applicant's licensed design team presented oral and written testimony to the Board:
 - a. Jack Englert, Executive Vice President and Principal of Criterion Development Partners and Manager of CPC Land Acquisition Company, LLC
 - b. Nancy Ludwig, President and Senior Principal at ICON Architecture
 - c. Tim Williams, Principal of Allen & Major Associates, Inc.

- d. Bob Michaud, Managing Principal of MDM Transportation Associates
- e. Michelle Lambert, Principal of Lambert Sustainability.

FINDINGS

1. The Applicant received a project eligibility letter for the Project from MassHousing, dated October 29, 2019, finding that the Project is eligible under the New England Fund housing subsidy program, and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development. In accordance with 760 CMR 56.04(6), the Board considers the issuance of the PEL to be conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements to receive a comprehensive permit.
2. The Board finds that the Applicant has complied with all of the rules and regulations of the City of Newton as they pertain to the application for a comprehensive permit.
3. The Site is located at 15 Riverdale Avenue in the Manufacturing Zoning District.
4. Existing conditions at the Site consist of 148,563 square feet (3.41 acres) of land improved with a single story structure containing approximately 52,000 square feet of gross floor area, and a single story structure of 1,136 square feet with the majority of the site being impervious.
5. The Site is located in a walkable area less than one mile from the following public transit services: MBTA bus routes: 52, 57, 59, 70, 71, 502, 504, including express buses providing connections to Boston, Cambridge, and other surrounding communities. The site also provides access to the Department of Conservation and Recreation’s Charles River bike path.
6. The Project as proposed meets many of the goals and smart growth strategies in Newton’s Comprehensive Plan such as:
 - a. locating additional housing units near public transit
 - b. creating affordable housing in Newton
 - c. design that shows respect for neighborhood context
 - d. strengthens alternatives to single-occupancy vehicle trips by providing bicycle accommodations, a 1.1 parking ratio, and transportation demand management contributions.
7. The Site is an appropriate location for the proposed mixed-use development due to its location proximate to the village of Nonantum and to Watertown Square, as well as its adjacency to public open spaces.
8. The Project provides community space, which will be open to the public and increases public access to the Charles River.

9. The Project as proposed achieves several goals of the Climate Action Plan by reducing the heat effect, providing stormwater management, and by reducing reliance on single-occupancy vehicles.
10. The proposed sustainability plan meets many of the City's goals outlined in both the Comprehensive Plan and Climate Action Plan such as lessening the negative environmental impacts of new development, reducing energy demand, and keeping ongoing operating and maintenance costs down, thus serving interests in housing affordability as well as natural resource protection.
11. The Board finds that the Site is an appropriate location for the proposed Project because the increase in density will not have an adverse impact on the neighborhood.
12. The Board finds that the project will provide 51 deed restricted housing units, 49 of which will be affordable to households earning up to 80% of Area Median Income, one of which will be available to households earning up to 65% of median income, and one of which will be available to households earning up to 50% of median income. As conditioned by this Decision, the proposed development is consistent with local needs and will provide housing for individuals with an AMI of 80% or less.
13. The Board finds that the Applicant has successfully developed and managed other Projects containing affordable housing in Massachusetts.
14. In accordance with City Ordinance Chapter 29, §§ 167-174, the Board finds that there is good cause, based in part on other mitigation and community benefits offered by the Applicant, to waive 75% of the required infiltration/inflow mitigation for the Project. Therefore, the fee shall be reduced to \$464,000.00.
15. The Board heard the concerns of City staff, boards, commissions, departments, and residents and weighed them against local needs. The Board finds that the Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.
16. The Board finds that the conditions imposed in this Decision are necessary in order to address Local Concerns, as that term is defined in 760 CMR 56.02. At no time during the public hearing did the Applicant indicate that the any conditions may render the Project uneconomic, and therefore the Board finds that the conditions will not render the Project uneconomic. To the extent that such conditions may render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
17. The Board acknowledges concerns raised by abutters and other interested parties. The Board finds that despite these concerns, the Project addresses local and regional housing needs.

18. The Applicant has had the opportunity to review the following conditions and has no objections.

DECISION

Pursuant to the Act, after convening a public hearing and making findings of fact, the Board grants a Comprehensive Permit to the Applicant for the Project, encompassing the enumerated waivers set forth herein and subject to the following conditions of approval set forth below.

CONDITIONS

GENERAL CONDITIONS

1. All buildings, parking areas, driveways walkways, landscaping and all other site features associated with this Comprehensive Permit shall be located and constructed consistent with the plans identified in Schedule A, and which are incorporated by reference (collectively, the “Approved Plans”).
2. Prior to the issuance of any building permits, the Applicant shall submit a complete final set of architectural plans including elevations, signed and stamped by an architect, dimensioned site plans, engineering plans, storm water drainage plans, landscaping plans, and utility plans, signed and stamped by a professional engineer, consistent with the Approved Plans listed/referenced in Condition 1. To the extent that the final plans referenced in this Condition differ from the Approved Plans, the Applicant shall request a consistency ruling from the Commissioner of Inspectional Services.
3. With respect to the Applicant’s request for waivers from local ordinances and regulations, the Board approves only those waivers listed in this Decision. The Project shall comply with all applicable local ordinances, rules, and regulations not expressly waived, including the payment of all applicable permit fees. The Project shall also comply with all applicable state and federal laws, codes, regulations and standards.
4. The City will not issue a building permit for the Project without final approval from the Subsidizing Agency.
5. Copies of all state and federal permits and approvals related to the Site or the Project shall be submitted to the City’s Department of Planning and Development as well as the Law Department for review to ensure consistency and compliance with this Decision.
6. Before any site clearing, grading, demolition or construction may begin on site, the Applicant shall submit a municipal lien certificate that shows all assessments and betterments have been paid in full and there are no outstanding municipal liens on the property.
7. Unless extended by the Newton Zoning Board of Appeals upon a finding of good cause, this Comprehensive Permit Decision shall lapse and become void if construction is not

commenced within three years of the date on which it is filed with the City Clerk. For purposes of this paragraph only, commencement of construction is defined as the issuance of a building permit (other than a demolition permit) for all or any portion of the Project.

8. The Applicant shall use its best efforts to secure a building permit within one year of the filing of this Comprehensive Permit Decision with the City Clerk to ensure that the units remain eligible for inclusion on the City’s Subsidized Housing Inventory.
9. This Comprehensive Permit Decision, and all conditions herein, shall run with the land and be binding on any heirs, successors or assigns of the Applicant. In the event that this Project, the comprehensive permit or any of the obligations therein are sold, transferred, sub-contracted or otherwise made the obligation(s) of an entity other than the original Applicant, the successor or subcontractor shall be bound by all of the terms and conditions of this Comprehensive Permit Decision.

HOUSING CONDITIONS

10. The Project shall include 204 units of rental housing, as listed in the following table:

Unit Type	Number of Units	Number of Affordable Units
Studio	20	5
One Bedroom	87	22
Two Bedroom	74	18
Three Bedroom	23	6

11. Twenty five percent (25%) of the units, which is 51 units, shall be affordable to households earning at or below 80% of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (the “Affordable Units”).
12. Forty-nine (49) of the Affordable Units shall be affordable to households at 80% of AMI. One (1) of the 2-bedroom Affordable Units shall be affordable to households earning up to 65% of AMI. One (1) of the 3-bedroom Affordable Units shall be affordable to households earning up to 50% of AMI.
13. All 51 Affordable Units shall be and shall remain affordable in perpetuity at the affordability levels set forth herein through the execution of the Regulatory Agreement.
14. All units, including both the Affordable Units and the market rate units, shall be eligible for inclusion on DHCD’s Subsidized Housing Inventory (SHI) in perpetuity in accordance with DHCD Guidelines.
15. To the extent allowed by law, preference for renting no less than 70% of the Affordable Units shall be given to residents of the City of Newton. The Applicant shall work with the City’s Planning Department to request this local preference from MassHousing.

16. Unless otherwise required by MassHousing, the Affordable Units shall be dispersed throughout the Project and shall have approximately the same bedroom "ratio" or "mix" as the other units in the Project. Each residential building shall have approximately no less than 25% Affordable Units.
17. The Affirmative Fair Housing Marketing and Resident Selection Plan shall meet the requirements of DHCD's Guidelines for G.L. c. 40B Comprehensive Permit Projects.
18. The Applicant shall provide evidence of MassHousing's approval of the Affirmative Fair Housing Marketing and Resident Selection Plan prior to commencing any marketing of the units.
19. If Certificates of Occupancy are sought on a per unit basis, then no more than three Certificates of Occupancy (temporary or final) shall be issued for market rate units until at least one Certificate of Occupancy (temporary or final) is issued for an Affordable Unit. At no point will the number of Certificates of Occupancy issued for Affordable Units be less than 25% of all Certificates of Occupancy issued.
20. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Approved Plans referenced in Condition #1 and Condition #10.
21. All leases for the units in the Project shall include language stating that tenants may not use any rooms other than bedrooms for sleeping purposes. Living rooms or dining rooms may not be used as bedrooms.
22. A second-Regulatory Agreement (the "City Regulatory Agreement"), in a form approved by the City Law Department, shall be entered into by the Application and the City and shall be executed and recorded prior to expiration of the initial Regulatory Agreement, and in effect for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into the City Regulatory Agreement to continue such restrictions and the terms of the City Regulatory Agreement shall be consistent with the terms of this Decision and with the customary terms of the City's Regulatory Agreements. At a minimum, the City Regulatory Agreement shall require: (i) that the Project shall remain 25% affordable in perpetuity; (ii) that 25% of the units in the Project shall be affordable and rented to low and moderate income households as that term is defined in G.L. c. 40B, §§ 20-23 as set forth in Condition #12; and (iii) annual monitoring and reporting to ensure compliance. The City Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the City.

MITIGATION/OFFSITE IMPROVEMENT CONDITIONS

23. The Applicant shall make payments in the aggregate amount of \$464,000.00 to the City for infrastructure improvements for inflow and infiltration (I&I). Payments shall be made as follows:

- a. \$232,000.00 at the first building permit for the Project.
 - b. \$232,000.00 at the first residential unit occupancy permit (temporary or final) in the Project.
24. Prior to the issuance of any Certificate of Occupancy (temporary or final) for the 100th dwelling unit, the Applicant shall make the following improvements to the easterly edge of Forte Park (the “Forte Park Improvements”):
- a. Prune existing trees of diseased and dead wood.
 - b. Remove invasive knotwood and replace it with native shrubs.
 - c. Remove the existing chain link fence and invasive weeds and replace them with a new 5-foot tall vinyl fence and native shrubs.
 - d. Perform minor grading.
 - e. Plant 28 new shade flowering and evergreen trees along the park edge.
 - f. Construct two accessible paths of no less than eight feet in width between the Project and the easterly edge of Forte Park.

In order to accomplish these Forte Park Improvements, the Applicant shall be permitted to access approximately 40 feet of City-owned land to the west of the building along Forte Park, to Midland Street, and other locations as needed. All improvements and construction within the limits of Forte Park shall be incorporated into the Construction Management Plan and shall be reviewed and approved by the Commissioner of Parks, Recreation, and Culture. The Applicant shall be responsible for repairing any portion of Forte Park prior to the issuance of any Certificates of Occupancy (temporary or final) for the last dwelling unit.

25. The Applicant shall be responsible for maintaining all plantings installed as part of the Forte Park Improvements for a period of two years following installation. Prior to the issuance of a final Certificate of Occupancy for the Project, the Applicant shall enter into an agreement with the City, in a form approved by the Law Department, obligating such maintenance and allowing the Applicant continued access to Forte Park to perform such maintenance.
26. Prior to the issuance of any building permit, other than a demolition permit, the Applicant shall pay the sum of \$200,000 to the City for upgrading the light fixtures at Forte Park and any related expenditures deemed necessary by the Commissioner of the Parks, Recreation, and Culture Department.

27. Prior to the issuance of any Certificate of Occupancy (temporary or final) for the last dwelling unit, the Applicant shall make improvements to land owned by the Commonwealth of Massachusetts Department of Conservation & Recreation (“DCR”) (the “DCR Improvements”) in accordance the Scope of Work, dated _____, on file with the Clerk of the Board.
- a. The Applicant shall provide a Memorandum of Understanding/License Agreement between the Applicant and the Department of Conservation and Recreation for the improvements described in the Scope of Work to be performed by the Applicant on the DCR’s property within 180 days of receiving this Comprehensive Permit Decision with no appeals pending.
 - b. The Applicant shall complete this work prior to the issuance of any Certificates of Occupancy (temporary or final) for the last dwelling unit.
 - c. The Applicant shall coordinate with the DCR when building the proposed two new connections to the Charles River Greenway bike path.
 - d. The Applicant must at all times allow for public access from Midland and Riverdale Avenues through the Site to land owned by the Department of Conservation and Recreation.
28. The Applicant shall ensure the availability of a public bathroom facility at reasonable times for public users of the DCR path, café customers and the users of the Community Space.
29. The Applicant shall reconstruct Los Angeles Street from California Street to Midland Avenue consistent with the Approved Plans and in accordance with the City of Newton’s specifications, provided that the Applicant obtains the legally required assent from abutting property owner(s). The plans shall include vertical granite curbing and a five foot wide sidewalk along the easterly edge of Los Angeles Street for the entirety of this length. The Applicant shall use best efforts to obtain all legally required permission to perform this work and such efforts must be documented to the Director of Planning and Development upon request. Prior to the issuance of any building permits for the vertical construction of the Project, the Applicant shall submit final plans for review and approval by the Director of Planning and Development and the Commissioner of Public Works in consultation with the Director of Transportation, and the City Engineer. Prior to the issuance of any certificates of occupancy (temporary or final) for the last dwelling unit, and at the Applicants sole cost and expense, the Applicant shall complete this work in accordance with the approved plans. If all or any portion of this work is not possible due to the inability to obtain property owners’ permissions, the Applicant shall work with the Director of Planning and Development and the Commissioner of Public Works to identify other local improvements or other measures that the Applicant shall fulfill at a similar cost.
30. Prior to the issuance of a Building Permit, other than a demolition permit, the Applicant shall submit engineering site plans to the City Engineer, the Director of Planning and Development, and the Commissioner of Public Works for the improvements to the

intersection of California and Bridge Streets as shown in Exhibit R1 “Conceptual Improvement Plan” of the May 19, 2020 MDM Transportation Consultants Memorandum, on file with the Clerk of the Board.

Prior to the issuance of any certificates of occupancy (temporary or final) for the last dwelling unit, at the Applicant’s sole cost and expense, the Applicant shall complete this work in accordance with the approved plans. The City Engineer shall also inspect and approve the improvements upon completion.

31. Prior to the issuance of a Building Permit, other than a demolition permit, the Applicant shall submit engineering site plans to the City Engineer, the Director of Planning and Development, and the Commissioner of Public Works for the improvements to the intersection of California and Los Angeles Streets as shown in Exhibit R2 “Conceptual Improvement Plan” of the May 19, 2020 MDM Transportation Consultants Memorandum, on file with the Clerk of the Board. Such work shall also be updated to include the following additional improvements:
 - a. Upgrading the pedestrian curb cut at the southwest corner of the intersection to modern standards.
 - b. Moving the “No Parking Sign” on the northern side of California Street eastward by no more than fifty feet from the intersection of California Street and Riverdale Avenue.

Prior to the issuance of any certificates of occupancy (temporary or final) for the last dwelling unit, and at the Applicant’s sole cost and expense, the Applicant shall complete this work in accordance with the approved plans. The City Engineer shall also inspect and approve the improvements upon completion.

CONSTRUCTION CONDITIONS

32. The Applicant shall pay the reasonable fees of the City’s consultants for review of the building permit plans or documents described herein or for inspections required during the construction phase.
33. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding holidays, unless waived by the Mayor in accordance with Newton Ordinances, §20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.
34. Prior to the issuance of any building permit for the Project, other than a demolition permit, the Applicant shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, the Commissioner of Public Works, the Commissioner of Parks, Recreation, and Culture, the City Engineer, and the Fire Department. The Construction Management

Plan shall be consistent with and not in conflict with relevant conditions of this Decision and shall include, but not be limited to, the following provisions:

- a. 24-hour contact information for the general contractor of the Project.
 - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated milestones and completion dates.
 - c. Site plan(s) showing the proposed location of the contractor and subcontractor parking, on-site material storage area(s), on-site staging area(s) for construction and delivery vehicles, and location of any security fencing.
 - d. Site plan(s) showing the construction and related activities within Forte Park.
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinance. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise-producing staging activities should be located as far as practicable from noise sensitive locations.
 - g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
 - h. A plan for rodent control prior to demolition, during demolition, and during construction.
 - i. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
35. The Applicant shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
36. The Applicant shall be responsible for repairing any damage to public ways and public property caused by any construction vehicles traveling to or from the Site. All repair work shall be done prior to the issuance of final Certificate of Occupancy, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination

and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.

37. The Applicant shall take all reasonable preventive measures to minimize bird strikes to the bridge between Buildings 1A and 1B.
38. The Applicant shall submit final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer for consistency with the Memorandum of _____, on file with the Engineering Department and the Planning Department.
39. The new eastern, northern, and western drive aisles around Building 1 shall be porous pavement to allow for groundwater recharge and a reduction in stormwater runoff.
40. The Applicant shall designate a neighborhood liaison to communicate with the neighborhood area council, local businesses, the Ward 1 City Councilors and any other interested City Councilors via email. The substance of the communication shall include updates related to key construction activities and facilitate an open line of communication between the General Contractor/Applicant and the neighborhood.
41. All internal courtyards and sidewalks, as well as sidewalks along the Project frontage and drive aisles around the buildings, shall be designed as shown on the final project plans, and, except as otherwise provided for herein, shall be open to the public. The Applicant is responsible for maintaining and plowing all above-referenced internal paved roadways and sidewalks, making sure they are kept in good and safe order.
42. All sidewalks and handicapped ramps shall be ADA compliant unless a variance for noncompliance is granted. A letter of compliance prepared by a professional engineer registered in the state of Massachusetts shall be submitted prior to issuance of an occupancy permit (temporary or final).
43. The Applicant shall locate all utility service lines on the Site underground. The Applicant shall also locate all utility service lines along the frontages of the Site underground.
44. Prior to the issuance of any Building Permit, other than a demolition permit, the Applicant shall prepare and submit a final Site Plan and Site Circulation Plan for review and approval by the Fire Department that confirms the Fire Department will have sufficient access to both buildings, confirms that fire access will function safely, and shows all hydrants and fire connections, and other features as may be required for Fire Department approval.
45. The Applicant shall submit final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. Once approved, the O&M Plan must be adopted, implemented, and sustained by the Applicant, and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City

Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

46. Prior to the issuance of any building permit for the Project, the Applicant shall submit a final photometric plan detailing lighting location and levels to the Commissioner of Public Works and the Department of Planning and Development for review and approval.
47. The Applicant shall notify the City and provide copies of any filings made in accordance with the Massachusetts Contingency Plan relating to any historical release of hazardous materials or the discovery of any new release.

SUSTAINABILITY CONDITIONS

48. The Applicant shall complete Passive House feasibility studies and energy modeling to determine the design and construction approach.
49. Building 1 (1A and 1B) shall be constructed to achieve, and the Applicant shall pursue, at a minimum, LEED v4 Residential Certifiability standards at the Silver level.
50. Building 2, floors two through four, shall be constructed to achieve Passive House certification in accordance with the requirements of the Passive House Institute US (PHIUS), the Passive House Institute (PHI) or other recognized Passive House standards and/or certification organization.
51. Buildings 1 and 2 shall feature all electric heating, cooling, and cooking systems, as well as electric hot water for both buildings.
52. Building 1's building envelope will meet or exceed Stretch Code and Building 2 will have a building envelope that meets Passive House standards.
53. The Applicant has committed to analyze, review and discuss with the Director of Planning and Development the achievement of LEED Gold v4 for Building 1, as well as the inclusion of Level 2 electric vehicle charging stations prior to the issuance of any building permit for the Project, in order to determine its feasibility.
54. The Applicant shall make every effort to utilize the sustainable building materials and systems referenced in the Sustainability Report dated April 22, 2020 and attached to Applicant's letter dated April 22, 2020, which is on file with the Clerk of the Board, including, but not limited to:
 - a. water efficient domestic plumbing fixtures;
 - b. LED light fixtures;
 - c. programmable thermostats;
 - d. building-level and unit electricity and water metering;
 - e. building systems commissioning;
 - f. low VOC building materials and finishes;
 - g. fresh air supply and kitchen exhaust provided in every apartment;

- h. MERV-rated air filters on ventilation equipment;
- i. construction and demolition waste will be recycled and diverted; and

TRAFFIC/PARKING CONDITIONS

- 55. The Project shall include 236 parking stalls.
- 56. Twenty-four (24) of the parking stalls shall be equipped with electric vehicle charging stations and an additional twenty-four (24) parking stalls shall be wired for electric vehicle use.
- 57. Of the twelve (12) visitor parking stalls, at least one (1) shall be ADA accessible.
- 58. On Midland Avenue, one parking stall shall be designed as an accessible parking stall and three parking stalls shall be reserved for visitors.
- 59. The cost of residential tenant parking for market-rate units shall be charged separately from residential tenant rents, with the same rental period for both the units and the parking. One (1) parking stall shall be available for each Inclusionary Unit without charge to the tenant of such unit. Prior to the issuance of any certificate of occupancy for a market rate unit (temporary or final), the Applicant shall provide evidence of such separation to the Director of Planning and Development.
- 60. The Applicant shall implement a Transportation Demand Management Plan to reduce reliance on motor vehicle transportation. The Plan shall be submitted to the Director of Planning and Development prior to the issuance of any building permit for the Project and shall include, but not be limited to:
 - a. Providing all dwellings units with a transit subsidy for two months for the cost of a Monthly Inner Express Bus Pass for up to two adults per unit for the first year. The Applicant shall provide the same subsidy for all new leases in years two and three.
 - b. Guaranteed ride home in the event of emergency, and other incentives designed to reduce reliance on transportation.
 - c. Ensuring the Project is a member of the Watertown Transportation Management Association for so long as the Project is eligible, and the Association exists.
 - d. Providing funding to the Watertown TMA for the creation or maintenance of a shuttle service along Pleasant Street and/or California Street.
 - e. Providing a bicycle fleet of at least twenty bicycles and ten saddlebags for the life of the Project.

- f. Providing bike storage for at least 219 bicycles throughout the project site for residents, visitors and users of the adjacent bike path, including a secure bicycle room.
 - g. Unbundled parking leases.
61. The Applicant will implement and maintain the Transportation Demand Management Plan contained in Condition 60 and shall collaborate with the City on traffic management issues.

OTHER/ONGOING CONDITIONS

62. The landscaping shown on the approved plan shall be maintained in good condition. The plantings shall be inspected annually, and any plant material that has become diseased or dies shall be replaced in a timely manner with similar material.
63. The Applicant shall be responsible at its sole cost for trash and recycling disposal for the Project.
64. The Applicant shall be responsible for keeping the internal roadways and sidewalks clear of snow to ensure safe and reliable access to and from all buildings, parking circulation, and pedestrian movements at all times. To the extent snow removal is necessary, such removal shall be conducted pursuant to a Snow Removal Plan, which shall be maintained on file at the Project and be available for review upon request by the Director of Planning and Development.
65. Any portions of the Site subject to the jurisdiction of the Conservation Commission must receive an Order of Conditions from the Conservation Commission prior to the issuance of any building permit for work on the Project subject to such jurisdiction.

CONDITIONS PRECEDENT TO THE ISSUANCE OF A BUILDING PERMIT

66. No Building Permit shall be issued pursuant to this Comprehensive Permit until the Applicant has:
- a. Recorded a certified copy of this Decision at the Middlesex County (South) Registry of Deeds and filed proof of such recording with the City Clerk, the Clerk of the Zoning Board of Appeals, and the Department of Planning and Development.
 - b. Submitted evidence of Final Project Approval by MassHousing.
 - c. Submitted evidence of MassHousing's approval of the Affirmative Fair Housing Marketing and Resident Selection plan.
 - d. Provided a fully executed Regulatory Agreement and proof of recording with the City Clerk, the Clerk of the Zoning Board of Appeals, and the Department of Planning and Development.

- e. Submitted final site and building plans for the specific building(s) subject to such building permit which shall include all required information for building code review and approval and consistency with the Approved Plans.
- f. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, the Commissioner of Parks, Recreation, and Culture, and the City Engineer in accordance with Condition #34.
- g. Submitted engineering, utility and drainage plans, and an Operations and Maintenance plan for Stormwater Management (O&M Plan), for review and approval by the City Engineer in accordance with Condition #38.
- h. Submitted a Transportation Demand Management Plan for review and approval by the Director of Planning and Development in accordance with Condition #60.
- i. Submitted a final photometric plan for review and approval in accordance with Condition #46.
- j. Submitted to the Fire Department for review and approval final site circulation plans and building plans which shall include all required information on proposed sprinkler and alarm systems, access to buildings, and all hydrants and fire connections;
- k. Submitted any payments required under Conditions #23 and #26.
- l. Obtained a written statement from the Director of Planning and Development that confirms that the building permit plans are consistent with the plans approved in Condition #1;
- m. Submitted a LEED Checklist prepared and certified by a LEED Accredited Professional to the Director of Planning and Development, indicating which points Building 1 (1A and 1B) intends to realize in order to achieve LEED in accordance with Condition #49.
- n. For the portions of Building 2 that will obtain Passive House certification in accordance with Condition #50, submitted (i) the credentials of the Passive House rater/verifier who will perform testing and verification, (ii) a letter of intent stating that the Passive House rater/verifier has been hired to complete the on-site verification process, (iii) the credentials of the certified Passive House consultant who has provided design, planning and consulting services, and (iv) a Passive House narrative and/or checklist prepared and certified by the certified Passive House consultant to the Director of Planning and Development, indicating standards that will be achieved.

- o. Submitted an analysis of sustainability strategies in accordance with Condition #53, for review and approval by the Director of Planning and Development.
- p. Produced evidence satisfactory to the Director of Planning and Development and the Law Department that the Applicant is prepared to comply with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY OCCUPANCY PERMITS

67. No occupancy permit (temporary or final) for any building authorized by this Comprehensive Permit shall be issued by the City until the Applicant has:
- a. Filed with the Board's Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by a registered architect, professional land surveyor, and registered landscape architect certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in digital format for the portion of the Project for which an occupancy permit is requested.
 - c. Recorded with the Middlesex South District Registry of Deeds an Operations and Maintenance Plan for Stormwater Management Facilities that provides ongoing stormwater system cleaning and maintenance and provided a copy of the recorded document to the City Engineer.
 - d. There shall have been filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department.
 - e. Submitted any payments required under Condition #23.
 - f. Completed all landscaping in compliance with Condition #1 related to or for the portion of the project for which an occupancy permit is requested.
 - g. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the project for which an occupancy permit is requested.

- h. Prior to the issuance of any Certificate of Occupancy (temporary or final) for the 100th dwelling unit, submitted evidence of substantial completion of the Forte Park Improvements in accordance with Condition #24.
 - i. Prior to the issuance of any Certificate of Occupancy (temporary or final) for the last dwelling unit, submitted evidence of substantial completion of off-site improvements in accordance with Conditions #29-31.
 - j. Prior to the issuance of any Certificate of Occupancy (temporary or final) for the last dwelling unit, submitted evidence of substantial completion of the DCR Improvements in accordance with Condition #27.
 - k. Filed with the Department of Inspectional Services and the Department of Planning and Development a letter of compliance prepared by a professional engineer certifying that all sidewalks and handicapped ramps are ADA compliant in accordance with Condition #42.
 - l. Filed with the Department of Inspectional Services and the Department of Planning and Development that LEED v4 Residential Silver Certifiability has been achieved for Building 1A and 1B in accordance with Condition #49.
 - m. For a temporary certificate of occupancy for the portions of Building 2 that will meet Passive House certification, filed with the Department of Inspectional Services and the Department of Planning and Development an updated Passive House narrative and/or checklist prepared and certified by a certified Passive House consultant to the Director of Planning and Development, indicating the measures that have been completed for the building for which a temporary occupancy permit is requested in accordance with Condition #50. For a final certificate of occupancy for the portions of Building 2, filed with the Department of Inspectional Services and the Department of Planning and Development (i) an affidavit signed by the certified Passive House consultant certifying that the pre-construction commissioning process requirements for Passive House have been met and that the post-construction commissioning process requirements will be met, (ii) the final testing and verification report completed by the Passive House rater/verifier, (iii) the credentials of the certified Passive House consultant, and (iv) an affidavit signed by that professional stating that he/she has reviewed all relevant documents and to the best of his/her knowledge, the documents provided indicate that such portions of the building was built to achieve Passive House certification.
 - n. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the undergrounding of utilities has been completed to the extent required by Condition #43.
68. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy of all or portions of the buildings prior to installation of final

landscaping provided that the Applicant shall first have filed with the Director of Planning and Development a letter of credit or other security in a form satisfactory to the Director of Planning and Development in an amount not less than 135% of the remaining landscaping for the building for which the temporary certificate of occupancy is sought to secure installation of such landscaping.

WAIVERS GRANTED

[TBD based on upcoming hearing]

WAIVERS NOT GRANTED

[TBD based on upcoming hearing]

DRAFT

RECORD OF VOTE

AYES: [TBD]

NAYS: [TBD]

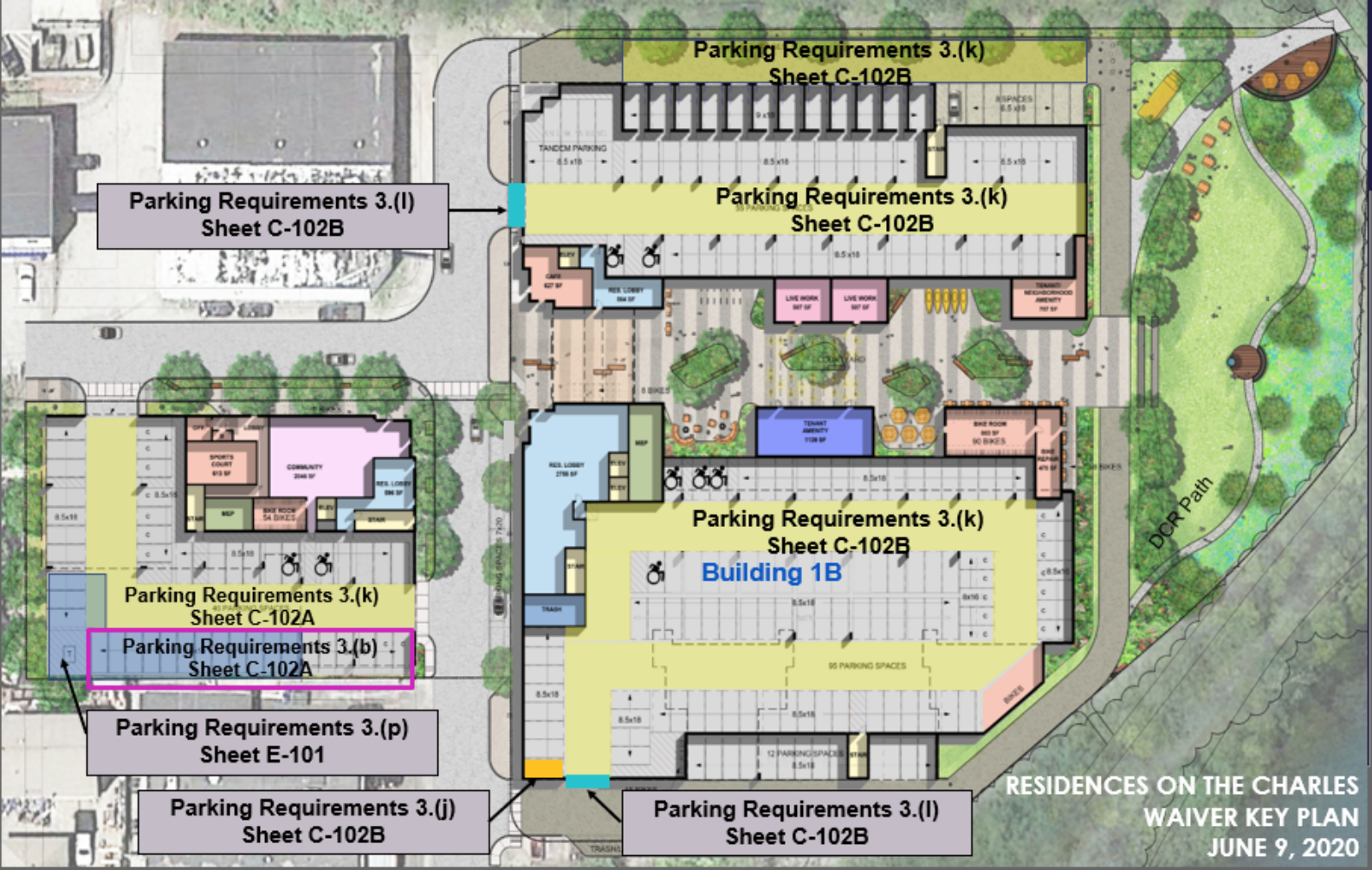
Brooke K. Lipsitt, Chairman

Wherefore, a Comprehensive Permit, consistent with the conditions of this Decision, is granted to the Applicant.

Filed with the City Clerk on _____, 2020

The City Clerk certifies that all statutory requirements have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to G.L. c. 40A, § 17 has been filed.

David A. Olson, City Clerk



RESIDENCES ON THE CHARLES
WAIVER KEY PLAN
JUNE 9, 2020