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Setti D. Warren  
Mayor

**ZONING BOARD OF APPEALS**  
Diane Vezeau, Board Clerk

#10-14

**Detailed Record of Proceeding and Decision**

Petition # 10-14 of Myrtle Village, LLC, applying pursuant to General Laws, Chapter 40B, Section 20 through 23, as amended, for the issuance of a Comprehensive Permit authorizing the construction of seven apartments on land located at 12 and 18-20 Curve Street in West Newton, Massachusetts. The property is located in a Multi-Residence 2 district.

The Zoning Board of Appeals for the City of Newton held public hearings on the above entitled proceeding on the following dates:

Tuesday, November 25, 2014, 7:00 p.m., at Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts, in the Aldermanic Chambers, Room 201; and

Thursday, December 4, 2014, 7:00 p.m. at Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts, in the Aldermanic Chambers, Room 201.

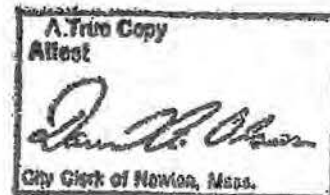
The following members of the Board were present at each hearing:

- Brooke K. Lipsitt, Chairman
- Harvey Creem, Vice Chairman
- Vincent Farina
- Barbara Huggins
- William McLaughlin
- Michael Rossi, as an alternate

The Petition was filed on October 28, 2014, on behalf of the Applicant by Attorney Alan Schlesinger, 1200 Walnut Street, Newton, Massachusetts. Included with the application was the Applicant's request for hearing with exhibits and drawings.

Due notice of the first hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list, by publication in the Newton Tab, a newspaper of general circulation in Newton, Massachusetts, on November 5 and 12, 2014, and on the City of Newton website on October 30, 2014. Due notice of the additional hearings were given by post submissions to the City of Newton website on November 26, 2014.

Property Address: 12 and 18-20 Curve Street West Newton, MA 02465  
Owner: Myrtle Baptist Church of West Newton  
Deed References: (i) Book 56762, Page 361 Middlesex South Registry of Deeds  
(ii) Book 10455, Page 494 Middlesex South Registry of Deeds



**FACTS:**

The following documents were received by the ZBA:

An application for a comprehensive permit from Myrtle Village, LLC, 21 Curve Street, West Newton, Massachusetts;

A determination of project eligibility letter from the Department of Housing and Community Development dated September 26, 2014; and

A Public Hearing Memorandum submitted by the City of Newton Department of Planning and Development dated November 21, 2014.

**Development team**

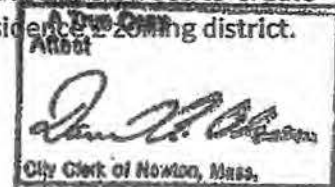
The Applicant is Myrtle Village, LLC, 21 Curve Street, West Newton, Massachusetts. The manager of Myrtle Village, LLC is Shelby Robinson. The Applicant is represented by Attorney Alan Schlesinger, of Schlesinger & Buchbinder, 1200 Walnut Street, Newton, Massachusetts, and the project's architect is Angelo A. Kyriakides, of AAK Architect Inc., PO Box 1068, Brockton, Massachusetts. The Applicant's housing consultant is Newton Community Development Foundation, 425 Watertown Street, Suite 205, Newton, Massachusetts. The project is a Local Initiative Program (LIP) of the Massachusetts Department of Housing and Community Development.

**November 25, 2014 Public Hearing**

The Applicant is requesting a comprehensive permit pursuant to Massachusetts General Laws Chapter 40B, Sections 20 through 23, to allow for the construction of seven apartments in two structures, referred to as "Myrtle Village" on 15,770 square feet of land located at 12 and 18-20 Curve Street in West Newton. The project will require the merging of the lots at 12 Curve Street and 18-20 Curve Street and an 81X lot merger plan must be submitted to the Engineering Division of the Public Works Department for review and approval. The lots are zoned Multi-Residence 2 and are currently developed with a single-family dwelling and a two-family dwelling. The proposed site plan includes three parking stalls on the combined site. The unit mix will include one one-bedroom unit, four two-bedroom units and two three-bedroom units. Two of the units will be restricted to 'very low income' households earning up to 50% of the area median income, two will be restricted to 'low income' households earning up to 80% of area median income and three will be restricted to households earning up to 85% of area median income.

This project would increase the supply of deed-restricted, affordable housing units by seven. Since this is a rental project, all seven of the units will be eligible to be included on the Subsidized Housing Inventory (SHI), which as of February 20, 2014 has 2,441 affordable housing units in Newton or 7.5% of the total year-round housing units (32,346 according to the 2010 U.S. Census).

Attorney Alan Schlesinger introduced the project. Mr. Schlesinger noted that Myrtle Village, LLC, is an affiliate of the Myrtle Baptist Church, and at this time the Myrtle Baptist Church owns both properties. The Church will transfer its equity in the properties to Myrtle Village LLC, the Applicant, of which the Church is the sole member. The plan is to renovate and add on to the single-family home at 12 Curve Street to create a total of three affordable units in that building. The Applicant also intends to renovate and add on to the two-family dwelling at 18-20 Curve Street to create four affordable units in that structure. The site is located in the Multi-Residence 2 zoning district.



Mr. Schlesinger described the City's support for this project in the form of a letter from the Newton Housing Partnership and the commitment to provide subsidies from the Community Preservation Act, Community Development Block Grant and HOME funds. He also stated that an official with the Fire Department stamped his approval of the plans after the Planning Department's memo was sent out stating that no comments had yet been received from the Fire Department. Mr. Schlesinger concluded his initial presentation by reiterating the points brought up in the Planning Department memorandum with regard to the project's limited impact on traffic, the small size of the units (between 700 and 1,275 square feet) and the parking arrangement with only three spaces on site and the rest in the Church's lot across the street allowing for significant (71%) open space on the combined residential lots.

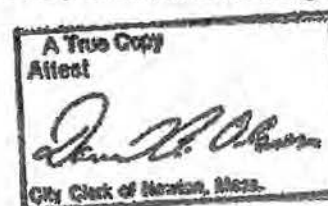
Shelby Robinson, Manager of Myrtle Village, LLC, spoke about the organization's mission to develop affordable housing in Newton. She introduced the rest of the development team and explained that Newton Community Development Foundation (NCDF) would handle the affirmative marketing and housing lottery and would manage the units after construction. The architect, Angelo Kyriakides will also act as the project manager during construction. The LLC has seven members of the Board of Directors, four of whom are affiliated with the Myrtle Baptist Church and three of whom are from the community at large. Ms. Robinson gave a history on how the Church came to own both parcels explaining that the structure at 18-20 Curve Street was first purchased by the Church in the 1950s and used as a parsonage. The house was converted to a two-family dwelling in the 1980s and the Church has been renting the units at below-market rates although there is currently no deed restriction on the property. More recently the Church purchased the property at 12 Curve Street. Ms. Robinson noted that the project has received a commitment of public subsidy for \$1,853,858 from CPA, CDBG, and HOME funds. After describing the composition of the units, Ms. Robinson concluded her presentation by explaining the budget and parking. She noted that in the budget the LLC has set aside \$6,000 for moving and relocation expenses for the current tenants. Two of the three current tenants will be returning to the site after construction. Also, the parking lot at the Myrtle Baptist Church will be expanded to allow for twelve parking spaces to be reserved for the residents of the housing while at the same time ensuring there is enough parking on site for the Church's use. The Applicant included a Power Point presentation.

Mr. Schlesinger summarized the waivers being sought by the Applicant.

The following people spoke in favor of the project:

Paul Snyder, Esq., 9 Ardmore Road, Newton. He is member of the Corpus Christi/St. Bernard's parish and spoke on behalf of the parish. He has seen the plans and the parish is in favor of the project. He does not expect any traffic issues.

Hubert Williams, 11 Prospect Street, Newton. He lives two doors down from the property. He said he looks forward to the new look of the project and welcoming the new neighbors who will have the good fortune to live in the neighborhood and close to public transportation. He read a statement from Reverend Howard Haywood who is in strong support of the project as well. Mr. Haywood's statement noted that the Myrtle Baptist Church was "reaching up, out and within" to create affordable housing and is the first faith-based organization to develop affordable housing in the City.





Bethea Israel, 10 Morgan Place, Apt. #1, Newton,. She has attended Myrtle Baptist Church for almost 10 years, and stated that affordable housing has helped the lives of her family and it helps to enrich the lives of City residents.

Earl Sheard, Marlboro. Mr. Sheard spoke as Chairman of the Trustee Board of Myrtle Baptist Church. He urged the Zoning Board of Appeals to approve the project which will help those who are in need.

Phil Herr, 20 Marlboro Street, Newton. Mr. Herr is a member of the Newton Housing Partnership and the Newton Fair Housing Committee. He noted that the applicant has been working since 2011 on this project and they have received the commitment of a large public subsidy from the City. He stressed that the Church is also making a significant contribution to the project in the form of its equity in the properties. The project has been carefully designed and vetted through the neighborhood. The applicant has been very patient throughout the process.

Richard Evans, 16 Wyoming Street, Dorchester. Mr. Evans is a former long-time resident of Newton. He attends Myrtle Baptist Church and was baptized there. Even when he moved out of Newton when the Massachusetts Turnpike was constructed, he still has a community here because of the Church. He strongly supports the proposal because it will give residents who no longer live in Newton an opportunity to live in Newton and to enjoy all of those opportunities that he and his family have enjoyed over the years.

Joan Banks, 19 North Street, Newton. Her granddaughter came back with her daughter to live in Newton but can't afford it here. She urges the Board to approve the Application because it will provide opportunities for others to live in Newton.

No one spoke in opposition to the project.

The ZBA raised several concerns about the project including: the legal relationship between the Applicant and the Myrtle Baptist Church; the need for an easement in order to allow for additional parking on the Church's property; which party would be responsible for maintenance of the parking and walking areas; issues related to the off-site location of the parking; the identification of specific parking spaces for the use of tenants; and what would happen in the event the two properties were no longer in common ownership. Ms. Lipsitt asked about the legal relationship between the Applicant and the Church. Mr. Schlesinger stated that the Applicant/LLC and the Church are separate legal entities that exist similar to the relationship between a shareholder and a corporation. Mr. Schlesinger further stated that the sole member and owner of all of the interest in the LLC is the Church.

Ms. Huggins asked whether there would be a legal agreement between the Applicant and the Church relative to additional parking for the units on the Church's property. Mr. Schlesinger explained that the Applicant and the Church will enter into an easement agreement relative to off-site parking for the units on the Church's property, and that these easement rights will run with the units. The easement will remain in perpetuity and will be superior to any mortgage on the Church. Additionally, there will be an agreement between the parties as to the allocation of maintenance obligations, improvements, and rights of access, according to Mr. Schlesinger.



Mr. Creem expressed concern that the walking pathway from the parking spaces on the Church's property to the units, along with the Church's parking lot, be properly maintained and lit for the safety of the residents of the units, and also that the rebuilt parking lot conform to zoning.

Mr. Sheard stated that while there is currently no official agreement in place, there are currently 5-6 residents who use the Church parking lot, and the Church maintains the parking lot and it is well lit. The driveway is paved and the walkway is clear. Mr. Sheard expressed the Church's commitment to ensuring that the walkway is safe for walking and that the parking lot is safe for parking and driving.

Ms. Lipsitt expressed concern about who would be responsible for maintenance of the walking pathway from the Church to the units, including lighting the pathway, and snow and ice removal. Mr. Schlesinger noted that a number of items would need to be addressed and agreed to by the parties including: easements for pedestrian and vehicular access; insurance provisions; specific maintenance obligations; allocations of cost and methods of costs collection; budget review; capital and operating repairs; and provisions for potential expansion of the Church and future uses of the Church.

Mr. Schlesinger stated that the Applicant would agree to request a cross-walk or to request permission from the City to allow the Applicant to paint a crosswalk or install a pedestrian crossing sign at the Applicant's expense.

Mr. Farina expressed concern about children living in the units who may traverse the parking lot to access the recreational area, and whether there was a need for 11 spaces to be located in the Church parking lot. Mr. Schlesinger stated that one of the spaces next to the units is designated for handicapped parking. The other two spaces are designated for short-term parking. Locating the remaining spaces on the Church's parking lot takes into account allowing for additional open space on the site, as well as safety considerations.

Ms. Lipsitt asked about the adjacent park and pedestrian access and the feasibility of the off-site parking, and noted that the Planning Department memo noted that the parking plan had not been stamped by an engineer and did not contain dimensions. Ms. Lipsitt expressed concern about how to enforce the promises made by the Church relative to the parking lot and walkway where the comprehensive permit before the Board was filed by the LLC and not the Church.


Mr. Farina expressed concern about the size of the parking spaces on the Church's property, and the applicant agreed to have the parking spaces be sized at 9 feet by 19 feet.

Mr. Schlesinger stated that the improvements to the parking lot will make it more conforming than as it currently exists, and that the Church would seek the necessary relief to ensure conformance with the zoning ordinances.

Ms. Lipsitt asked what would happen to the parking spaces if the Church decided to leave the site.

Mr. Schlesinger stated that in such a situation the Church would have the right to relocate the parking access. He also stated that the easement would run with the land, and would bind any successor to the Applicant.

The Board expressed the need for additional time to review draft conditions prior to the continuation of the Public Hearing and the need for further clarification regarding the legal

Attest  
  
 City Clerk of Norton, Mass.

arrangement between the parties, and the layout and functioning of facilities on the Church site for the benefit of the Applicant/LLC. The Board requested from the Applicant a clarification of the Church's role and obligations, and the shared obligations between the two parties regarding the utilization of the Church site. A more detailed explanation of how the parking area will work, how it will be maintained, how the spaces will be striped, and the location of the parking spaces was requested. The Board requested a scalable engineered plan showing the before/existing condition of the Church's parking lot and after/proposed condition of the Church's parking lot including the designated the 11 parking spots. The Board requested a draft easement agreement and an easement plan showing the proposed easement and how it would work. Mr. McLaughlin suggested inclusion of the concept of self-help for individuals relative to maintenance, in order to allow residents of the units to undertake maintenance in the event the church was unwilling or unable to do so.

A motion was made by Harvey Creem to continue the public hearing, and duly seconded by William McLaughlin. The motion carried 5-0 in favor, none opposed. The Public Hearing was continued to December 4, 2014.

#### December 4, 2014 Continued Public Hearing

The following items were received by the Zoning Board of Appeals prior to the Continued Public Hearing:

Copy of Remarks of Reverend Howard Haywood;

Copy of the Power Point Presentation that was made by Myrtle Village at the November 25, 2014 Public Hearing;

Proposed site parking plan (overlay of existing conditions);

Proposed pedestrian and vehicular access easement;

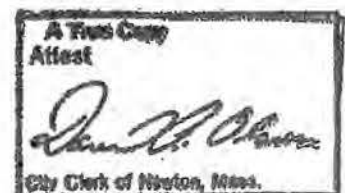
Memorandum of Understanding Between Myrtle Village LLC and the Myrtle Baptist Church as to easements and operation of the parking area;

Proposed conditions submitted by the Department of Planning and Development; and

Printouts just received related to this hearing which was not read by the members of the ZBA but were made part of the record.

Alan Schlesinger, representing Myrtle Village LLC, updated the Zoning Board of Appeals on the information the Board had requested at the November 25<sup>th</sup> public hearing including a proposed site parking plan for the Myrtle Baptist Church parking lot indicating the existing configuration, and where the 12 reserved parking spaces would be located and a version of that same plan overlaid with a proposed pedestrian and vehicular easement. He also described the details of a Memorandum of Understanding with regard to parking on the Church lot signed by officials of Myrtle Village LLC and the Church and outlining an arrangement that will be formalized when the project is completed. Mr. Schlesinger represented that the Church has sufficient parking to provide the designated parking spaces for the Myrtle Village housing and also to supply its own needs.

No one from the public requested the opportunity to speak about the project.





The Board discussed the various waivers with the Applicant. The Applicant agreed to remove the request for a waiver from Newton Zoning Ordinance, Section 30-5(b)(4) requiring a special permit for a retaining wall in excess of 4 feet in the setback after the Board noted that the retaining wall was not visible on the plans.

The Board asked for clarification as to why the MOU refers to 11 spaces, but the plans show 12 parking spaces. Mr. Schlesinger explained that the LLC is obligated to provide 11 parking spaces, but currently plans to provide 12. Mr. Schlesinger assured the Board that the Church would seek appropriate relief in the event it becomes necessary to do so relative to its own parking lot, in order to ensure compliance with zoning.

**REQUESTED WAIVERS**

**Zoning Ordinance**

The applicant requests waivers from the following local regulations which otherwise would be required under Newton Ordinances:

A. Use: The Applicant seeks a comprehensive permit in lieu of use variances, special permits and approvals to allow the Property to be used for the Project including without limitation:

1. Special Permit under the provisions of Newton Zoning Ordinance ("NZO") § 30-9(b)(5) to permit the Property to be used as seven attached dwellings and accessory parking.
2. Special Permit under the provisions of NZO § 30-9(b)(5)a) to permit parking within 20' of a boundary line.
3. Special Permit under the provisions of NZO § 30-9(b)(5)b) to permit exceptions to the dimensional controls in NZO §30-15.
4. Variance from requirements of Newton's Inclusionary Housing Ordinance, NZO §30-24 (f).

B. Density and Dimensional Controls: The Applicant seeks a comprehensive permit in lieu of such variances or special permits as may be required from or under NZO §30-15 for construction of the Project in the Multi-Residence 2 District including without limitation:

1. Variances from the dimensional requirements of § 30-15 Table 1 for attached dwellings as follows:

	Required	Existing	Proposed
Lot Area Per Unit	4,000 sq. ft.	5,445 sq. ft. (18-20) 4,880 sq. ft. (12)	2,293 sq. ft.
Front Setback	25 ft.	22.53 ft. (18-20) 14.44 ft. (12)	14.44 ft. (12)

*[Handwritten Signature]*  
 City Clerk of Newton, Mass.



Side Setback	25 ft. (for attached dwellings)	8ft. (18-20) 6.26 ft. (12)	6.26 ft.
Rear Setback	25 ft. (for attached dwellings)	+Approx. 44 ft. (18-20) +Approx. 28ft. (12)	14 ft.

+ scaled from plans, not specially noted

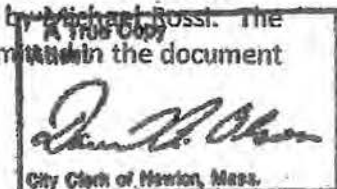
- C. Parking Requirements: The Applicant seeks a comprehensive permit in lieu of a special permit pursuant to §30-19 (m) in order to permit a parking facility in accordance with the submitted plans and to deviate from *inter alia* the following requirements under §30-19:
1. §30-19 (c)(4) prevents assignment of parking spaces to unit owners.
  2. Special permit to allow provision of off-street parking on a lot other than the petitioned premises.
  3. Application for parking and loading facility permit under §30-19(e).
  4. Under §30-19(h) 1 to permit outdoor parking spaces to be located within the front and side setback less than 5 feet from a building or structure containing dwelling units.
  5. Waiver of interior landscaping provisions in the parking facility.
- D. Site Plan Approval: The Applicant requests a comprehensive permit in lieu of site plan approval required under §30-23 in connection with special permits granted under §30-24.

#### Non-zoning ordinances

- E. Demolition Delay: Revised Ordinances §22-44 provides for a review by the Newton Historic Commission and the possible imposition of a demolition delay for demolition of historically significant buildings.
- F. Utility Connection Permits: The applicant seeks a comprehensive permit in lieu of such local approvals as are required to (i) open streets, (ii) make utility connections for water, sewer, gas, electric, cable or other utilities from time to time.

#### FINDINGS AND DETERMINATION:

After a discussion of the merits and facts of the application, and based on the representations made by the Applicant during the public hearing, a motion to grant the Comprehensive Permit subject to the conditions as discussed was made by Harvey Creem and duly seconded by Michael Rossi. The Zoning Board of Appeals voted 5-0 to grant the Comprehensive Permit as submitted in the document



entitled "Myrtle Village, 12 and 18-20 Curve Street, West Newton," dated October 24, 2014, subject to the following conditions:

**CONDITIONS:**

- 1) All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Comprehensive Permit shall be located and constructed consistent with the plan set:

Neighborhood Site Plan, dated October 24, 2014

Proposed Curve Street Affordable Housing Development, dated October 24, 2014

Proposed Site Plan for Myrtle Baptist Church, dated July 24, 1986

Site Parking Plan (Proposed), dated October 7, 2014

Plan of Land in Newton, Middlesex Co., MA, (no block), dated January 5, 2012

Density & Dimensional Site Plan, dated October 24, 2014

Proposed First Floor Plans, Dated, October 24, 2014

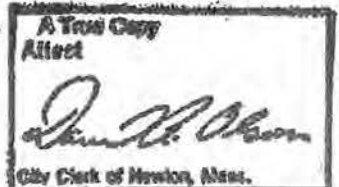
Proposed Second Floor Plans, Dated, October 24, 2014

Proposed Curve Street Elevation "C, B & A", dated October 24, 2014

Proposed Curve Street Elevation "D & E", dated October 24, 2014

and any additional plans to be approved per Condition 8).

- 2) Except as expressly waived in this comprehensive permit decision, the Project shall comply with all Newton ordinances and other local rules and regulations, including the payment of all applicable permit fees.
- 3) 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 for review to ensure consistency and compliance with this comprehensive permit decision.
- 4) Two units shall be affordable to households earning up to 50% of area median income. Two additional units shall be affordable to households earning up to 80% of area median income. The three remaining units shall be affordable to households earning up to 85% of area median income. All affordable units shall be deed restricted as affordable in perpetuity.
- 5) The marketing and resident selection process for the affordable units shall be consistent with the "Guidelines for Uniform Local Resident Preferences in Affordable Housing", prepared by the City's Fair Housing Task Committee (Revised March, 2012), including a local preference for 70 percent of the affordable units. That process is consistent with the provisions of Newton Zoning Section 30-24(f), and is intended as a standard provision for all Newton housing programs.
- 6) Before any clearing, grading, demolition or construction may begin on site, the applicant shall submit a municipal lien certificate that shows all taxes, assessments and betterments have been paid in full and there are no outstanding liens on the property.



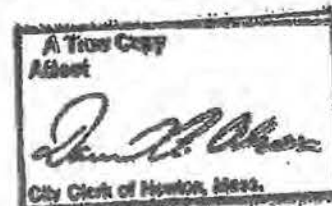
Condition(s) precedent to the issuance of a demolition permit:

- 7) All construction and demolition activity shall be limited to 7AM-6PM Monday through Friday excluding holidays, unless extended with the approval of the Commissioner of the Inspectional Services Department.

Condition(s) precedent to the issuance of a building permit:

- 8) 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 submitted copies of the recorded Decision with the City Clerk, the Clerk of the Zoning Board of Appeals, and the Department of Planning and Development;
  - b. submitted evidence of Final Approval by the subsidizing agency and executed a Regulatory Agreement in a form approved by the City's Law Department;
  - c. submitted final site and building plans, which shall include all required information on proposed sprinkler and alarm systems for building code review and approval;
  - d. submitted evidence of compliance with all conditions listed in the DHCD letter of Determination of Site Eligibility dated September 26, 2014;
  - e. submitted a valid and legally binding agreement between the Myrtle Baptist Church and Myrtle Village LLC, which the Planning Department and Law Department shall review and deem to be consistent with the Memorandum of Understanding submitted on December 1, 2014 regarding the location of a minimum of 11 reserved parking spaces in the Church parking lot at 21 Curve Street including a clear designation as to which entity will construct and maintain both the parking spaces and the lighting along the pathway from the parking lot to the street;
  - f. submitted the following to the Director of Planning and Development for review and approval:
    - i. a photometric plan with specifications of all exterior lighting fixtures both on the project site (12 and 18-20 Curve Street) and the Myrtle Baptist Church site at 21 Curve Street,
    - ii. an engineered plan and memo from the Engineering Division of Public Works approving this plan and its final engineering plans and details,
    - iii. a detailed construction management plan;
  - g. obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.

No building permit may be issued if the plans submitted for Building Code review differ in any material respect from the plans submitted to the Board and approved in Condition #1.



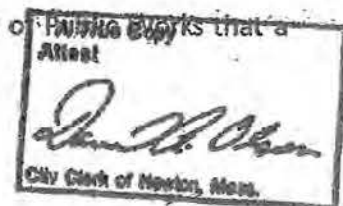
**Conditions related to construction:**

9) The Applicant agrees to provide, in a form approved by the City's Law Department an agreement in which the Applicant agrees on behalf of itself or any successor owner of the property at 18-20 Curve Street to indemnify and hold harmless the City of Newton for any injury to persons or property suffered by the City of Newton to the extent arising from any intentional acts or negligence of the Applicant or any successor owner of the property at 18-20 Curve Street.

**Conditions precedent to the issuance of any occupancy permits:**

10) No building or structure, or portion thereof subject to this Comprehensive Permit shall be occupied nor shall any Certificate of Occupancy be issued until:

- a. the applicant shall have filed with the ZBA Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by a registered architect and registered land surveyor certifying that the site and buildings have been constructed consistent with plans submitted to the Board and on file with the Clerk of the Zoning Board of Appeals;
- b. 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;
- c. there shall have been filed with the ZBA Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, and parking areas;
- d. there shall have been submitted the language for the proposed deed restrictions to the City's Law Department for review;
- e. the parking lot as described in Condition 8(e) and shown on SP-1 "Site Parking Plan (Proposed) (Overlay of Existing Conditions)" signed and stamped by Angelo A. Kyriakides, registered architect, dated 10/7/2014, revised 10/24/2014, has been constructed according to the site plan and any proposed landscaping and additional appropriate lighting as shown on the plan required in Condition 8(f)(i) has been installed;
- f. the Commissioner of Inspectional Services may issue one or more temporary certificates of occupancy of all or portions of the buildings prior to installation of final landscaping and final paving on the project site (12 and 18-20 Curve Street) 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 value of the remaining landscaping and paving to secure installation of such landscaping and finished course of paving;
- g. the Applicant has made a request to the City's Commissioner of





crosswalk be built, at the expense of the Applicant, across Curve Street between the housing site and pedestrian access to the Church parking lot.

**Ongoing Conditions:**

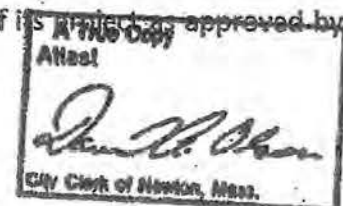
- 11) The landscaping shown on the approved plan shall be maintained in good condition. The plantings shall be inspected annually, and any plant material that has become diseased or dies shall be replaced in a timely manner with similar material.
- 12) No exterior lighting shall trespass onto abutting properties, and all exterior lighting fixtures shall be shielded or diffused as necessary.
- 13) In accordance with 760 CMR 56.04(8), copies of cost certifications shall be submitted to the City of Newton for review to determine whether any funds in excess of the profit limitations of the subsidizing agency are payable to the City.
- 14) Unless extended by the Newton Zoning Board of Appeals upon a finding of good cause, this comprehensive permit shall lapse and become void if construction pursuant to a building permit has not begun within three years of the date on which the comprehensive permit is filed with the City Clerk. The applicant shall use its best efforts to secure a building permit within one year and an occupancy permit within eighteen months of issuance of this comprehensive permit, so that all affordable units remain continuously eligible for inclusion on the Subsidized Housing Inventory.
- 15) This comprehensive permit, and all conditions herein, shall run with the land and be binding on any successors or assigns. 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, Myrtle Village LLC, the successor or subcontractor shall provide written notice to the Board in accordance with 760 CMR 56.05(12)(b) and be bound by all of the terms and conditions of this comprehensive permit.

**Conditions Precedent to a Temporary Certificate of Occupancy:**

- 16) A temporary certificate of occupancy can be issued if the 11 parking spaces on the Church site are usable and identified, but that the final Certificate of Occupancy will not be granted until the parking lot is complete.

**Other Conditions:**

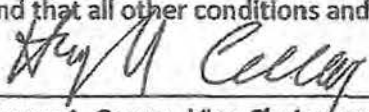
- 17) In accordance with 760 CMR 56.04(8), copies of cost certifications shall be submitted to the City of Newton for review to determine whether any funds in excess of the profit limitations of the subsidizing agency are payable to the City.
- 18) In accordance with 760 CMR 56.02 & 56.05(13), the subsidizing agency or its designated monitoring agent shall provide information on the status and enforcement of the use restriction deed riders for the seven affordable units in the Project.
- 19) In the event that the Applicant desires to change the details of its



the Comprehensive Permit, it shall promptly notify the Board in writing, describing such change; pursuant to the procedure outlined in 760 CMR 56.05 (11)(a).

A motion was made by William McLaughlin to close the public hearing, and duly seconded by Vincent Farina. The motion carried 5-0 in favor, none opposed.

In reaching this Decision, the Board has endeavored to insure that the conditions herein do not render the project uneconomic and that the conditions are consistent with local needs. If the applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

  
Harvey A. Creem, Vice-Chairman

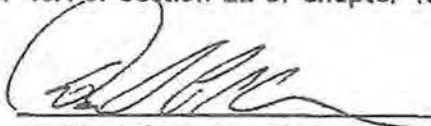
AYES: Brooke K. Lipsitt  
Harvey A. Creem  
Vincent Farina  
Barbara Huggins  
William M. McLaughlin

NAYS: None

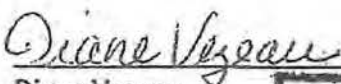
Copies of this decision and all plans referenced in this decision have been filed with the Planning and Development Department, the ZBA and the City Clerk.

The decision was filed with the City Clerk on January 12, 2015.

The City Clerk certified that all statutory requirements for the issuance of a COMPREHENSIVE PERMIT have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section 17, Chapter 40A or Section 21 of Chapter 40B has been filed.

  
David A. Olson, City Clerk

I, Diane Vezeau, am the Clerk of the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.

  
Diane Vezeau

