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Mayor

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ZONING BOARD OF APPEALS

Brenda Belsanti, Board Clerk

DECISION

1135-1137 Washington Street, Newton, Massachusetts
Comprehensive Permit

Decision Number: #10-22

Date Application Filed: September 26, 2022

Applicant: Metro West Collaborative Development, Inc.

Premises Affected: 1135-1137 Washington Street

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

Public Hearing Dates: October 19, 2022; December 7, 2022; January 11, 2023

Decision of the Board: Approval with conditions

Members Voting: Brooke K. Lipsitt (Chair); Mike Rossi; William McLaughlin, Elizabeth Sweet, Lei Reilley, Jennifer Pucci (Alternate)

Date of Decision: January 11, 2023

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PROCEDURAL HISTORY

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1. On June 22, 2022, The Department of Housing & Community Development issued a Project Eligibility Letter (“PEL”) to Metro West Collaborative Development (the “Applicant”).
 2. On September 26, 2022, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, §§ 20-23 (the “Act”) to construct a 100% affordable mixed-use development with 43 affordable residential rental units, community and office space, and 31 parking stalls on 33,150 square feet of land located at 1135-1137 Washington Street, Newton, MA (the “Site”).
 3. The materials submitted by the Applicant in the application and/or entered into the record during the public hearings include:
 - a. Application for Comprehensive Permit submitted September 26, 2022 including the following plans for The Armory, 1135-1137 Washington Street, Newton, MA:
 - i. Site Development Plan dated September 16, 2022, consisting of 9 sheets;
 - ii. Narrative Description of Project dated September 23, 2022, consisting of 6 sheets;
 - iii. List of Requested Waivers to Local Requirements & Regulations dated September 23, 2022, consisting of 6 sheets;
 - iv. Zoning Review Memorandum dated September 1, 2022, consisting of 7 sheets;
 - v. Zoning Analysis dated September 23, 2022, consisting of 1 sheet;
 - vi. Landscape Plan dated September 15, 2022, consisting of 3 sheets;
 - vii. Utilities Plan dated September 15, 2022, consisting of 9 sheets;
 - viii. Existing Conditions Site Plan dated July 13, 2022, consisting of 1 sheet;
 - ix. Architectural Plans dated September 14, 2022, consisting of 11 sheets;
 - x. Aerial Photograph dated August 25, 2022, consisting of 1 sheet;
 - xi. Context Photographs dated September 22, 2022, consisting of 5 sheets; and
 - xii. Traffic Study dated September 1, 2022, consisting of 11 sheets
 - b. Public Hearing Memo for the City of Newton Department of Planning and Development to the Zoning Board of Appeals dated October 12, 2022, consisting of 35 pages;
 - c. Urban Design Commission memo dated October 13, 2022, consisting of 4 pages;
 - d. Newton Fair Housing Committee memo dated October 17, 2022, consisting of 3 pages;
 - e. DPW Engineering Sewer Inflow and Infiltration Mitigation Fee memo dated October 7, 2022, consisting of 3 pages;
 - f. Nitsch Engineering Existing Transportation Conditions Memo dated September 1, 2022, consisting of 11 pages;
 - g. BSC Group Transportation Peer Review memo dated November 9, 2022, consisting of 4 pages;
 - h. MetroWest Collaborative Development Transportation Demand Management Proposal memo dated November 22, 2022, consisting of 2 pages;

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- i. Newton Affordable Housing Trust memo dated November 25, 2022, consisting of 1 page;
 - j. MetroWest Collaborative Development Supplemental Information memo dated November 28, 2022, consisting of 7 pages;
 - k. List of Requested Waivers submitted November 29, 2022, consisting of 5 pages;
 - l. Nitsch Engineering Storm Water Report dated November 22, 2022, consisting of 201 pages;
 - m. Stormwater Plans submitted November 29, 2022, consisting of 10 pages;
 - n. Landscaping Elevations submitted November 29, 2022, consisting of 1 page;
 - o. Plant List submitted November 29, 2022, consisting of 1 page;
 - p. Bike Circulation Diagram submitted November 29, 2022, consisting of 3 pages;
 - q. Sign Location & Sizing diagram submitted November 29, 2022, consisting of 1 page;
 - r. BSC Group Transportation memo dated November 9, 2022, consisting of 4 pages;
 - s. Nitsch Engineering Existing Conditions memo dated November 28, 2022, consisting of 13 pages;
 - t. DPW Engineering memo dated December 1, 2022, consisting of 6 pages;
 - u. Public Hearing Memo for the City of Newton Department of Planning and Development to the Zoning Board of Appeals dated November 30, 2022, consisting of 259 pages;
 - v. DPW Engineering Sewer Inflow and Infiltration Mitigation Fee Memo dated December 8, 2022, consisting of 2 pages;
 - w. BSC Group Transportation Peer Review memo dated December 1, 2022, consisting of 4 pages;
 - x. Nitsch Engineering Response to December 7, 2022 ZBA hearing memo dated December 13, 2022, consisting of 1 page;
 - y. BSC Group Transportation Peer Review memo dated December 23, 2022, consisting of 3 pages;
 - z. MetroWest Collaborative Development Supplemental Information memo dated December 30, 2022, consisting of 5 pages;
 - aa. Swept Path Analysis dated January 3, 2023, consisting of 1 page;
 - bb. Photometric Study dated January 3, 2023, consisting of 32 pages; and
 - cc. Public Hearing Memo for the City of Department of Planning and Development Zoning Board of Appeals dated January 4, 2023, consisting of 116 pages.
4. The Zoning Board of Appeals for the City of Newton (the "Board") opened a duly noticed public hearing on October 19, 2022. A second session of the public hearing was held on December 7, 2022, via in person and Internet video conferencing, pursuant to Massachusetts executive order, *Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, Section 20* (March 10, 2020), and Chapter 53 of the Acts of 2020, an *Act To Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19* (April 3, 2020). Additional sessions of the public hearing were held on January 11, 2023 all in person and via Internet video conferencing pursuant to the aforementioned Executive Order and Act.
5. On January 11, 2023, the Board closed the public hearing.

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6. The Board deliberated on the Application at a public hearing held on January 11, 2023 date and voted to grant a Comprehensive Permit subject to the Conditions listed below.
7. As required by the Act, the Board notified all applicable local boards, commissions and departments of the filing of the Application by sending a copy thereof to such local boards, commissions, and departments for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
8. During the course of the public hearing, City staff, boards/commissions, peer reviewers, local residents, and technical experts submitted extensive oral and written testimony with respect to the Project on issues of site design, open space, massing, scale, pedestrian scale, streetscapes/public realms, feasibility of the parking plan; geotechnical studies including but not limited to foundation method, construction means and methods, groundwater impact; soil conditions and testing for hazardous materials, groundwater impacts; construction management planning, protection of abutters' properties during construction, emergency access during construction; parking demand, parking design and management, and parking ratios; studies to assess intensity of use related to the mixed use program; shadow impacts, traffic and pedestrian safety, rubbish and recycling management; site circulation, access/egress, stopping site distance, and integration and coordination of functions occurring in the ground plane including but not limited to truck deliveries, trash/recycling pickup, ride share drop-off and pick-up, snow removal; and stormwater management.
9. The following consultants and independent peer reviewers assisted the Board in its review of the Application:
 - a. Transportation
Stephen Siragusa, M.S.
BSC Group, Inc.
10. The following representatives and members of the Applicant's licensed design team presented oral and written testimony to the Board:
 - a. Terrence P. Morris, Esq., Permitting Counsel
 - b. Caitlin Madden, Executive Director of Metro West Collaborative Development, Inc.
 - c. Sharone Small, Senior Project Manager of Metro West Collaborative Development, Inc.
 - d. Andrew Consigli, Managing Partner of Civico Development, LLC
 - e. Taylor Bearden, Partner of Civico Development, LLC

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- f. Sam Scoppettone, Senior Associate of Civico Development, LLC
- g. Laura Cella-Mowatt, RA, Davis Square Architects
- h. Chelsea Christenson, PE, Nitsch Engineering
- i. Rebecca Bachand, PLA, RBLA Design, LLC
- j. Bryan Zimolka, PE, Nitsch Engineering (was not present)

FINDINGS

1. The Applicant received a project eligibility letter (“PEL”) for the Project from the Department of Housing and Community Development (“DHCD”), dated June 22, 2022 finding that the Project is eligible under the Low Income Housing Tax Credit (“LIHTC”) program, and 100% of the units will be available to households earning no more than 60% of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development. In accordance with 760 CMR 56.04(6), the Board considers the issuance of the PEL to be conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements to receive a comprehensive permit.
2. The Board finds that the Applicant has complied with all of the rules and regulations of the City of Newton as they pertain to the application for a comprehensive permit.
3. The Site is located at 1135-1137 Washington Street in the Business 2 (BU-2) Zoning District.
4. Existing conditions at the Site consist of 33,150 square feet of land improved with a two-story structure with the majority of the site being impervious.
5. The Site is located in a walkable area one-half mile or less from the following public transit services: MBTA bus routes 553 and 554 and the Framingham/Worcester commuter rail line. These transit lines provide connections to Boston, Framingham, Waltham, Worcester and other surrounding communities.
6. The Project as proposed meets many of the goals and smart growth strategies in Newton’s Comprehensive Plan including, but not limited to :
 - a. Development of additional housing units near public transit
 - b. Creation of deeply affordable housing in Newton
 - c. Revitalization and reuse of a historic structure
 - d. Respect for neighborhood context through its design
 - e. Provision of alternatives to single-occupancy vehicle trips by providing bicycle accommodations, and less than 1:1 parking ratio.

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7. The Project as proposed meets many of the goals and smart growth strategies in Newton's Washington Street Vision Plan such as:
 - a. Focusing housing where residents have transportation options
 - b. Leveraging public land for affordable housing development
 - c. Reducing the heat island effect with increased landscaping and vegetation
 - d. Protection of iconic buildings
8. The Site is an appropriate location for the proposed mixed-use development due to its location on Washington Street and being proximate to the villages of West Newton and Newtonville.
9. The Board finds that the Site is an appropriate location for the proposed Project because the increase in density will not have an adverse impact on the neighborhood due to its location in a Business zone and location on Washington Street with a mix of uses nearby.
10. The Board finds that the project will provide 43 deed restricted housing units, 28 of which will be affordable to households earning up to 60% of Area Median Income and 15 of which will be available to a household earning up to 30% of Area Median Income. As conditioned by this Decision, the proposed development is consistent with local needs and will provide housing for individuals with an AMI of 60% or less.
11. The Board finds that the Applicant has successfully developed and managed other projects containing affordable housing in Massachusetts.
12. In accordance with City Ordinance Chapter 29, §§ 167-174, the Board finds that there is good cause, based in part on other mitigation and community benefits offered by the Applicant, to waive 75% of the required infiltration/inflow mitigation for the Project. Therefore, the fee shall be reduced to \$104,599.
13. The Board heard from City staff, boards, commissions, departments, and residents and has taken that testimony into account. 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.
14. 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 conditions may render the Project uneconomic, and therefore the Board finds that the conditions set forth herein will not render the Project uneconomic. To the extent that such conditions may render the Project uneconomic, the Board finds that the conditions are Consistent with Local Needs.
15. The Applicant has had the opportunity to review the following conditions and has no objections.

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DECISION

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

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CONDITIONS

GENERAL CONDITIONS

1. All buildings, parking areas, driveways walkways, landscaping and all other site features associated with this Comprehensive Permit shall be located and constructed consistent with the plans identified in Schedule A, and which are incorporated by reference (collectively, the "Approved Plans").
2. Prior to the issuance of any building permits, the Applicant shall submit a complete final set of architectural plans including elevations, signed and stamped by an architect, dimensioned site plans, engineering plans, storm water drainage plans, landscaping plans, and utility plans, signed and stamped by a professional engineer, consistent with the Approved Plans listed/referenced in Condition 1. To the extent that the final plans referenced in this Condition differ from the Approved Plans, the Applicant shall request a consistency ruling from the Commissioner of Inspectional Services.
3. With respect to the Applicant's request for waivers from local ordinances and regulations, the Board approves only those waivers listed in this Decision. The Project shall comply with all applicable local ordinances, rules, and regulations not expressly waived, including the payment of all applicable permit fees. The Project shall also comply with all applicable state and federal laws, codes, regulations, and standards.
4. The City will not issue a building permit for the Project without final approval from the Subsidizing Agency as defined in 760 CMR 56.02.
5. Copies of all state and federal permits and approvals related to the Site or the Project shall be submitted to the City's Department of Planning and Development as well as the Law Department for review to ensure consistency and compliance with this Decision.
6. Before any site clearing, grading, demolition or construction may begin on site, the Applicant shall submit a municipal lien certificate that shows all assessments and betterments have been paid in full and there are no outstanding municipal liens on the property.
7. Unless extended by the Newton Zoning Board of Appeals upon a finding of good cause, this Comprehensive Permit Decision shall lapse and become void if construction is not commenced within three years of the date on which it is filed with the City Clerk. For

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purposes of this paragraph only, commencement of construction is defined as the issuance of a building permit (other than a demolition permit) for all or any portion of the Project.

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

HOUSING CONDITIONS

10. The Project shall include 43 units of affordable rental housing (the "Affordable Units"), as listed in the following table:

Unit Type	Number of Affordable Units
One Bedroom	15
Two Bedroom	21
Three Bedroom	7

11. 28 of the Affordable Units shall be affordable to households earning at or below 60% of the AMI, 15 units of the Affordable Units shall be affordable to households earning at or below 30% of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (the "Affordable Units").
12. All 43 Affordable Units shall be and shall remain affordable in perpetuity at the affordability levels set forth herein through the execution of the Regulatory Agreement.
13. All 43 Affordable Units shall be eligible for inclusion on DHCD's Subsidized Housing Inventory (SHI) in perpetuity in accordance with DHCD Guidelines.
14. 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.
15. The Applicant shall provide evidence of DHCD's approval of the Affirmative Fair Housing Marketing and Resident Selection Plan prior to commencing any marketing of the units.
16. 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 expiration of the initial Regulatory Agreement, and shall remain effective for so long as the Project exists. The Applicant shall enter into the City

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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 100% affordable in perpetuity; (ii) that 100% 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 and as set forth in Condition #11; 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

- 17. The Applicant shall make payments in the aggregate amount of \$104,599 to the City for infrastructure improvements for inflow and infiltration (I&I). Payments shall be made as follows:
 - a. \$52,299.50 prior to issuance of the first building permit for the Project.
 - b. \$52,229.50 prior to issuance of the first residential unit occupancy permit (temporary or final) in the Project.

CONSTRUCTION CONDITIONS

- 18. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding holidays, unless waived by the Mayor in accordance with Newton Ordinances, §20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.
- 19. 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 Fire Department. 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 the contractor and subcontractor parking, on-site material storage area(s), on-site staging area(s) for construction and delivery vehicles, and location of any security fencing.

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- 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 truck and construction vehicles before exiting the site.
- e. Proposed methods of noise control, in accordance with the City of Newton's Ordinance. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise-producing staging activities should be located as far as practicable from noise sensitive locations.
- 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.

20. The Applicant shall do the following to remediate pest and rodent activity:

- a. Prior to issuance of any demolition or building permit, the Applicant, at its sole cost and expense, 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, 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 Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. A copy of such approval shall be provided to the Department of Planning and Development.
- 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 the Operator deems necessary to control pest infestation and migration.
- d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development and Inspectional Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment.
- e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of the final certificate of occupancy, the Applicant shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters subject to owner authorization of such properties and a waiver of liability.

21. The Applicant shall implement the following measures to mitigate and reduce significant vibration impacts caused by construction equipment associated with demolition or ledge/rock removal:

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- a. Prior to the issuance of any demolition, foundation, or building permit, the Applicant shall conduct a pre-construction survey of all buildings and structures within 250 feet of the Project (as measured from the Project's property lines) for which the owner of the building or structure has granted approval at no charge to the owners. The survey must include photos taken both inside and outside prior to construction to set a baseline of existing conditions. Copies of the survey and photos shall be provided to owners. The buildings and structures associated with the Dunstan East Project, as approved by Comprehensive Permit #09-19(2), shall be exempt from the provisions of this condition.
 - b. The Applicant shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:
 - i. Measurements of static ground vibration prior to construction.
 - ii. Vibration level limits for demolition and construction activities based on building conditions and soil conditions. The limit should be determined using industry standards, provided that vibration level limits shall not exceed .50 peak particle velocity (PPV) at the property line of the Project.
 - c. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
 - d. Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
 - e. A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.
 - f. The Applicant shall submit the vibration control plan to the Commissioner of Inspectional Services for review and approval prior to the issuance of any demolition, foundation, or building permit.
 - g. The Applicant shall implement the approved vibration control plan. Vibration levels shall be regularly monitored during demolition and construction. The Applicant shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
 - h. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the construction activity causing the vibration shall cease and not resume until mitigation measures are implemented and notice is provided to the Commissioner of Inspectional Services.
 - i. The Applicant shall provide written notice to all property owners within 250 feet of the Project 48 hours prior to vibration-related activity that includes an explanation of the proposed activity, address of the site, date and time of the work, and contact information of the contractor overseeing the work.
 - j. Following construction, the Applicant shall with approval of the owners, re-inspect all homes, subject to the pre-construction survey to determine any damages caused by vibration. The Applicant shall maintain records of all complaints it receives for vibration-related damages.
22. 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.

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23. 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, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
24. All sidewalks and accessible ramps shall be ADA compliant unless a variance for noncompliance is granted. A letter of compliance prepared by a professional engineer registered in the state of Massachusetts shall be submitted prior to issuance of an occupancy permit (temporary or final).
25. The Applicant shall underground all lateral utility connections from the right of way to the structure(s) and locate all utility service lines on the site underground.
26. 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 Fire Department that confirms the Fire Department will have sufficient access to the building, confirm that fire access will function safely, and shows all hydrants and fire connections, and other features as may be required for Fire Department approval.
27. The Applicant shall submit final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. Once approved, the O&M Plan must be adopted, implemented, and maintained by the Applicant, and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
28. Prior to the issuance of any building permit for the Project, the Applicant shall submit a final photometric plan detailing lighting location and levels to the Commissioner of Public Works and the Department of Planning and Development for review and approval.
29. 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

30. The project shall be designed and constructed to achieve Enterprise Green Communities Green Building Rating System. Certification by the Enterprise Green Communities Green Building Rating Program is not required.

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- 31. The Project shall feature all electric heating, cooling, and cooking systems, as well as electric hot water.
- 32. The Applicant shall design and construct the new residential construction in accordance with Passive House standards as follows:
 - a. The Applicant shall perform a feasibility study and energy modeling in keeping with Passive House design requirements.
 - b. The Applicant shall work with Passive House Institute US (PHIUS) prior to pre-certification submission to ensure the building envelope, excluding the historic headhouse and new construction parking garage, is designed so there is the greatest probability of being able to attain Passive House certification for the project.
 - c. The Applicant shall submit to the Planning Department a copy of all interim submissions as they are available, and after Certificate of Occupancy, final submissions for PHIUS, regardless of whether the project achieves certification.
 - d. The Applicant shall demonstrate best efforts throughout the construction and commissioning phases to achieve Passive House certification.
 - e. The Applicant shall submit the project to DHCD as a project seeking Passive House certification, which in good faith will require all the above efforts.

TRAFFIC/PARKING CONDITIONS

- 33. The Project shall include 31 parking stalls.
- 34. Five (5) of the parking stalls shall be equipped with electric vehicle charging stations and an additional twenty-six (26) parking stalls shall be electric vehicle charging station ready, meaning that electrical systems and conduit are prepared to expand the number of charging stations for electric vehicle use.
- 35. The Applicant shall implement a Transportation Demand Management Plan to reduce reliance on motor vehicle transportation. The Plan shall be submitted to the Director of Planning and Development prior to the issuance of any building permit for the Project (other than a demolition permit) and shall include, but not be limited to:
 - a. 30% above the required bicycle parking required by zoning. The Newton Zoning Ordinance requires three bicycle parking spaces, the Applicant is proposing 65 bicycle parking spaces. 43 of the bicycle parking spaces shall be secure and within the basement of the building. The remaining 22 bicycle parking spaces will be accommodated outdoors.
 - b. 100% of the parking stalls shall be electric vehicle (EV) ready and 5 of the 31 (16%) shall have access to EV chargers.
 - c. Provide information on sustainable transportation options including but not limited to: MBTA services, Bluebikes, and NewMo. This information shall be provided when residents move in or sign their rental agreement and posted in common areas of the building.

36. The Applicant will implement and maintain the Transportation Demand Management Plan contained in Condition #35 and shall collaborate with the City on traffic management issues.

OTHER/ONGOING CONDITIONS

37. 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.
38. The Applicant may utilize City services for trash and recycling disposal, provided that the Applicant provide suitable accommodations and locations of receptacles on site to facilitate the services as specified by the Commissioner of Public Works.
39. Any portions of the Site subject to the jurisdiction of the Conservation Commission must receive an Order of Conditions from the Conservation Commission prior to the issuance of any building permit for work on the Project subject to such jurisdiction.

CONDITIONS PRECEDENT TO THE ISSUANCE OF A BUILDING PERMIT

40. Prior to issuance of a building permit, the Applicant shall submit to the Planning Department the following:
- a. an updated Rating System Checklist enumerating the criteria set forth in the applicable green building rating system and indicating which technical and design requirements will be met in the green building project design and the resulting rating level of the project.
 - b. an updated Rating System Narrative describing the technical and design elements of the project that will be utilized to achieve compliance with the applicable green building rating system.
 - c. an updated Energy Narrative, describing the energy efficiency, renewable energy, and other technical and design elements of the project that serve to minimize energy use, make use of renewable energy sources, and demonstrate how close the project is to achieving net zero energy use status.
 - d. a document demonstrating the credentials of the project's designated green building professional.
 - e. an affidavit signed by the green building professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project is being designed to achieve Enterprise Green Communities.
 - f. The credentials of the project's green commissioning agent.

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41. No building permit shall be issued pursuant to this Comprehensive Permit until the Applicant has:

- g. Recorded a certified copy of this Comprehensive Permit Decision at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
- h. Submitted evidence of Final Project Approval by DHCD.
- i. Submit a draft marketing plan for the leasing of the residential units to the City for review.
- j. 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.
- k. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, the Commissioner of Parks, Recreation, and Culture, and the City Engineer in accordance with Condition #19.
- 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 #27.
- m. Submitted a Transportation Demand Management Plan for review and approval by the Director of Planning and Development in accordance with Condition #35.
- n. Submitted a final photometric plan for review and approval in accordance with Condition #28.
- o. Submitted to the Fire Department for review and approval final site circulation plans and building plans which shall include all required information on proposed sprinkler and alarm systems, access to buildings, and all hydrants and fire connections;
- p. Submitted any payments required under Condition #17.
- q. Obtained a written statement from the Director of Planning and Development that confirms that the building permit plans are consistent with the plans approved in Condition #1;
- r. 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

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conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety.

- s. Submitted a copy of the Pest Control inspection report and the remediation action plan in accordance with Condition # 20
- t. Conducted the preconstruction survey in accordance with Condition #21.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY OCCUPANCY PERMITS

42. The Applicant shall submit to the Planning Department any updates to the sustainability documents submitted prior to occupancy along with the following:

- a. an affidavit certifying that the pre-construction commissioning process requirements of Enterprise Green Communities have been met and that the post-construction commissioning process requirements of Section 5.13 of the Zoning Ordinance were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.
- b. Credentials of the project's accredited Green Building Professional and an affidavit signed by that professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project was built to achieve the requirements of Section 5.13 of the Zoning Ordinance.

43. No final certificate of occupancy (unless otherwise stated) for any building authorized by this Comprehensive Permit shall be issued by the City until the Applicant has:

- a. Filed with the building permit record statements by a registered architect and a professional land surveyor certifying compliance with Condition #1.
- b. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced Condition #1. 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.

Submitted final as-built survey plans in digital format signed and stamped by a registered land surveyor. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy of all or portions of the buildings prior to providing the final as built plans.

- 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 evidence of DHCD's approval of the Affirmative Fair Housing Marketing and Resident Selection plan.

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- f. 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.
- g. Received a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department.
- h. Submitted any payments required under Condition #17.
- i. Completed all landscaping in compliance with Condition #1 related to or for the portion of the project for which an occupancy permit is requested.
- j. 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.
- k. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground for the portions of the Project for which a certificate of occupancy is requested to the extent required by this Order, or submit evidence that best efforts have been made to underground the utilities.
- l. Submitted the final rodent control report in accordance with Condition #20.

WAIVERS GRANTED

1. The Board grants waivers from the following sections of the Zoning Ordinance:
 - a. Section 4.1.2.B.1 to permit a development of over 20,000 square feet.
 - b. Section 4.4.1 to allow ground floor residential use with residential use above.
 - c. Section 4.1.2.A.2 to waive minimum required lot area per unit.
 - d. Section 5.11 to waive all inclusionary zoning requirements, as the project provides 100% affordable housing units in perpetuity.
 - e. Section 5.13.6.A to waive the special permit submittal requirements for sustainable development design standards, provided that such submittals are included with the building permit application.

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- f. Section 7.3.1.B to waive the requirement for submission of a 3-D computer generated model.
 - g. Section 7.4 Waive site plan approval procedures.
2. The Board grants waivers from the following dimensional requirements of Section 4.1.3 of the Zoning Ordinance:

Zoning Category	Required/Allowed	Existing	Proposed/Allowed by Waiver
Side Yard Building Setback	23.7 feet or half of the building height	36.5'	13'
Building Height	24'	NA	47.9'
Maximum Number of Stories	2 stories	2 stories	4 stories
Lot Area per Unit	1,200 square feet	NA	771 square feet

3. The Board grants waivers from the following requirements of Section 5.1 of the Zoning Ordinance:
- a. Section 5.1.3.B to waive the requirement to apply to A-B+C parking formula.
 - b. Section 5.1.3.E to allow assigned parking.
 - c. Section 5.1.4.A to allow a waiver of 18 parking stalls.
 - d. Section 5.1.5 to waive the application requirements for a parking and loading facility permit.
 - e. Section 5.1.7.A to allow parking in the front setback and within five feet of the street, both from Armory Street.
 - f. Section 5.1.7.B.1 to allow parking stalls with a width of less than nine feet.
 - g. Section 5.1.7.B.2 to allow parking stalls with a depth of less than nineteen feet.
 - h. Section 5.1.8.B.1 to waive minimum parking stall width for a parking facility with more than five stalls.

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- i. Section 5.1.8.B.2 to waive minimum parking stall depth for a parking facility with more than five stalls.
 - j. Section 5.1.8.B.4 to waive stall width and depth for accessible stalls.
 - k. Section 5.1.8.B.6 to waive the requirement that end stalls restricted on one side by curbs, walls, fences, or other obstructions shall have the maneuvering space at the aisle of at least five (5) feet in depth and nine (9) feet in width.
 - l. Section 5.1.8.C.1 and 5.1.8.C.2 to waive minimum maneuvering aisle dimensions.
 - m. Section 5.4.2.B to allow a retaining wall with a height greater than four feet within the front setback from Armory Street.
4. The Board grants a waiver from the following sections of the Revised Ordinances of Newton, Massachusetts, 2017:
- a. Sections 22-50 waive review and demolition delay by Newton Historical Commission.
 - b. Section 29-169 to waive 75% of the Applicant's infiltration/inflow mitigation fee, resulting in a required payment of \$104,599.

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


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RECORD OF VOTE

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AYES: Brooke K. Lipsitt, Mike Rossi, William McLaughlin, Elizabeth Sweet, and Lef Reilly

NAYS: None



Brooke K. Lipsitt, Chairperson

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

Filed with the City Clerk on January 17, 2023.

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.

Carol Moore, City Clerk

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SCHEDULE A

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APPROVED PLANS FOR COMPREHENSIVE PERMIT DECISION #10-22
1135-1137 Washington Street, Newton, Massachusetts

<u>No.</u>	<u>Drawing Title</u>	<u>Latest Issue</u>
C-000	General notes	September 15, 2022
C-200	Erosion and sedimentation control plans	September 15, 2022
C-300	Site layout plan	September 15, 2022
C-400	Site grading plan	September 15, 2022
C-500	Site drainage and utility plan	September 15, 2022
C-600	Stormwater details	September 15, 2022
C-601	Utility details	September 15, 2022
C-602	Civil details	September 15, 2022
C-603	Erosion and sedimentation control details	September 15, 2022
L-100	Landscape grading plan	September 15, 2022
L-101	Landscape plan	September 15, 2022
L-200	Landscape details	September 15, 2022
A-100	Garage level	September 14, 2022
A-101	First floor level	September 14, 2022
A-102	Second floor	September 14, 2022
A-103	Third floor	September 14, 2022
A-104	Fourth floor level	September 14, 2022
A-106	Roof level	September 14, 2022
A-200	Exterior elevations	September 14, 2022
A-201	Exterior elevations	September 14, 2022
A-202	Materiality	September 14, 2022
A-500	Building section	September 14, 2022