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ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

DECISION

**1149, 1151, 1157, 1169, 1171-1173, 1179 and 1185 Washington Street,
12, 18, 24 and 25 Kempton Place, and
32 and 34 Dunstan Street, Newton, Massachusetts
Amended and Restated Comprehensive Permit**

Decision Number:	#09-19; #09-19(2)
Applicant:	Dunstan East, LLC
Premises Affected:	1149, 1151, 1157, 1169, 1171-1173, 1179 and 1185 Washington Street, 12, 18, 24 and 25 Kempton Place, and 32 and 34 Dunstan Street in Newton, Massachusetts, Assessor's Map 31007 0028, 31007 0028A, 31007 0029, 31007 0030, 31007 0032, 31007 0033, 31007 0035, 31007 0036, 31007 0037, 31007 0038, 31007 0040, 31007 0040A, 31007 0040B, 31007 0040C, 31007 0040D, 31007 0040E, 31007 0040F, 31007 0040G, 31007 0041, 31007 0042
Relief Requested:	Comprehensive Permit, G.L. c. 40B, §§ 20-23 and Substantial Change to Comprehensive Permit
Date Original Application Filed:	December 24, 2019
Public Notice for Original Application:	January 8, 2020 and January 15, 2020
Public Hearing Dates for Original Application:	January 22, 2020; March 17, 2020; April 22, 2020; May 20, 2020; June 8, 2020; June 23, 2020; July 8, 2020
Decision of the Board on Original Comprehensive Permit:	Approved with Conditions

Members Voting on Original Comprehensive Permit:	Brooke K. Lipsitt, (Chair); William McLaughlin (Vice Chair); Barbara Huggins Carboni; Michael Rossi; Michael Quinn
Date of Decision of Original Comprehensive Permit:	July 8, 2020
Date Application for Substantial Change Filed:	April 8, 2021
Public Notice for Substantial Change Application:	April 14, 2021 and April 21, 2021
Public Hearing Dates on Substantial Change Application:	April 28, 2021; June 10, 2021; June 28, 2021; August 9, 2021; September 9, 2021
Decision of the Board on Amended and Restated Comprehensive Permit:	Approved with Conditions
Members Voting on Amended and Restated Comprehensive Permit:	Brooke K. Lipsitt, (Chair); William McLaughlin (Vice Chair); Michael Rossi; Stuart Snyder; Treff LaFleche
Date of Decision of Amended and Restated Comprehensive Permit:	September 9, 2021

PROCEDURAL HISTORY

1. On October 28, 2019, Massachusetts Housing Finance Agency (“MassHousing”) issued a Project Eligibility Letter (“PEL”) to Dunstan East, LLC (the “Applicant”).
2. On December 24, 2019, the Applicant Applied for a Comprehensive Permit pursuant to G.L. c. 40B, §§ 20-23 (the “Act”) to construct a mixed use development known as “Dunstan East” (the “Original Application”) containing three new buildings with 244 residential rental units and 12,141 square feet of retail/commercial space, and to maintain an approximately 8,222 square foot existing office building (the “Original Project”) on approximately 3.17 acres of land located at 1149, 1151, 1169, 1171-1173, 1179 and 1185 Washington Street, 12, 18, 24, and 25 Kempton Place, and 32 and 34 Dunstan Street in Newton, Massachusetts (the “Original Site”).
3. During the course of the public hearing on the Original Application, based upon feedback from the Board, advisory groups, and residents, the Original Project underwent several revisions, ultimately resulting in a smaller project with 234 residential rental units, including 59 affordable housing units, and 8,318 square feet of retail/commercial space

(the “July 2020 Revised Project”). The final revision included a reduction in a portion of the Original Project’s height and a reallocation of the residential rental units, ground floor commercial space and lobby space.

4. The materials submitted by the Applicant and/or entered into the record during the public hearing on the Original Application include:

- Application for Comprehensive Permit dated December 19, 2019 and submitted December 24, 2019, including the following plans:
 - i. Site Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. (C-2.0)
 - ii. Grading and Drainage Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. (C-3.0)
 - iii. Utility Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. (C-4.0)
 - iv. Site Details Plans 1 – 3 dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. (C-5.1 – C 5-5.3)
 - v. Site Materials Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Halvorson Design (L 1.1.)
 - vi. Existing Site Layout Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-001)
 - vii. Building 1 and 2 Level P2 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-120)
 - viii. Buildings 1, 2, and 3 Level P1 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-121)
 - ix. Buildings 1, 2, and 3 Level 1 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-122)
 - x. Buildings 1, 2, and 3 Level 2 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-123)
 - xi. Buildings 1, 2 and 3 Level 3 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-124)
 - xii. Buildings 1, 2, and 3 Level 4 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-125)
 - xiii. Buildings 1, 2, and 3 Level 5 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-126)
 - xiv. Buildings 1, 2, and 3 Level 6 Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-127)
 - xv. Roof Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-128)
 - xvi. Buildings 1 and 2 Elevations dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-203)
 - xvii. Buildings 1 and 2 Elevations dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-204)

- xviii. Building 3 Elevations dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-205)
- xix. Building Sections Plan dated November 25, 2019 by Vanasse Hangen Brustlin, Inc. and Elkus Manfredi Architects (A-203)
- xx. Boundary and Topographic Survey dated May 28, 2019, prepared by Gerry L. Holdright, PLS, of Control Point Associates, Inc. (Sheets 1-5)
- Planning Department Public Hearing Memorandum dated January 16, 2020;
- Letter from the Urban Design Commission dated January 16, 2020;
- Horsley Witten Group Peer Review dated March 10, 2020;
- Planning Department Public Hearing Memorandum dated March 12, 2020;
- Planning Department Public Hearing Memorandum dated April 16, 2020;
- Transportation Engineering Peer Review, conducted by BETA Group, Inc. dated April 2020;
- Planning Department Public Hearing Memorandum dated May 14, 2020;
- Newton Fair Housing Committee letter to Brooke K. Lipsitt, Zoning Board of Appeals Chair re: Dunstan East Comprehensive Permit;
- BETA Group, Inc. Memorandum entitled “The Dunstan Residence West Newton Redevelopment Transportation Engineering Peer Review- Transportation Engineering Peer Review of Response to Comments,” dated May 2020;
- Correspondence from Schlesinger and Buchbinder LLP dated March 12, 2020 with the following enclosed documents:
 - i. Shadow study dated February 28, 2020 by Elkus Manfredi Architects consisting of nine (9) sheets;
 - ii. Photometric Plan dated March 3, 2020 by ReflexLighting;
 - iii. Plan entitled “Fire Department Access Plan” dated February 11, 2020 by VHB stamped and signed by Deputy Chief Israel Jimenez on March 4, 2020 indicating site review and acceptance;
 - iv. Memorandum from Leslie Kivitz, Esquire, General Counsel for Mark Development, LLC outlining site control for 12 Kempton Place;
 - v. Site Sections dated February 28, 2020 by Elkus Manfredi Architects consisting of seven (7) sheets;
 - vi. Floor Plans showing corridor lengths consisting of three (3) sheets;
 - vii. Vision Plan comparison.
- Correspondence from Schlesinger and Buchbinder LLP dated April 16, 2020 with the following enclosed documents:
 - i. Retail Loading Plan dated April 16, 2020 by Elkus Manfredi Architects;
 - ii. Residential Move-in and Move-Out Plan dated April 16, 2020 by Elkus Manfredi Architects.;
 - iii. Trash Management Plan dated April 16, 2020 by Elkus Manfredi Architects;
 - iv. Residential Pick-up/Drop-off Plan dated April 16, 2020 by Elkus Manfredi Architects;

- v. Garage Parking Plan and Matrix dated April 16, 2020 by Elkus Manfredi Architects;
 - vi. Courtyard Division of Space Diagram dated April 16, 2020 by Elkus Manfredi Architects;
 - vii. Bike Parking Matrix dated April 16, 2020 by Elkus Manfredi Architects;
 - viii. Transit Capacity Analysis with Appendix dated April, 2020 by Vanasse Hangen Brustlin, Inc.
- Correspondence from Schlesinger and Buchbinder LLP dated May 11, 2020 with the following enclosed documents:
 - i. Development Team's May 1, 2020 Response to Horsley-Witten Group's March 10, 2020 Peer Review Memorandum and supporting Exhibits;
 - ii. VHB's April 28, 2020 Response to BETA Group's April, 2020 Peer Review Memorandum;
 - iii. Revised Civil Engineering Plans dated April 28, 2020 by VHB consisting of fifteen sheets;
 - iv. Site Operations Memorandum;
 - v. Preliminary Signage/Wayfinding Plan dated April 30, 2020 by Elkus Manfredi Architects consisting of three sheets;
 - vi. Proposed Dunstan Street Improvements dated April 30, 2020 by Mark Development consisting of seven sheets;
 - vii. Revised Architectural Plans dated May 8, 2020 by Elkus Manfredi Architects consisting of fourteen sheets; and
 - viii. Memorandum from Mark Development dated May 8, 2020 explaining the various plan changes.
 - Letter from Green Newton to the Zoning Board of Appeals dated April 22, 2020;
 - Letter from Joel A. Bloom, 20 Turner Street dated March 17, 2020;
 - Letter from Newton Housing Partnership dated April 20, 2020;
 - Letter from the Fair Housing Committee dated April 27, 2020;
 - Memorandum from City Councilor Andreae Downs, Susan Albright, Jake Auchincloss, Alicia Bowman, Vicki Danberg, Alison Leary and Brenda Noel re: Parking dated April 24, 2020;
 - Letter from Bart Lloyd, 65 Taft Avenue, dated April 21, 2020;
 - Letter from Benita Danzing, 79 Brookside Avenue, dated May 10, 2020;
 - Letter from Claire Sokoloff, 41 Oxford Road, dated May 14, 2020;
 - Letter from Daniel Harris, 14 Phillips Lane, dated May 9, 2020;
 - Letter from Donnalyn Kahn, 66 Highland Avenue, dated May 13, 2020;
 - Letter from Ellen Lubell and David Nathan, 80 Temple Street, dated April 17, 2020;
 - Letter from Engine 6, dated May 13, 2020;
 - Letter from Fran Godine, 19 Crofton Road, dated April 22, 2020;
 - Letter from Gloria Gavris, 21 Monadnock Road, dated May 12, 2020;
 - Letter from Alex Olhava, 11 Scarsdale Road and Griffin Bond, 1592 Commonwealth Avenue, dated May 11, 2020;

- Letters from Howard Rosenof, 9 Vincent Street, dated April 8, 2020, April 17, 2020, April 28, 2020, and June 1, 2020;
- Letter from John Sisson, 45 Greenlawn Avenue, dated May 14, 2020;
- Letter from Lynn Weissberg, 5 Alden Street, dated April 21, 2020;
- Letter from Rob Gifford, 41 Oxford Road, dated May 14, 2020;
- Letter from Sue Parsons, 172 Washington Street, dated May 14, 2020;
- Letter from Susan Davidoff, 24 Bridge Street, dated May 14, 2020;
- Letter from Tim Murphy, 250 Waltham Street, dated May 13, 2020;
- Letter from Tom Gagen, 32 Fern Street, dated May 13, 2020;
- Correspondence from Schlesinger and Buchbinder LLP dated June 2, 2020 with the following enclosed documents:
 - i. Revised Architectural Plans dated June 1, 2020 by Elkus Manfredi Architects (consisting of fourteen sheets);
 - ii. Rendered elevations dated Jun 1, 2020 by Elkus Manfredi Architects summarizing plan changes and enhancements since previous filing (consisting of four sheets);
 - iii. Matrix outlining plan evolution since original filing and updated affordable unit mix;
 - iv. Summary of Proposed Mitigation from Mark Development; and
 - v. Memorandum from Sanborn Head dated March 31, 2020.
- Planning Department Public Hearing Memorandum dated June 4, 2020;
- Letter from Michael Halle, Chair of the Newton Transportation Advisory Group dated May 19, 2020;
- Letter from Julia Wolfe, 170 Cherry Street, dated May 19, 2020;
- Letter from Angela Eleazar, 160 Stanton Avenue, dated May 21, 2020;
- Letter from Ellen Weinberger, 160 Elliot Ave, dated June 1, 2020
- Letter from Allison Kelly and Andrew Reed, 11 Raymond Place, dated June 1, 2020;
- Letter from Ellen Weinberger, 126 Elliot Avenue dated June 1, 2020;
- Letter from Allison Kelley and Andrew Reed, 11 Raymond Place, dated June 1, 2020;
- Supplemental Material from the Applicant dated June 2, 2020
- Revised Architectural Plans dated June 1, 2020 by Elkus Manfredi Architects (consisting of fourteen sheets).
- Rendered elevations dated Jun 1, 2020 by Elkus Manfredi Architects summarizing plan changes and enhancements since previous filing (consisting of four sheets).
- Matrix outlining plan evolution since original filing and updated affordable unit mix.
- Summary of Proposed Mitigation from Mark Development.
- Memorandum prepared for Mark Development by Sanborn Head dated March 31, 2020.
- Supplemental Material from the Applicant dated June 17, 2020:
- Revised list of waivers from the Applicant

- Memorandum from Bozzuto Management Company to Mark Development dated June 15, 2020
- Letter from Arthur Glasgow, 9 Laurel Street, dated June 15, 2020;
- Letter from Beverly Craig, 9 Arlington Street #2, dated June 15, 2020;
- Letter from Chagit Steiner, 48 Woodward Street, dated June 16, 2020;
- Letter from Watertown Street and Dunstan Street neighbors Paula Farina Pollis, Nancy McKenna, Cheryl Forte, Gabriella Meyer, Phyllis Krag, Ken Weissberg, Frank and Susan Sullivan, Alex Davis, Fran Davis, Ruby Lee, Tim Marks and Ann Carey, dated June 15, 2020;
- Letter from Ellie Goldberg, 79 Elmore Street, dated June 15, 2020;
- Letter dated from GreenNewton dated June 16, 2020;
- Letter from Heather Amsden 8 Birch Hill Road, dated June 5, 2020;
- Letter from Jay Walter, 83 Pembroke Street, dated June 16, 2020;
- Letter from Jen Barrer-Gall, 95 Court Street #2, dated June 15, 2020;
- Letter from Jonathan Kantar, 672 Chestnut Street, dated June 15, 2020;
- Letter from Judith Boroschek, 32 Indian Ridge Road, dated June 15, 2020;
- Letter from Judy Norsigian, 43 Waban Hill Road North, dated June 15, 2020;
- Letter from Kathy Pillsbury, 34 Carver Road, dated June 17, 2020;
- Letter from the League of Women Voters Newton, dated June 11, 2020;
- Letter from Leslie Zebrowitz, 62 Pine Crest Road, dated June 17, 2020;
- Letter from Marian Glasgow, 9 Laurel Street, dated June 15, 2020;
- Letter from Naomi Myrvaagnes, 59 Morseland Avenue, dated June 5, 2020;
- Letter from Patricia N. Burdick, 180 Dudley Road, dated June 16, 2020;
- Letter from Peter Barrer, 60 Endicott Street, dated June 14, 2020
- Letter from Ron Blau, 11 Wood End Road, dated June 16, 2020;
- Letter from Sarah Grant, 77 Waban Hill Road North, dated June 17, 2020
- Planning Memorandum dated June 18, 2020
- Letter from Meryl Kessler, 147 Prince Street, dated June 19, 2020
- Letter from Doris Ann Sweet, 281 Lexington Street, dated June 19, 2020
- Letter from Arthur Glasgow, 9 Laurel Street, dated June 29, 2020
- Letter from Barbara Allaire, 26 Lowell Avenue, dated June 29, 2020
- Letter from Betsy Harper, 19 Fairmont Avenue, dated July 1, 2020
- Letter from Bill Dain, 199 Harvard Circle, dated June 23, 2020
- Letter Chagit Steiner, 48 Woodward Street, dated June 29, 2020 from
- Letter from David Backer, 47 Page Road, dated July 1, 2020
- Letter from Green Newton, dated June 28, 2020
- Letter from Hanni Myers, 21 Manet Circle, dated June 30, 3030
- Letter from Howard Rosenof, 9 Vincent Street, dated June 24, 2020
- Letter from Jane S. Getter, 128 Warren Street #1, dated June 29, 2020
- Letter from Jonathan Kantar, 672 Chestnut Street, dated July 1, 2020
- Letter from Josephine McNeil, 53B Taft Avenue, dated June 25, 2020
- Letter from Josh Nichols-Barrer, 60 Endicot Street, dated June 29, 2020
- Letter from Judith Boroschek, 32 Indian Ridge Road, dated July 1, 2020
- Letter from Judith Nichols, 60 Endicott Street, dated June 29, 2020
- Letter from Juliet Schor, 5 Stuart Road, dated June 29, 2020
- Letter from Kimberly Jackson, 103 Ripley Street, dated June 29, 2020

- Letter from Leslie Zebrowitz, 62 Pine Crest Road, dated June 29, 2020
 - Letter from Lexi Turner and Tom Bledsoe, 34 Ricker Road #2, dated June 29, 2020
 - Letter from Lisa Monahan, 1105 Walnut Street, dated June 22, 2020
 - Letter from Madelyn Morris, 31 Cottage Street, dated June 29, 2020
 - Letter from Marian Glasgow, 9 Laurel Street, dated June 29, 2020
 - Letter from Nick Lazaris, 1947 Beacon Street, dated June 23, 2020
 - Letter from Patricia N. Burdick, 108 Dudley Road, dated June 30, 2020
 - Letter from Paul Holt, 75 Andrew Street, dated June 29, 2020
 - Letter from Peter Bruce, 11 Chaffin Place, dated June 23, 2020
 - Letter from Peter H. Smith, 130 Washington Street, dated June 22, 2020
 - Letter from Peter H. Smith, 130 Washington Street, dated June 29, 2020
 - Letter from Peter J. Barrer, 60 Endicott Street, dated July 1, 2020
 - Letter from Rachel Alder-Golden, 20 Clarendon Street, dated June 30, 2020
 - Letter from Randall Block, 45 Lafayette Road, dated June 23, 2020
 - Letter from Right Size Newton, dated June 24, 2020
 - Letter from Ron Blau, 111 Wood End Road, dated June 29, 2020
 - Letter from Ruby Lee and Tim Marks, 904 Watertown Street, dated July 1, 2020
 - Letter from Tarik Lucas, 36 Central Avenue, dated July 2, 2020
 - Letter from Vivi Leavy, 4 Eden Avenue, dated June 22, 2020
 - Letter from Paula Farina Pollis, 79 Fessenden Street, dated July 7, 2020
 - Letter from Peter Barrer, 60 Endicott Street, dated July 6, 2020
 - Letter from Susan Tornheim, 120 Hyde Street, dated July 3, 2020
 - Correspondence received from Schlesinger and Buchbinder, LLP dated July 2, 2020, which included the following documents:
 - i. Revised Waiver List dated July 2, 2020;
 - ii. Revised Civil Engineering and Landscape Plans dated July 1, 2020 by VHB consisting of eighteen sheets;
 - iii. Revised Photometric Plan by ReFlexLighting dated June 23, 2020;
 - iv. Sustainability Strategic Plan for Dunstan East by New Ecology dated June 26, 2020; and
 - v. Transportation Demand Management Memorandum dated July 2, 2020 by VHB.
5. The Zoning Board of Appeals for the City of Newton (the “Board”) opened a duly noticed public hearing on the Original Application on January 22, 2020. A second session of the public hearing was held on March 17, 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 on the Original Application were held on April 22, 2020, May 20, 2020, June 8, 2020, June 23, 2020, and July 8, 2020, all via Internet video conferencing pursuant to the aforementioned Executive Order and act.
6. The Board conducted a duly noticed site visit on February 24, 2020.

7. On July 8, 2020, the Board closed the public hearing on the Original Application.
8. The Board deliberated on the application at a public hearing held on July 8, 2020 and voted 4 to 1 to grant a Comprehensive Permit for the July 2020 Revised Project (the “Original Comprehensive Permit”). Board members Brooke K. Lipsitt, (Chair), William McLaughlin (Vice Chair), Michael Rossi, and Michael Quinn voted in favor of approving the Original Comprehensive Permit and Board member Barbara Huggins Carboni voted against granting the Original Comprehensive Permit.
9. On February 4, 2021 the Applicant filed an application for insubstantial changes (the “February 2021 Insubstantial Change Application”) which made certain changes to Buildings 1 and 2 of the July 2020 Revised Project, including increasing the number of residential units within Buildings 1 and 2 by 4 units (for a total of 238 residential units in the project) and reducing the retail/commercial square footage in Buildings 1 and 2 from 8,318 sf to 5,821 sf. The February 2021 Insubstantial Change Application included the following:
 - Correspondence received from Schlesinger and Buchbinder, LLP dated February 4, 2021, which included the following documents:
 - i. Site Plan, Sheet C-3.0 dated 4/28/20, most recently revised 2/1/21;
 - ii. Existing Site Layout Plan, Sheet A001 dated 11/25/19, most recently revised 2/1/21;
 - iii. Buildings 1, 2, and 3 Level P2, Sheet A120, dated 11/25/19, most recently revised 2/1/21;
 - iv. Buildings 1, 2, and 3 Level P1, Sheet A121, dated 11/25/19, most recently revised 2/1/21;
 - v. Buildings 1, 2, and 3 Level 1, Sheet A122, dated 11/25/19, most recently revised 2/1/21;
 - vi. Buildings 1, 2, and 3 Level 2, Sheet A123, dated 11/25/19, most recently revised 2/1/21;
 - vii. Buildings 1, 2, and 3 Level 3, Sheet A124, dated 11/25/19, most recently revised 2/1/21;
 - viii. Buildings 1, 2, and 3 Level 4, Sheet A125, dated 11/25/19, most recently revised 2/1/21;
 - ix. Buildings 1, 2, and 3 Level 5, Sheet A126, dated 11/25/19, most recently revised 2/1/21;
 - x. Buildings 1, 2, and 3 Level 6, Sheet A127, dated 11/25/19, most recently revised 2/1/21;
 - xi. Buildings 1, 2, and 3 Roof Plan, Sheet A128, dated 11/25/19, most recently revised 2/1/21;
 - xii. Overall Project Comparison dated January 29, 2021; and
 - xiii. Dunstan East Commercial Use Parking Calculation dated February 2, 2021.

10. On February 24, 2021, the Board voted to approve the February 2021 Insubstantial Change Application.
11. On April 8, 2021, the Applicant filed an application for Approval of Substantial Changes to the Original Comprehensive Permit (the “Substantial Change Application”). The substantial changes included the following changes to the footprint and design of Building 3: (a) expanding the footprint of Building 3 onto the 1157 and 1149-1151 Washington Street properties, resulting in an increased square footage of approximately 71,485 sf, (b) modifying the Original Site to include the property at 1157 Washington Street (Tax Parcel 31007 0029) (as modified, the “Site”), increasing the acreage of the Site to approximately 3.58 acres; and (c) increasing the number of residential units within Building 3 by 64 units (for a total of 132 residential units in Building 3 and 302 residential units in the entire project) (as modified, the “April 2021 Project”). The Substantial Change Application did not propose any changes to Buildings 1 and 2.
12. Prior to submitting the Substantial Change Application, the Applicant filed a notice of project change with MassHousing pursuant to 760 CMR 56.04(5) to document changes to the project since the issuance of the PEL. Pursuant to a response from MassHousing dated April 1, 2021, MassHousing confirmed that a new PEL was not required for the changes to the project.
13. During the course of the public hearing on the Substantial Change Application, based upon feedback from the Board and the Urban Design Commission, the April 2021 Project underwent several revisions, including the addition of approximately 1,950 sf of retail/commercial in Building 3, for a total of 7,771 sf of retail/commercial space in the entire project, the relocation of the lobby for Building 3 to the intersection of Washington Street and Kempton Place, and the realignment of the sixth story of Building 3 to provide a stepdown in height as Building 3 approaches the adjacent Armory property (as revised, the “Project”).
14. The materials submitted by the Applicant and/or entered into the record during the public hearing on the Substantial Change Application include:
 - Application for Approval of Substantial Changes to the Original Comprehensive Permit dated April 8, 2021, including the following:
 - i. Comprehensive Permit #09-19
 - ii. Architectural Plans prepared by Elkus Manfredi dated April 8, 2021, consisting of twelve (12) sheets as follows:
 - Existing Site Layout Plan (A001)
 - Building 1, 2, and 3 Level P2 Plan (A120)
 - Building 1, 2, and 3 Level P1 Plan (A121)
 - Building 1, 2, and 3 Level 1 Plan (A122)
 - Building 1, 2, and 3 Level 2 Plan (A123)
 - Building 1, 2, and 3 Level 3 Plan (A124)

- Building 1, 2, and 3 Level 4 Plan (A125)
- Building 1, 2, and 3 Level 5 Plan (A126)
- Building 1, 2, and 3 Level 6 Plan (A127)
- Building 1, 2, and 3 Roof Plan (A128)
- Building Elevations Building 3 (A303)
- Building Sections – Building 3 (A322)
- iii. Civil Engineering Plans prepared by VHB dated April 8, 2021, consisting of nine (9) sheets as follows:
 - Legend and General Notes (C-1.0)
 - Site Prep and Erosion & Sediment Control Plan (C-2.0)
 - Site Plan (C-3.0)
 - Grading and Drainage Plan (C-4.0)
 - Utility Plan (C-5.0)
 - Site Details (C-6.1)
 - Site Details (C-6.2)
 - Site Details (C-6.3)
 - Site Details (C-6.4)
- iv. Landscape Plans prepared by Halvorson Studio dated April 8, 2021 consisting of three (3) sheets as follows:
 - Site Materials (L1.1)
 - Site Planting (L1.2)
 - Site Details (L1.3)
- vi. Boundary and Topographic Survey Plans prepared by Control Point Associates dated June 21, 2017 consisting of four (4) sheets as follows:
 - Sheet 1 of 4
 - Sheet 2 of 4
 - Sheet 3 of 4
 - Sheet 4 of 4
- vii. Rendered Site Plan by Halvorson Studio, undated;
- viii. Photometric Plan by Reflex Lighting dated April 1, 2021;
- ix. Traffic Impact and Access Study prepared by VHB dated April 2021;
- x. Sustainability Report prepared by New Ecology dated April 7, 2021;
- xi. Wavier List;
- xii. Commercial Parking Calculation; and
- xiii. Affordable Housing Matrix.
- Planning Department Hearing Memorandum dated April 21, 2021.
- Memorandum from the Urban Design Commission dated April 21, 2021.
- Correspondence from members of the City of Newton’s Sustainability Team received April 21, 2021.
- Correspondence from Schlesinger and Buchbinder, LLP dated May 19, 2021, with the following enclosed document:
 - i. Stormwater Report prepared by VHB dated May 17, 2021.
- Correspondence from Schlesinger and Buchbinder, LLP dated May 27, 2021, with the following enclosed documents:

- i. Memorandum from Mark Development dated May 27, 2021, prepared in response to questions and comments raised at the April 28, 2021 meeting of the Zoning Board of Appeals;
 - ii. Revised Architectural Plans prepared by Elkus Manfredi Architects dated May 26, 2021, consisting of twelve (12) sheets;
 - iii. Figure Ground Plan prepared by Elkus Manfredi Architects dated May 26, 2021;
 - iv. Plans entitled Dunstan East Rendered Elevations prepared by Elkus Manfredi Architects dated May 26, 2021, consisting of twelve (12) sheets;
 - v. Updated Shadow Studies prepared by Elkus Manfredi Architects dated May 26, 2021, consisting of forty-eight (48) sheets; and
 - vi. Dunstan East Street Sections prepared by Elkus Manfredi Architects dated May 26, 2021, consisting of three (3) sheets.
- Memorandum from John Daghlian, Associate City Engineer, dated May 27, 2021.
 - Correspondence from Nancy O'Driscoll of 24 Lindbergh Ave. dated May 28, 2021.
 - Memorandum from the Horsley Witten Group dated May 28, 2021.
 - Correspondence from Lizbeth Heyer of the Newton Housing Partnership dated May 29, 2021.
 - Correspondence from Schlesinger and Buchbinder, LLP dated June 2, 2021, with the following enclosed plan:
 - i. Site Plan (C-3.0) prepared by VHB dated April 8, 2021, stamped as reviewed and approved by the Newton Fire Department.
 - Memorandum from the Planning and Development Department dated June 3, 2021.
 - Correspondence from Paula Rohrlick of 73 Davis Avenue dated June 3, 2021.
 - Memorandum from VHB dated June 3, 2021.
 - Correspondence from Schlesinger and Buchbinder, LLP dated June 8, 2021, with the following enclosed document:
 - i. Memorandum from Randall C. Hart and Noah Yoskowitz of VHB Re: Program Modification Traffic Generation dated June 3, 2021.
 - Memorandum from the BETA Group dated June 18, 2021.
 - Correspondence from U-Chan dated July 18, 2021.
 - Memorandum from the Planning and Development Department dated June 21, 2021.
 - Correspondence from Schlesinger and Buchbinder, LLP dated June 22, 2021, with the following attached document:
 - i. Memorandum from Mark Development Re: Responses to Provide to ZBA Members, City Councilors, Planning Department, Horsley Witten and Engineering Department dated June 22, 2021, with Exhibits.
 - Memorandum from the Urban Design Commission dated June 23, 2021.
 - Correspondence from Schlesinger and Buchbinder, LLP dated July 16, 2021, with the following enclosed documents:
 - i. Memorandum from Randall C. Hart of VHB Re: TDM Summary dated July 16, 2021.
 - ii. Memorandum from Randall C. Hart and Noah Yoskowitz of VHB Re: Response to Comments Transportation Engineering Peer Review, BETA Group (June 2021) dated July 15, 2021.

- Correspondence from Schlesinger and Buchbinder, LLP dated July 21, 2021, with the following enclosed documents:
 - i Section Diagrams prepared by Elkus Manfredi dated June 10, 2021, consisting of two (2) sheets.
 - ii Plans Entitled Dunstan East Floodplain prepared by Elkus Manfredi dated June 21, 2021, consisting of two (2) sheets.
 - iii Renderings prepared by Elkus Manfredi dated July 8, 2021, consisting of two (2) sheets.
 - iv Plan entitled Building 1, 2, and 3 Level P1 Plan (A121) prepared by Elkus Manfredi revised May 26, 2021.
 - v Plan entitled Building Elevations Building 3 (A303) prepared by Elkus Manfredi revised July 19, 2021.
 - vi Rendering entitled East Elevation - Building 3 prepared by Elkus Manfredi dated July 8, 2021.
 - vii Revised Civil Engineering Plans prepared by VHB dated July 20, 2021, consisting of nine (9) sheets as follows:
 - Legend and General Notes (C-1.0)
 - Site Prep and Erosion & Sediment Control Plan (C-2.0)
 - Site Plan (C-3.0)
 - Grading and Drainage Plan (C-4.0)
 - Utility Plan (C-5.0)
 - Site Details (C-6.1)
 - Site Details (C-6.2)
 - Site Details (C-6.3)
 - Site Details (C-6.4)
 - viii Revised Stormwater Report prepared by VHB revised as of July 19, 2021.
 - ix Plan entitled Proposed Drainage Conditions Figure 4 prepared by VHB revised as of July 2021.
 - x Plan entitled Existing/Proposed Floodplain Limit Plan Figure 5 prepared by VHB revised as of July 2021.
 - xi Flood Markup and Street Furnishings Plan prepared by VHB dated April 8, 2021.
 - xii Revised Commercial Use Parking Calculation prepared by Schlesinger and Buchbinder revised July 21, 2021.
 - xiii Chart entitled Table 4 Incremental Flood Storage Comparison prepared by VHB.
- Correspondence from Schlesinger and Buchbinder, LLP dated August 2, 2021, with the following enclosed documents:
 - i Renderings entitled East Elevation – Building 3 prepared by Elkus Manfredi consisting of two (2) sheets revised as of July 29, 2021.
 - ii Renderings entitled Building 3 Armory View prepared by Elkus Manfredi dated July 21, 2021, consisting of two sheets.
- Memorandum from the Planning and Development Department dated August 2, 2021.
- Correspondence from Mark Development dated August 17, 2021, with the following enclosed document:

- i Memorandum from Randall C. Hart and Noah Yoskowitz of VHB Re: Response to Comments Transportation Engineering Peer Review, BETA Group (August 2021) dated August 17, 2021.
 - Correspondence from Schlesinger and Buchbinder, LLP dated August 31, 2021, with the following enclosed documents:
 - i Memorandum from the City Engineer dated July 28, 2021;
 - ii Memorandum from Mark Development Re: Responses to Planning Department Question/Peer Review consisting of six sheets, dated August 30, 2021; and
 - iii Memorandum from Mark Development Re: Responses to Horsley Witten Peer Review Comments consisting of three sheets, dated August 30, 2021.
 - Correspondence from Schlesinger and Buchbinder, LLP dated September 2, 2021, with the following enclosed document:
 - i Revised Civil Engineering Plans prepared by VHB dated September 3, 2021, consisting of nine (9) sheets as follows:
 - Legend and General Notes (C-1.0)
 - Site Prep and Erosion & Sediment Control Plan (C-2.0)
 - Site Plan (C-3.0)
 - Grading and Drainage Plan (C-4.0)
 - Utility Plan (C-5.0)
 - Site Details (C-6.1)
 - Site Details (C-6.2)
 - Site Details (C-6.3)
 - Site Details (C-6.4)
15. The Board opened a duly noticed public hearing on the Substantial Change Application via Internet video conferencing on April 28, 2021. Additional sessions of the public hearing on the Substantial Change Application were held on June 10, 2021, June 28, 2021, August 9, 2021, and September 9, 2021. All public hearings were held 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), 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), and Chapter 20 of the Acts of 2021, an *Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency* (June 16, 2021).
16. On September 9, 2021, the Board closed the public hearing on the Substantial Change Application.
17. The Board deliberated on the Substantial Change Application at a public hearing held on September 9, 2021 and voted to grant the requested substantial changes to Building 3 subject to the Conditions listed below in the form of an amended and restated comprehensive permit (the “Amended and Restated Comprehensive Permit”).

18. As required by the Act, the Board notified all applicable local boards, commissions, and departments of the filing of the Original Application, the February 2021 Insubstantial Change Application, and the Substantial Change 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.
19. During the course of the public hearing on the Original Application, the February 2021 Insubstantial Change Application, and the Substantial Change Application, 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; landscaping; lighting; sewer and drainage; massing; scale; pedestrian scale; height; streetscapes/public realms; architecture; 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; construction management and planning; protection of abutters' properties during construction; emergency access during construction; sustainability; parking adequacy, design, management, and ratios; shadow impacts; traffic impact and access studies; traffic and pedestrian safety; traffic demand management; rubbish and recycling management; site circulation, access/egress; adequacy of transit service; signage; accessibility; water table, flooding, flood plain, and compensatory flood storage; stormwater management; integration and coordination of functions occurring in the ground plane including but not limited to truck deliveries, trash/recycling pickup, and loading zones; rideshare drop-off and pick-up; snow removal; engineering; infiltration and inflow; design; environmental concerns; greenspace and recreation areas; site control, and the City's Vision Plan for the Washington Street corridor.
20. The following consultants and independent peer reviewers assisted the Board in its review of the Original Application, the February 2021 Insubstantial Change Application, and the Substantial Change Application:
 - a. Transportation
Jeff Maxtutis and Jaklyn Centraccio
BETA Group, Inc.
 - b. Site Design, Open Space, Civil Engineering, Stormwater, Flooding
Janet Bernardo and Jon Ford
Horsley Witten Group
21. The following representatives and members of the Applicant's development team presented oral and written testimony to the Board:
 - a. Stephen Buchbinder, Esq., Katherine Adams, Esq. and Julie Ross, Esq., Schlesinger and Buchbinder, LLP
 - b. Robert Korff, Founding Principal and CEO, Mark Development, LLC

- c. Damien Chaviano, Principal, Mark Development, LLC
- d. David Roache, Vice President of Development, Mark Development, LLC
- e. John Martin, AIA, LEED-AP, Principal, Elkus Manfredi Architects
- f. Randall C. Hart, Director, Transportation, Planning & Energy, Vanasse Hangen Brustlin, Inc.
- g. Rich Hollworth, Director of Land Development, Vanasse Hansen Brustlin, Inc.
- h. Jeff Speck, AICP, CNU-A, LEED-AP, Hon. ASLA, Speck and Associates
- i. Robert Adams, Principal Landscape Architect, Halvorson
- j. Thomas Chase, New Ecology, Senior Project Manager, LEED BD+C + Homes, CPHC

FINDINGS

1. The Applicant received the PEL 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 up to 80% of 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 Original Application, the February 2021 Insubstantial Change Application, and the Substantial Change Application for a comprehensive permit.
3. The Site is located at 1149, 1151, 1157, 1169, 1171-1173, 1179 and 1185 Washington Street, 12, 18, 24, and 25 Kempton Place, and 32 and 34 Dunstan Street in Newton, Massachusetts, in the Business 2 Zoning District.
4. Existing conditions at the Site consist of approximately 156,218 square feet (3.58 acres) of land improved with multiple commercial/industrial and residential buildings. A majority of the Site is impervious area. The Site and surrounding neighborhood are comprised of a mix of uses, including single- and multi-story commercial and industrial uses along Washington Street, and residential uses to the north of the Site along Watertown Street. The residential uses on the east side Dunstan Street and the south side of Watertown Street are buffered by Cheesecake Brook, which abuts the Site to the north.
5. The Site is located in a walkable area directly served by MBTA bus routes 553 and 554 providing express connections to Boston, and the Site is less than one mile from MBTA bus route 170 and MBTA commuter rail stations in West Newton and Newtonville.
6. The Project is consistent with several goals of Newton’s *Comprehensive Plan* by locating additional housing units near public transit.

7. The Project is consistent with the principles of the Washington Street Vision Plan by:
 - a. Using building height to foster a moment of arrival along Washington Street;
 - b. Transitioning height from Washington Street to the residential structures north of the Site with a rear setback in excess of that required in the Business 2 Zoning District; and,
 - c. Employing a variety of building sizes and shapes to create a public courtyard and to create the appearance of smaller blocks.
8. The Site is an appropriate location for the Project due to its location within the Business 2 District, proximity to the village of West Newton, and the creation of additional housing near transit and existing neighborhood amenities.
9. The Project provides outdoor community space, which will be open to the public and increases public access to Cheesecake Brook.
10. The sustainability plan meets many of the City's goals outlined in the Climate Action Plan including:
 - a. Improving Cheesecake Brook to increase compensatory flood storage and reduce downstream flooding;
 - b. Reducing the heat island effect by redeveloping a substantially impervious site to include open space and plantings;
 - c. Constructing the buildings to achieve LEED Gold version 4 certifiability and conducting an embodied carbon analysis during final design.
11. Twenty five percent (25%) of the units in the Project, which is 76 units, will be deed-restricted housing units, 66 of which will be affordable to households earning up to 80% of Area Median Income, and 10 of which will be affordable to households earning up to 50% of Area Median Income. The Board finds the latter ten units exceed the requirements of G.L. c. 40B. As conditioned by this decision, the proposed development is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, and will provide housing for individuals with an AMI of 80% or less.
12. The Board finds that a development at this location is appropriate because it increases density without having an adverse impact on the neighborhood, the Project is structurally sound, has adequate sewage and water drainage arrangements, and adequate fire protection. The Project has adequate arrangements for dealing with traffic circulation within the site and off, the Site is not proximate to airports, industrial activities, or other activities which may affect the health and safety of the occupants of the proposed housing, and the Project has adequate parking arrangements.
13. In accordance with Chapter 29, §§ 167-174 of the Revised Ordinances of Newton, Massachusetts, 2017 (hereinafter, "Revised Ordinances"), 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 infiltration/inflow calculation for the Project. Therefore, the infiltration/inflow fee shall be \$597,078.00.

14. 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.
15. 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 any condition 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.
16. 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.

DECISION

Pursuant to the Act, after convening a public hearing and making findings of fact, the Board grants this Amended and Restated 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. This Amended and Restated Comprehensive Permit amends, restates, and supersedes the Original Comprehensive Permit granted by the Board on July 21, 2020, as modified by insubstantial changes approved by the Board on February 24, 2021, and recorded with the Middlesex South Registry of Deeds in Book 78614, Page 543. The Board acknowledges that in issuing this Amended and Restated Comprehensive Permit, the Board is approving changes to Building 3. As the Substantial Change Application did not seek to modify or alter any provisions relating to Buildings 1 and 2, to the extent that the Amended and Restated Comprehensive Permit is challenged, the Applicant may proceed with construction of Buildings 1 and 2 as originally approved.

CONDITIONS

GENERAL CONDITIONS

1. All buildings, parking areas, driveways walkways, landscaping and other site features associated with this Amended and Restated 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, and 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. The final plans referenced in Condition #2 shall include 10 full balconies located on the western façade of Building 3.
4. 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.
5. The City will not issue a building permit for the Project without final approval from the Subsidizing Agency.
6. 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.
7. 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.
8. Unless extended by the Newton Zoning Board of Appeals upon a finding of good cause, this Amended and Restated 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, not including the time required to pursue or await the determination of an appeal pursuant to G.L. c. 40B. 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.
9. The Applicant shall use its best efforts to secure a building permit within one year of the filing of this Amended and Restated Comprehensive Permit Decision with the City Clerk to ensure that the units remain eligible for inclusion on the City's Subsidized Housing Inventory.
10. This Amended and Restated 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 the comprehensive permit.

11. The Applicant shall pay the reasonable fees of the City's consultants for review of any design plans, building permit plans, or any other plans or documents required to be submitted to the City by any condition within this Amended and Restated Comprehensive Permit, or for any inspections by the City required herein during the construction phase.

HOUSING CONDITIONS

12. The Project shall include 302 units of rental housing, as listed in the following table:

Unit Type	Number of Units	Number of Affordable Units
Studio	19	5
One Bedroom	165	42
Two Bedroom	85	21
Three Bedroom	33	8

13. Twenty five percent (25%) of the units in the Project, which is 76 units, shall be affordable housing units, as follows ("the Affordable Units"):
 - a. 66 of the residential units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Moderate-Income Units"). The AMI used for establishing rent and income limits for the Moderate-Income Units must not exceed 80% of AMI.
 - b. 10 of the residential units in the Project shall be affordable to households at or below 50% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Low-Income Units"). The AMI used for establishing rent and income limits for the Low-Income Units must not exceed 50% of AMI.
14. All 76 Affordable Units shall be and shall remain affordable in perpetuity at the affordability levels set forth herein through the execution of the Regulatory Agreement.
15. 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.

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 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 rented 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. A second Regulatory Agreement (the "City Regulatory Agreement"), in a form approved by the City Law Department, shall be entered into by the Applicant and the City and shall be executed and recorded prior to the expiration of the initial Regulatory Agreement and shall remain effective for as long as the Project exists. 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 Conditions #11 and #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

22. The Applicant shall make payments in the aggregate amount of \$597,078.00 to the City for infrastructure improvements for inflow and infiltration (I&I). Payments shall be made as follows:
 - a. \$298,539.00 at the first building permit for the vertical construction of the Project; and,

- b. \$298,539.00 prior to the issuance of the first dwelling unit occupancy permit (temporary or final) in the Project.
23. Prior to the issuance of any building permits for the vertical construction of the Project, the Applicant shall submit plans for the reconstruction/improvement of the sidewalk along the Washington Street frontage of the Project with Americans with Disabilities Act ("ADA")-compliant sidewalks for review and approval by the Director of Planning and Development and the Commissioner of Public Works. The plans shall include the replacement by the Applicant of the City's street lights currently within that sidewalk consistent with the City's current standards for light poles. Prior to the issuance of any certificates of occupancy (temporary or final) for the final dwelling unit, and at the Applicant's sole cost and expense, the Applicant shall complete this work in accordance with the approved plans. The Commissioner of Public Works shall inspect and approve the improvements upon completion.
24. Prior to the issuance of any building permit for the Project, other than a demolition permit, the Applicant shall make a payment in the amount of \$50,000.00 to the City to be used for feasibility, design, or pilots of transportation/streetscape improvements to Washington Street in furtherance of the City's implementation of the Washington Street Vision Plan.
25. The Applicant shall improve the pedestrian curb cut and ramp on the corner of Dunstan and Washington Street in front of 1191 Washington Street to current ADA standards and in accordance with the City of Newton's specifications, provided that the Applicant obtains permission from the abutting property owner to the extent such permission is legally required. 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 such work 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 final dwelling unit, and at the Applicant's 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 cost similar to that of the work set forth in this condition.
26. Prior to the issuance of the first building permit for vertical construction of the Project, the Applicant shall, at its sole cost and expense, submit a design for a crosswalk across Washington Street in the general vicinity of Armory Street, equipped with a pedestrian hybrid beacon (a.k.a. high-intensity activated crosswalk beacon ["HAWK"]) to the Commissioner of Public Works and the Director of Planning and Development for review

and approval. The design shall include curb extensions on the north and south side of Washington Street and shall be consistent with MBTA bus stop guidelines. Upon the City's approval of the design and location, the Applicant shall, at its sole cost and expense, construct and install all infrastructure of the approved design and have the improvements inspected and approved by the Department of Public Works prior to the issuance of any certificate of occupancy (temporary or final) for the final dwelling unit.

27. Prior to the issuance of any certificate of occupancy (temporary or final) for the final dwelling unit, the Applicant shall, at its sole cost and expense not to exceed \$70,000.00, purchase and install bus shelters on both the north and south sides of Washington Street. Final design, location and installation shall be in accordance with the scope of work required in Condition #26 above and subject to review and approval by Commissioner of Public Works and the Director of Planning and Development.
28. Prior to the issuance of any certificates of occupancy (temporary or final) for the final dwelling unit, the Applicant shall, at its sole cost and expense, submit traffic signal plans to the Commissioner of Public Works with revised traffic signal timing, phasing, splits, and offsets (as appropriate) for review and approval, and at the Applicant's sole cost and expense, the Applicant shall complete this work in accordance with the approved plans at the following locations:
 - a. Watertown Street at Albemarle Road; and,
 - b. Washington Street at Prospect Street.
29. Prior to the issuance of any certificates of occupancy (temporary or final) for the final dwelling unit, the Applicant shall, at its sole cost and expense, repair the existing sidewalk segment over Cheesecake Brook on the east side of Dunstan Street to the satisfaction of the Commissioner of Public Works.
30. Prior to the issuance of any building permit or demolition permit for the Project, the Applicant shall seek the necessary approvals from the Newton Conservation Commission for the proposed improvements to Cheesecake Brook including: restoration and naturalization of the Cheesecake Brook edge; removing the wall on the south side of Cheesecake Brook within the limits of the Site; regrading the bank and adding vegetation along the newly naturalized edge; sidewalk repairs at Cheesecake Brook bridge, and construction of the pedestrian way along Cheesecake Brook. Such improvements shall be completed by the Applicant, at its sole cost and expense, prior to the issuance of a certificate of occupancy (temporary or final) for the final dwelling unit. In the event the Conservation Commission does not approve the above improvements, the Applicant shall work with the Director of Planning and Development to identify alternative local improvements or other measures that the Applicant shall fulfill at a cost similar to that of the improvements identified in this condition.

31. Prior to the issuance of the first building permit for vertical construction of the Project, the Applicant shall submit a plan detailing the improvements to Dunstan Street in accordance with sheet C-3.0 of the civil engineering set, submitted and dated February 1, 2021 and on file with the Clerk of the Board, to the Commissioner of Public Works and the Director of Planning and Development for review and approval. The Applicant shall complete this work, at its sole cost and expense, prior to the issuance of a certificate of occupancy (temporary or final) for the final dwelling unit.
32. The Applicant shall pay to the City of Newton, or its designee, the sum of \$100,000 for improvements to the Elm Street Park Playground and the sum of \$50,000 for improvements to the Wellington Park Playground prior to issuance of any building permit for vertical construction.
33. The Applicant shall meet with the owners of: 18 Dunstan Street; 902-904 Watertown Street; 888-898 Watertown Street; and 886 Watertown Street to discuss the installation of landscaping and/or fencing on those properties for the purpose of screening. The Applicant agrees to install, or to reimburse at the option of the owner, landscaping and/or fencing selected by each of the owners of the above-listed properties at a cost not to exceed \$50.00 per linear foot of the abutting property line and consistent with the following abutting property line measurements:

18 Dunstan Street	122 feet
902-904 Watertown Street	61 feet
888-898 Watertown Street	173 feet
886 Watertown Street	83 feet

Prior to the issuance of the first building permit for vertical construction of the Project, the Applicant shall provide evidence satisfactory to the Director of Planning and Development of progress in discussions with the property owner(s) toward fulfillment of this Condition. The screening must be installed and/or reimbursement for screening must be made prior to the issuance of any certificate of occupancy (temporary or final) for the final dwelling unit in the Project.

34. The Applicant shall purchase and, at its sole cost and expense, install a public bike share docking station either on the Site or in a mutually agreeable location in the vicinity of the Site prior to the issuance of a certificate of occupancy (temporary or final) for the final dwelling unit. The designated bike share system, final design, location, and installation of the station shall be subject to review and approval by the Director of Planning and Development and the Commissioner of Public Works. The Applicant shall also pay the cost of operations for the station for two years. The Director of Planning and Development and the Commissioner of Public Works shall require a bond or other security, including but not limited to a contractual agreement with the City, to secure payment of such

operating costs. The Applicant's obligation to purchase, install, and operate the station for two years shall not exceed \$70,000. In the event the City no longer utilizes any bike share system, the Applicant shall work with the Director of Planning and Development and the Commissioner of Public Works to identify other local improvements or mitigation measures that the Applicant shall complete prior to the issuance of a certificate of occupancy (temporary or final) for the final dwelling unit at a cost not to exceed \$70,000.

CONSTRUCTION CONDITIONS

35. 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 Revised Ordinances, §20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.
36. The Petitioner shall do the following in order to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition permit, the petitioner shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity prior to demolition, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Planning and Development Department, Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit.
 - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of any temporary certificate of occupancy, the Pest Control Operator shall file a final report with the Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site and neighborhood assessment.
 - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final) the petitioner shall offer rodent abatement services on an as needed basis for all properties within a 300 foot radius of the site, subject to owner authorization of such properties and a waiver of liability.

37. 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 City Engineer and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Applicant shall comply in all material respects with the final Construction Management Plan, which 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 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. 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; and locating a truck washing station to clean muddy wheels on all trucks and construction vehicles before exiting the site.
 - e. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. 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.
 - f. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
 - g. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
 - h. The CMP shall include a vibration control plan that includes a study of projected vibration impacts and a monitoring program to be implemented with regular reporting. The Applicant shall also offer pre-construction surveys at no charge to the owners of the properties abutting the Site.
38. 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.

39. 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 the final certificate of occupancy for the final dwelling unit in the Project, 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's making such determination, shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame as determined by the Commissioner.
40. The Applicant shall designate a neighborhood liaison to communicate via email with the neighborhood, all property owners and businesses within 300 feet of the Site, and the Ward 3 City Councilors. The substance of the communication shall include updates related to key construction activities and the project timeline and shall facilitate an open line of communication between the General Contractor/Applicant and the neighborhood.
41. All signage shall comply with Section 5.2 of the Revised Ordinances. A comprehensive signage package shall be submitted to the Urban Design Commission for review and approval prior to the issuance of any sign permit for the Project.
42. All sidewalks located within the Site shall be designed as shown on the Approved Plans and shall be open to the public. All internal roadways (Kempton Place and Brook Drive) shall be designed as shown on the Approved Plans.
43. All sidewalks and pedestrian ramps located within the Site or along the Site's frontage shall be ADA compliant unless a variance for noncompliance is granted by the Massachusetts Architectural Access Board. Applicant shall submit a letter of compliance prepared by a professional engineer registered in the state of Massachusetts to the Director of Planning and Development prior to the issuance of any certificate of occupancy (temporary or final) for the final dwelling unit.
44. 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. This condition does not require the undergrounding of the utility service lines currently located on the western side of Dunstan Street.
45. Prior to the issuance of any building permit for the Project (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 Chief of the Fire Department that confirms the Fire Department will have sufficient access to all 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.

46. Prior to the issuance of any building permit for the Project (other than a demolition permit), the Applicant shall submit final engineering, utility, and drainage plans, and an Operations and Maintenance ("O&M") plan for Stormwater Management for review and approval by the City Engineer. Once approved, the O&M Plan must be adopted, implemented, and maintained by the Applicant and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M Plan 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.
47. The Applicant shall conduct a Closed Circuit Television Inspection ("CCTV") of the drainpipe traversing the site prior to the issuance of a demolition permit and shall provide evidence to the Commissioner of Public Works certifying such inspection was submitted to the appropriate state agency having jurisdiction over the drainpipe. The Applicant shall also conduct a post-construction CCTV inspection of the drainpipe prior to the issuance of any temporary certificate of occupancy and shall provide evidence of submission to the appropriate state agency. Such inspections shall be witnessed by a representative from the either the Utilities or Engineering Division and the Applicant shall provide electronic copies of the inspections to the Commissioner of Public Works upon request.
48. Prior to the issuance of the first building permit for vertical construction of 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.
49. 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

50. The Applicant shall complete Passive House feasibility studies and energy modeling to determine the design and construction approach. Such reports shall be provided to the Director of Planning and Development prior to the issuance of the first building permit for vertical construction of the Project.
51. The Applicant shall complete an embodied carbon analysis to guide materials selection during design and construction. The analysis will include but not be limited to materials for concrete, framing, cladding, and insulation. Such analysis shall be provided to the Director of Planning and Development prior to the issuance of the first building permit for vertical construction of the Project.
52. The Applicant shall comply with all applicable sustainable design provisions of the Revised Ordinances.
53. Ten percent (10%) of the parking stalls shall be equipped with electric vehicle charging stations and an additional ten percent (10%) of the parking stalls shall have the conduit and

electric panels installed to allow for wiring and installation of future electric vehicle charging stations.

54. The Applicant shall design and construct the Project to provide the space necessary for the installation of additional transformers, panels, electric rooms and other hardware to equip all parking stalls with electric vehicle charging stations.
55. The Applicant shall utilize sustainable building materials and systems including, but not limited to:
 - a. water efficient domestic plumbing fixtures;
 - b. LED light fixtures;
 - c. programmable thermostats;
 - d. building-level and unit-level electricity and water metering;
 - e. building systems commissioning;
 - f. low VOC building materials and finishes;
 - g. fresh air supply and bathroom and kitchen exhaust provided in every apartment; and,
 - h. MERV8-rated air filters on ventilation equipment.Construction and demolition waste will be recycled and diverted, as possible, by the receiving facility.

TRAFFIC/PARKING CONDITIONS

56. Detectable warning panels shall be installed along the garage entrances on Dunstan Street and Kempton Place and reviewed and approved by the Commissioner of Public Works.
57. The Project shall include 338 parking stalls. If the Applicant determines that there is insufficient parking, the Applicant may implement a valet parking program within the parking garage under Buildings 1 and 2.
58. All parking areas, including the retail/commercial and visitor parking areas, shall comply with all applicable ADA requirements.
59. The cost of residential tenant parking for market-rate units shall be charged separately from residential tenant rents, and the rental period cannot commence prior to, nor extend past the end of, the rental period of the unit. At all times, the designated residential parking stalls shall only be rented to current residential tenants. 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. One (1) parking stall shall be available for each Affordable Unit without charge to the tenant of such unit.

61. The Applicant shall provide a minimum of 1 bicycle storage space for each residential unit within the buildings or garage. Outdoor uncovered storage for forty-four (44) additional bicycles will be provided on the Site. In the event that the bike share station required by Condition #32 render the 44 outdoor bicycle parking stalls required by this condition impracticable, as determined by the Director of Planning and Development and Commissioner of Public Works, the Applicant shall be allowed to reduce the number of outdoor bicycle stalls. Any reduction shall be subject to review and approval of the Director of Planning and Development.

62. 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 the first building permit for vertical construction of the Project for review and approval and shall include, but not be limited to, the following:
 - a. Providing a reimbursement for two months for the cost of public transportation, not to exceed the cost of a monthly Express Bus Pass, to all new tenants who move into the Project during year 1 and request a reimbursement. This reimbursement shall be limited to two adults per unit. The reimbursement shall apply to car-share, bicycle share, or other mode.
 - b. Onsite Transportation Coordinator.
 - c. Liaison with MassRides.
 - d. Car pool/ride share program.
 - e. Disseminating information on alternate travel modes.
 - f. Distributing transit maps, schedules and passes.
 - g. Monitoring TDM effectiveness through surveys and other tools and adjusting as necessary
 - h. Establishing and maintaining a website providing travel-related information and promoting awareness of alternative travel modes.
 - i. Indoor bike storage and fix-it station for residents, and bike racks outdoors.
 - j. On-site car-sharing service (such as Zipcar) if available.
 - k. Preferential electric vehicle/low emission car parking in parking garages by designating spaces and providing electric vehicle charging stations.
 - l. Shared parking for retail/commercial uses.
 - m. "Unbundling" of parking costs from rent/leases.

63. The Applicant will implement and maintain the Transportation Demand Management Plan contained in Condition #56 and shall collaborate with the City on traffic management issues.

64. Prior to the issuance of the first building permit for vertical construction of Building 3 of the Project, the Applicant shall apply to the Traffic Council to designate an on-street loading zone in front of Building 3 along the Project's Washington Street frontage as shown on the Approved Plans. If the Traffic Council denies this request, the Project shall

be constructed in accordance with the Approved Plans with an on-site loading zone located on the eastern side of Kempton Place. The Board acknowledges that the Traffic Council has already approved the designation of an on-street loading zone along the Project's Washington Street frontage between Dunstan Street and Kempton Place as shown on the Approved Plans.

OTHER/ONGOING CONDITIONS

65. 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.
66. The Applicant shall be responsible at its sole cost for trash and recycling disposal for the Project.
67. 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 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.
68. 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 demolition permit or building permit for the Project.
69. The Applicant shall allow public pedestrian access, including accessible access through the courtyard between Buildings 1 and 2 to Cheesecake Brook and shall allow public pedestrian access to the boardwalk at the northern portion of the Site. In the event a pedestrian connection is developed in the future from the eastern boundary of the Site to Armory Street the Applicant shall also allow public pedestrian access through the eastern portion of the Site to the pedestrian connection. The Applicant agrees to use reasonable and good faith efforts to facilitate and allow such future connection, provided, however, that this Condition shall not obligate the Applicant to: (i) construct any improvements on the Site, (ii) allow others to construct improvements on the site, or (iii) incur any costs to facilitate such a connection.
70. Both Kempton Place and Dunstan Street shall be open to the public, but may be closed by the Applicant at periodic and reasonable times for events. The Applicant is responsible for maintaining and plowing all internal paved roadways and sidewalks, ensuring they are clean, well-kept and in good and safe working order.

CONDITIONS PRECEDENT TO THE ISSUANCE OF BUILDING PERMITS

71. No building permit shall be issued pursuant to this Amended and Restated 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 in accordance with Conditions #2-3.
- f. Obtained a written statement from the Director of Planning and Development that confirms that the final site and building permit plans are consistent with the Approved Plans.
- g. Submitted a municipal lien certificate showing all assessments and betterments have been paid in full and that there are no outstanding municipal liens on the Site in accordance with Condition #7.
- h. Submitted the payment required for improvements to Washington Street in accordance with Condition #24.
- i. Received an order of Conditions from the Conservation Commission prior to the issuance of any building permit or demolition permit in accordance with Condition #30.
- j. 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 Chief of the Fire Department, the Commissioner of Public Works, and the City Engineer in accordance with Condition #37.
- k. Submitted to the Chief of 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 in accordance with Condition #45.

- l. 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 #46.
- m. Submitted evidence of the CCTV drainpipe inspection in accordance with Condition #47.
- n. For a building permit for Building 3, submitted to the Director of Planning and Development a copy of the petition filed with the Traffic Council requesting designation of an on-street loading zone in accordance with Condition #64.
- o. 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.

72. No building permit for vertical construction shall be issued pursuant to this Amended and Restated Comprehensive Permit until the Applicant has:

- a. Submitted the portion of the I&I payment required in accordance with Condition #22.
- b. Submitted plans to the appropriate City Departments for review and approval regarding the off-site improvements in accordance with Conditions #23, 25, 26, and 31.
- c. Submitted evidence of installation of, or reimbursement for, landscaping and/or fencing in accordance with Condition #33 to the Director of Planning and Development.
- d. Submitted the payments required for improvements to Elm Street Park and Wellington Park in accordance with Condition #32.
- e. Submitted a final photometric plan for review and approval by the Director of Planning and Development in accordance with Condition #48.
- f. Submitted to the Director of Planning and Development copies of the Passive House feasibility studies and embodied carbon analysis in accordance with Conditions #50-51.

- g. Submitted a signed and stamped affidavit prepared by a professional engineer to the City Engineer, Commissioner of Inspectional Services and the Director of Planning and Development evidencing compliance with Condition #54.
- h. Submitted a Transportation Demand Management Plan for review and approval by the Director of Planning and Development in accordance with Condition #62.

CONDITIONS PRECEDENT TO THE ISSUANCE OF OCCUPANCY PERMITS

73. No occupancy permit (temporary or final) shall be issued pursuant to this Amended and Restated Comprehensive Permit 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 buildings 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 in accordance with Condition #46.
- d. 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.
- e. Completed all landscaping in compliance with Condition #1 related to or for the portion of the project for which an occupancy permit is requested.
- f. Submitted the portion of the I&I payment required in accordance with Condition #22.
- g. Submitted to the Director of Planning and Development evidence of separation of charges for tenant parking and tenant rent in accordance with Condition #59.

74. No certificate of occupancy (temporary or final) for the final dwelling unit in the Project shall be issued until the Applicant has:

- a. Received a statement from the City Engineer certifying that all engineering details have been constructed to standards of the Department of Public Works.

- b. Submitted to the Director of Planning and Development evidence of completion of off-site improvements in accordance with Conditions #23, 25, 26, 27, 28, 29, and 31.
- c. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the undergrounding of utilities has been completed in accordance with Condition #44.
- d. 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 #43.
- e. Submitted evidence of completion of installation of, or reimbursement for, landscaping and/or fencing in accordance with Condition #33 to the Director of Planning and Development.
- f. Completed installation of the bike share docking station or, if applicable, completed other improvements or mitigation in accordance with Condition #34.
- g. Submitted evidence of the post-construction CCTV drainpipe inspection in accordance with Condition #47.

75. 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 value of the remaining landscaping for the building for which the temporary certificate of occupancy is sought to secure installation of such landscaping.

WAIVERS GRANTED

1. The Board grants waivers from the following sections of the Zoning Ordinance:
 - a. Section 4.1.2.B to permit a development of over 20,000 square feet.
 - b. Section 4.4.1 to allow residential use at the ground floor.
 - c. Section 4.4.1 to allow a multi-level accessory parking facility, standalone ATM, fast food establishments, for-profit educational uses, and restaurants with over 50 seats.

- d. Section 5.4.2. to allow a retaining wall of up to 5 feet within a setback for the existing channel wall on the south bank of Cheesecake Brook.
 - e. Section 5.11 to waive all inclusionary zoning requirements.
2. The Board grants waivers from the following dimensional requirements of Section 4.1.2 and 4.1.3 of the Zoning Ordinance:
- a. Lot Area Per Unit – allowing 517 square feet per unit (based on 302 units) where 1,200 square feet per unit is minimum required.
 - b. Front Setback – allowing 0.2 foot front setback where 5 feet is the minimum required (based on average setback in accordance with § 1.5.2 and § 4.1.3).
 - c. Side Setback – allowing 6 foot side setback where 40.5 feet is the minimum required (based on one-half of building height).
 - d. Floor Area Ratio (FAR) – allowing a floor area ratio of 2.33 where 2.0 is the maximum allowed.
 - e. Stories – allowing 6 stories where 4 is the maximum allowed by special permit.
 - f. Building Height – allowing 81.10 foot building height (calculated in accordance with §1.5.4) where 48 feet is the maximum allowed.
3. The Board grants waivers from the following parking requirements of Section 5.1 of the Zoning Ordinance:
- a. Section 5.1.3.E to allow the assignment of parking spaces to unit tenants.
 - b. Section 5.1.4.A to allow reduced parking requirement of 1 stall per unit for multi-family dwelling.
 - c. Section 5.1.4.A to allow 36 parking stalls for the proposed retail, personal service, restaurant, health club, and similar commercial uses, where 141 is required.
 - d. Section 5.1.5 to waive the application and permit for parking and loading facility.
 - e. Section 5.1.8.A.1 to allow parking stalls to be located within the required side setback or within 5 feet of a street.
 - f. Section 5.1.8.A.2 to allow parking stalls to be located within 5 feet from any building containing dwelling units.

- g. Section 5.1.8.B.1 to allow parking stalls with a width of less than nine feet.
 - h. Section 5.1.8.B.2 to allow parking stalls with a depth of less than nineteen feet.
 - i. Section 5.1.8.B.6 to waive the required maneuvering space for end aisles.
 - j. Section 5.1.8.B.7 to waive the requirement of an off-street parking or loading plan for noncommercial vans, buses, or other vehicles exceeding 7 ½ feet by 18 feet.
 - k. Section 5.1.8.C.1-2 to waive the minimum maneuvering aisle dimensions.
 - l. Section 5.1.10.A.1 to waive the 1-foot candle lighting requirements for outdoor parking.
 - m. Section 5.1.12.B to waive the requirement to submit a plan for off-street loading facilities.
 - n. Section 5.1.12.C (and the corresponding Table) to waive the requirement of an off-street loading facility, subject to Condition 58.
 - o. Section 5.1.12.D to waive the design requirements for off-street loading facilities.
4. The Board grants a waiver from the following sections of the Revised Ordinances:
- a. Sections 22-22(c)(1) to waive, to the extent permitted by state law, the provisions stated therein for the construction, reconstruction, or enlargement of buildings in the Floodplain/Watershed Protection District.
 - b. Section 29-169 to waive 75% of the Applicant's infiltration/inflow mitigation fee, resulting in a required payment of \$597,078.00.

The Board does not approve any waivers that are not listed in this Decision.

RECORD OF VOTE

AYES: Brooke K. Lipsitt, (Chair)
William McLaughlin (Vice Chair)
Michael Rossi
Stuart Snyder
Treff LaFleche

NAYS: None



Brooke K. Lipsitt, Chairman

Wherefore, an Amended and Restated Comprehensive Permit, consistent with the conditions of this Decision, is granted to the Applicant.

Filed with the City Clerk on _____, 2021

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. 40B, § 22 has been filed.

Nadia Khan, Acting City Clerk

SCHEDULE A

PROJECT MASTER PLANS

A. In the event that the Applicant exercises the substantial changes to Building 3 as approved by this Amended and Restated Comprehensive Permit, the Project shall be located and constructed consistent with the following Approved Plans:

1. A set of plans entitled "Site Plans- Dunstan East, Washington Street, West Newton, Massachusetts," prepared by VHB, dated April 8, 2021, as revised September 3, 2021, signed and stamped by Richard S. Hollworth, Registered Professional Engineer, containing the following sheets:

Sheet No.	Drawing Title	Latest Issue
C-1.0	Legend and General Notes	April 8, 2021
C-2.0	Site Prep and Erosion & Sediment Control Plan	July 20, 2021
C-3.0	Site Plan	July 20, 2021
C-4.0	Grading and Drainage Plan	September 3, 2021
C-5.0	Utility Plan	September 3, 2021
C-6.1	Site Details	July 20, 2021
C-6.2	Site Details	July 20, 2021
C-6.3	Site Details	September 3, 2021
C-6.4	Site Details	April 8, 2021

2. Existing conditions plans entitled "Alta/NSPS Land Title Survey" prepared by Control Point Associates, Inc., unsigned and unstamped, dated July 21, 2017 revised through March 23, 2021, containing the following sheets:

Sheet 1	Boundary & Topographic Survey	March 23, 2021
Sheet 2	Boundary & Topographic Survey	March 23, 2021
Sheet 3	Boundary & Topographic Survey	March 23, 2021
Sheet 4	Boundary & Topographic Survey	March 23, 2021

3. A set of architectural plans entitled "Dunstan East, Washington Street, West Newton, Massachusetts" prepared by VHB and Elkus Manfredi Architects dated November 25, 2019, as revised through July 29, 2021, signed and stamped by John P. Martin, Architect, containing the following sheets:

Sheet No.	Drawing Title	Latest Issue
A001	Existing Site Layout Plan	May 26, 2021
A120	Building 1, 2, and 3 Level P2 Plan	May 26, 2021
A121	Building 1, 2, and 3 Level P1 Plan	July 19, 2021
A122	Building 1, 2, and 3 Level 1 Plan	May 26, 2021
A123	Building 1, 2, and 3 Level 2 Plan	May 26, 2021
A124	Building 1, 2, and 3 Level 3 Plan	May 26, 2021

A125	Building 1, 2, and 3 Level 4 Plan	May 26, 2021
A126	Building 1, 2, and 3 Level 5 Plan	May 26, 2021
A127	Building 1, 2, and 3 Level 6 Plan	May 26, 2021
A128	Building 1, 2, and 3 Roof Plan	May 26, 2021
A303	Building Elevations Building 3	July 29, 2021
A322	Building Sections – Building 3	May 26, 2021

4. A set of landscape plans entitled “Dunstan East, Washington Street, West Newton, Massachusetts” prepared by VHB and Halvorson/Tighe and Bond Studio, dated April 28, 2021 revise through July 1, 2020, signed and stamped by Rob Adams, registered Landscape Architect, containing the following sheets:

Sheet No.	Drawing Title	Latest Issue
L1.1	Site Materials	July 1, 2021
L1.2	Planting Plan	July 1, 2021

5. A photometric plan entitled “Dunstan East – Site” prepared by ReFlex Lighting dated April 1, 2021.

B. In the event that the Applicant does not exercise the substantial changes to Building 3 as approved by this Amended and Restated Comprehensive Permit, the Project shall be located and constructed consistent with the following Approved Plans that were approved as part of the Original Comprehensive Permit and subsequent Insubstantial Change determination:

1. A set of plans entitled “Site Plans- Dunstan East, Washington Street, West Newton, Massachusetts,” prepared by VHB, dated April 28, 2020, as revised through July 1, 2020, signed and stamped by Richard S. Hollworth, Registered Professional Engineer, containing the following sheets:

<u>No.</u>	<u>Drawing Title</u>	<u>Latest Issue</u>
C-1.0	Legend and General Notes	April 28, 2020
C-2.0	Site Prep and Erosion & Sediment Control Plan	July 1, 2020
C-3.0	Site Plan	July 1, 2020
C-4.0	Grading and Drainage Plan	July 1, 2020
C-5.0	Utility Plan	July 1, 2020
C-6.1	Site Details	July 1, 2020
C-6.2	Site Details	July 1, 2020
C-6.3	Site Details	July 1, 2020
C-6.4	Site Details	July 1, 2020

- Existing conditions plans entitled “Alta/NSPS Land Title Survey” prepared by Control Point Associates, Inc., unsigned and unstamped, dated June 21, 2017 revised through March 23, 2021, containing the following sheets:

Sheet 1	Boundary & Topographic Survey	March 23, 2021
Sheet 2	Boundary & Topographic Survey	March 23, 2021
Sheet 3	Boundary & Topographic Survey	March 23, 2021
Sheet 4	Boundary & Topographic Survey	March 23, 2021
Sheet 5	Boundary & Topographic Survey	March 23, 2021

- A set of architectural plans entitled “Dunstan East, Washington Street, West Newton, Massachusetts,” prepared by VHB and Elkus Manfredi Architects, dated November 25, 2019, as revised through June 1, 2020, signed and stamped by John H. Martin, Registered Architect, containing the following sheets:

A001	Existing Site Layout
A120	Buildings 1, 2, and 3- Level P2
A121	Buildings 1, 2, and 3- Level P1
A122	Buildings 1, 2, and 3- Level 1
A123	Buildings 1, 2, and 3- Level 2
A124	Buildings 1, 2, and 3- Level 3
A125	Buildings 1, 2, and 3- Level 4
A126	Buildings 1, 2, and 3- Level 5
A127	Buildings 1, 2, and 3- Level 6
A128	Buildings 1, 2, and 3- Roof Plan
A203	Buildings 1, 2- Elevations
A204	Buildings 1, 2- Elevations
A205	Building 3- Elevations
A223	Building Sections

- A set of landscape plans entitled “Dunstan East, Washington Street, West Newton, Massachusetts” prepared by VHB and Halvorson/Tighe and Bond Studio, dated April 28, 2021 revise through July 1, 2020, signed and stamped by Rob Adams, registered Landscape Architect, containing the following sheets:

Sheet No.	Drawing Title	Latest Issue
L1.1	Site Materials	July 1, 2020
L1.2	Planting Plan	July 1, 2020
L1.3	Site Details	July 1, 2020

- A photometric plan entitled “Dunstan East- Site,” prepared by ReFlexLighting, dated June 23, 2020.
- A set of plans prepared by VHB and Elkus Manfredi revising certain plans approved as part of the Original Comprehensive Permit as follows:

No.	Drawing Title	Latest Issue
C-3.0	Site Plan	February 1, 2021
A001	Existing Site Layout	February 1, 2021
A120	Buildings 1, 2, and 3 - Level P2	February 1, 2021
A121	Buildings 1, 2, and 3 - Level P1	February 1, 2021
A122	Buildings 1, 2, and 3 - Level 1	February 1, 2021
A123	Buildings 1, 2, and 3 - Level 2	February 1, 2021
A124	Buildings 1, 2, and 3 - Level 3	February 1, 2021
A125	Buildings 1, 2, and 3 - Level 4	February 1, 2021
A126	Buildings 1, 2, and 3 - Level 5	February 1, 2021
A127	Buildings 1, 2, and 3 - Level 6	February 1, 2021
A128	Buildings 1, 2, and 3 - Roof Plan	February 1, 2021