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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

COMPREHENSIVE PERMIT AMENDMENT

*Lofts at Charles River Landing LLC, applicant
300 Second Avenue
Map 300, Parcel 24*

April 25, 2019

The Lofts at Charles River Landing, LLC, applicant, made application to the Board of Appeals for an Amendment to the Comprehensive Plan under MGL Chapter 40B, 760 CMR 56.00, and/or any other applicable Sections of the Needham By-Law including Sections 3.2.4.1(k) (accessory use within NEBC District) and Section 5.1.4 (Off-Street Parking Requirements) to allow the construction of an approximately 2,900 square foot fenced-in dog park for residents at the property; to reduce the number of off-street parking by 7 spaces for a total of 580 parking spaces; to relocate certain components of the irrigation system; to remove associated curbing; to convert existing asphalt parking pavement to pervious surface; to install a four foot tall perimeter fence and gated entry with a stone boundary and edging at the base of the fencing; and to install artificial grass turf, benches, dog park obstacles and signage. The property is located at 300 Second Street, Needham, MA in the New England Business Center District. A public hearing was held in the Select Board Chambers, Needham Town Hall, 1471 Highland Avenue, Needham, MA, on Thursday, April 25, 2019 at 7:30 p.m.

Documents of Record:

Documents submitted before or at the April 25, 2019 hearing:

- Application for Hearing, dated March 28, 2019; Clerk stamped March 28, 2019.
- Plans prepared by Allen & Major Associates, Inc, Abbreviated and Notes C-001-C-002; Partial Existing Conditions, 1; Demolition & Erosion Control Plan C-101; Layout & Materials Plan, C-102; Grading & Spot Grade Plan, C-103; Details, C-501-503, stamped by Timothy J. Williams, Professional Engineer, March 12, 2019.
- Letter, David A. Roche, Building Commissioner, April 18, 2019.
- Letter, Thomas A. Ryder, Assistant Town Engineer, April, 2019.
- Letter, Lee Newman, Director of Planning and Community Development, April 24, 2019.
- Email, Tara Gurge, Assistant Public Health Director, April 18, 2019
- Email, Tara Gurge, Assistant Public Health Director & David Parson, Animal Control Officer, April 18, 2019.
- Letter, Thomas A. Ryder, Assistant Town Engineer, April 18, 2019.

- Email, Chief Dennis Condon, Fire Department, April 16, 2019.
- Email, Robert Deutsch, 14 Highland Street, Needham, April 23, 2019.
- Email, LihWen and Samson Chu, 6 Highview Street, Needham, April 24, 2019.
- Letter, Nina Prohodski, 55 Riverside Street, Needham, April 23, 2019.
- Email, Emily Keller, 14 Highview Street, Needham, April 24, 2019.
- Email, Diane Abbott, 69 Highland Terrace, Needham, April 24, 2019.
- Email, Joseph and Eileen Manning, Needham, April 24, 2019.
- Email, Rich Epstein, 75 Highland Terrace, Needham, April 25, 2019.
- Email, Laura Utano, April 25, 2019.
- Email, Melanie Prescott, 72 Riverside Street, Needham, April 25, 2019.
- Email, Joe Manning, April 25, 2019.

Documents submitted before or at the May 16, 2019 hearing:

- Email, Richard Perlman, May 5, 2019.
- Letter, Harmon Lewis, 300 Second Avenue, Unit 4167, May 8, 2019.
- Email, Lisa Callahan, 300 Second Avenue, May 10, 2019.
- Email, Ryan McKee, 18 Highview Street, May 13, 2019.
- Email, Pam Fernandes, 300 Second Avenue, May 14, 2019.
- Email, Naomi Ribner, 40 Riverside Street, May 15, 2019.
- Email, John Bulian, Chairman, Needham Select Board, May 15, 2019.
- Email, Joe and Eileen Manning, May 16, 2019.

Documents submitted before or at the June 20, 2019 hearing:

- Dog Run Site Plan, prepared by Wessling Architects, ZBA Received Stamped June 20, 2019.
- Dog Run Enlarged Plan, prepared by Wessling Architects, ZBA Received Stamped June 20, 2019.
- Email, Ryan McKee, 18 Highview Street, June 17, 2019.
- Email, Melanie Prescott, 72 Riverside Street, June 20, 2019.
- Email, Elizabeth Kaponya, 27 Highland Terrace, June 20, 2019.

April 25, 2019

The Board included Jon D. Schneider, Chairman; Jonathan D. Tamkin, Member; Howard S. Goldman, Member; Kathy Lind Berardi, Associate Member; and Peter Friedenberg, Associate Member.

Mr. Schneider opened the hearing at 8:17 p.m. by reading the public notice.

John Dougherty, attorney representing the applicant, reported that the applicant was proposing a dog park as an amenity for the residents of the apartment complex. This amenity will allow dogs to be exercised off-leash while in the proposed fenced in area. There will be a posted sign detailing the rules of the park – use at your own risk, owners are responsible for the behavior of their dogs, dogs must be licensed and up to date vaccination, dogs must be under owner's control at all times, dogs must be leashed when entering and exiting the area, dog waste must be cleaned up immediately, owners must be in the park with the leash readily available, aggressive dogs must be removed immediately, dog handlers must be at least 13

years old, children under 13 years old must be accompanied by an adult, aggressive dogs and dogs in heat must remain on leash.

Dog owners who live at the complex sign a rider to their lease which imposes rules and restricts the type of dog allowed. The landlord can impose fines and terminate the rental agreement if there are any violations caused by the dog. The dog park will be restricted to the residents of the property. Access to the park will be available by a key fob. The fob will also restrict access limited to established park hours. There will be video surveillance of the park. The fob and video will give the landlord information to manage and control the park.

Ryan Bianchetto, PLA, Allen & Major Associates, Inc and landscape architect for the applicant, stated that the park will be located on the far north corner of the parking lot. The proposed park abuts the Charles River Walkway Park and residential neighbors. There are trees on the north and south side of the proposed park. There is an eight foot wooden fence and a 34 feet buffer zone of the complex property behind the fence to the boundary of the abutting residential property line. The dog park will not be immediately adjacent to any residential property line.

The applicant proposes to build the dog park over seven current parking spaces. The current fence will remain and no trees will be removed. The current natural buffer will not be affected by the proposed park. The Town's By-Law requires 525 parking spaces for the apartment project. The complex has a total of 587 spaces which is a surplus of 62 spaces. With the loss of seven spaces associated with this project, the total of 580 spaces will still maintain a surplus of 55 spaces.

70% of the complex is comprised of studio and single bedroom units whose tenants primarily use the available 439 spaces located in the parking garage. The north surface parking lot is rarely used and has a surplus of spaces.

The dog park will be located in the most north portion of the parking lot. Seven spaces will be eliminated – three from the east side and four spaces from the west side. The surrounding green spaces will remain. The area will be enclosed with a four foot fence and will have a double gate on south side. There will be an artificial turf surface specifically designed for dogs and there will be agility and exercise features. The artificial turf, known as *canine grass*, has a ¾ inch grass-like blade which sits on top of a mat, laid on top of a stone surface. Unlike sports artificial turf there is no sand or rubber infill. It has an antimicrobial feature. This turf allows water to infiltrate faster than a natural grass field. It was selected over stone, mulch, dirt and artificial turf which each had wearability issues. The *canine grass* can be easily cleaned with an irrigation system and hosed down by maintenance staff. The existing property irrigation system will be extended into the park with spray heads and a hose connection will be installed. The park will also be maintained by the dog owners who are required to pick up if their dog soils the area.

Mr. Friedenbergs asked the direction of the site's water runoff. The site is essentially flat with only a .033 to .035 grade, water runoff infiltrates evenly. The *canine grass* infiltrates water 100 times faster than turf. If there was an excess of water volume the runoff would flow evenly in all directions. The site is intentionally not pitched for maximum infiltration efficiency.

Mr. Friedenbergr inquired about the temperature of the surface. Mr. Bianchetto did not know, but he informed that the park was shaded by mature trees on three sides and would be in shadow for the majority of the day. Dog owners generally do not walk their dogs during extreme weather conditions.

The dog park will have several receptacles at the gate of the dog park and at the entrances of the building. The dog bags will be provided; the bag dispenser is part of the receptacle unit.

Comments received:

- The Planning Board made no comment.
- The Public Works Department had no comment.
- The Building Commissioner had no comment.
- The Fire Department had no comment.
- The Board of Health had extensive issues that had to do with the operation of the park.
- Citizen Comments in opposition were received from:
 - Ryan McGee, 18 Highview Street;
 - Robert Deutsch, 14 Highview Street. He also raised issues about lack of landscaping property care and excessive site lighting;
 - LiWen and Samson Chu, 6 Highview Street;
 - Nina Prohodski, 58 Riverside Street;
 - Emily Keller, 14 Highview Street;
 - Diane Abbot, 69 Highland Terrace;
 - Joseph and Eileen Manning, 69 Riverside Street. They also raised issues about the broken fence and excessive site lighting;
 - Janice Epstein, 75 Highland Terrace;
 - Richard Epstein, 75 Highland Terrace;
 - Melanie Prescott, 72 Riverside Street;
 - Laura Utano, also raised concerns about excessive harsh site lighting.

Mr. Schneider opened the meeting to public comments.

Elizabeth Kaponya, 27 Highland Terrace, reported that residents had not received notice of the hearing. Daphne Collins, Zoning Administrative Specialist, stated that all the persons on the Town Assessors Abutting Properties Certified list were mailed notices on April 8, 2019. A neighborhood meeting was convened on April 22, 2010 at Nina Prohodshi's residence. Everyone in attendance was in opposition to the dog park. They are concerned about the noise and sanitation. Of particular concern was the possible runoff containing bacteria into the Charles River. They were also concerned about the excessive light spillage from the site based on recently installed lighting.

Mr. Schneider inquired if there was going to be additional lighting at the dog park. The applicant responded that other than the existing lighting no lighting was proposed for the dog park.

Ms. Kaponya noted that there is an available public dog park for Needham residents located at the secluded Nike Site and was in opposition to a private one next to a residential neighborhood.

Janice Epstein, 75 Highland Terrace, informed the Board that all the abutters of the project submitted letters in opposition of the dog park. She was concerned about the proximity of the dog park to the DCR property and the Charles River and the habit of walkers on the Charles River walkway of throwing bags of dog waste on adjacent properties.

She had an issue about the precedent of a private dog park when the Town already has a public dog park. Mr. Schneider clarified that this case will not set a precedent. The reason a dog park can be considered at this development is because it's a 40B project.

Ms. Epstein was concerned about conditions set by the ZBA in the Comprehensive Permit that go ignored by the applicant. In particular, the LED lighting on the roof and parking lot spills onto their properties and there is also a broken fence. These problems continue despite ongoing contacts with the property manager. Mr. Schneider suggested that Ms. Epstein could take the violations to the Building Commissioner for enforcement.

Ms. Epstein requested that another location of the dog park be considered such as at the front of the property which would be less intrusive to the abutting neighbors.

John Bulian, Chair of the Needham Select Board and former member of the Needham Dog Park Committee, was not in opposition to dog parks at 40B projects. He requested that

- the applicant find another location on the property that would be less intrusive to the residential neighbors;
- the meeting be continued to allow the Select Board to review the proposed plan and submit comments to the Board

Mr. Schneider asked Mr. Dougherty if the applicant was amenable to a continuance. Mr. Dougherty was amenable to a continuance. Mr. Tamkin and Mr. Goldman were supportive of a continuance to allow input from the Select Board.

Mr. Schneider was troubled by the applicant proposing a dog park directly adjacent to a residential neighbor and would be more inclined to consider it if it were in another location of the property.

Constantine Koukoulis, Asset Manager of the Property, clarified that the project is not a dog park but an exercise run for dogs. He said that the dog run is to allow the dogs to be off leash with other dogs in a controlled space. No chemicals will be associated with the run.

He reported that the property went to LED lights for efficiency purposes. He was committed to looking into ways to reduce the output of the lights as they are much brighter than previous lighting. Mr. Schneider inquired if the lights could be shaded so they don't cast light onto the abutters. Mr. Koukoulis affirmed that it could be done. Mr. Koukoulis said he was available 24/7 and welcomed concerns. He provided his cell number to neighbors.

Scott A. Winkler, architect for the applicant, reported that other locations were considered. Some were closer to neighbors and all required the taking of trees. Mr. Koukoulis noted that the front entrance was considered, but the landscaping would have to be disturbed and a dog run wasn't the ideal first visual.

The meeting was continued to May 16, 2019 at 8:00 p.m., Charles River Room, Public Services Administration Building, 500 Dedham Avenue.

The meeting adjourned at 9:15 p.m.

May 16, 2019

The Board included Jon D. Schneider, Chairman; Jonathan D. Tamkin, Member; and Kathy Lind Berardi, Associate Member.

Mr. Schneider opened the hearing at 8:33 p.m. by reading the public notice.

John Dougherty, attorney representing the applicant, reported that they have responded to concerns about the fence, lighting and location.

The fence had been repaired. UDR, the owner, is working with an electrician to replace the upper deck parking garage lighting poles with pack lights installed on the four foot parapet wall.

Mr. Schneider read Condition #20 of the Comprehensive Permit issued December 14, 2006 which stated the following:

All exterior lighting at the Site shall be designed so as not to spill over to the adjoining properties (i.e., the foot candle level at the site boundaries is zero).

Mr. Dougherty said UDR is committed in taking steps to bring the lighting into compliance. Ms. Berardi asked how long it would take. Constantine Koukoulis said it would take between two to three weeks depending on the availability of equipment and weather.

Ryan Bianchetto, the applicant's Landscape Architect, reported that they had a new proposal where the park is rotated at 90 degrees and moved closer to the DCR property. The existing eight foot wooden fence will remain and act as a visual and sound barrier. The fence is 34' from the property line. The revised plan will provide additional green space and a vegetative buffer. In the original plan, the closest residential abutter was 175' from the park. In the revised plan, the distance to the closest neighbor has been increased to 190'.

The option of relocating the dog run to the front was problematic because of utilities and sewer lines, the heavy activity and traffic, the elimination of mature trees and the tight configuration of the parcel along the property line. Because of the close location to the Charles River walkway, the dog park might create confusion to dog walkers along the walkway.

The new proposed location will take down some trees. Like the original plan, the majority of the dog run will be on existing parking pavement. However, more parking spaces will be lost in the revised plan.

There will be multiple cleaning activities to maintain the run. It will be connected to the existing irrigation system to allow the washing of the entire site and there will also be a hose connection for staff to hose down the site with water. Mr. Schneider asked how often will the

park be irrigated. Mr. Koukoulis said it will be irrigated twice a day. The rules will require that dog owners pick up any dog waste in the dog run. There will be bags and receptacle stations in the park and throughout the property. The run will be videotaped to address any issues that may develop at the site. In addition the lease language is very strict as to dog and facility care. The landlord has remedies for violators of the park – limiting access to the park or termination of lease. An issued fob will restrict use of the run. Mr. Koukoulis said that the lease limits tenant dogs to 50lbs or less with the majority around 25lbs.

Ms. Berardi asked how many parking spaces will be removed as a result of the revised plan. Mr. Dougherty reported that 20 spaces will be eliminated. The By-Law requires 525 spaces. Currently there are 587 spaces, a surplus of 62 available parking spaces. With the new plan, the surplus parking spaces will be 42.

Mr. Schneider reported that the following comments were received:

- The Needham Board of Selectmen took no position on the project, but requested that the dog park not border any residences.
- Letters in opposition were received from:
 - Ryan McKee, 18 Highview Street.
 - Naomi Ribner, 40 Riverside Street.
 - Joe and Eileen Manning, 69 Riverside Street.
- Letters in support were received from:
 - Harmon Lewis, 300 Second Avenue, Unit 4167.
 - Sheila and Richard Perlman, 300 Second Avenue.
 - Pam Fernandes, 300 Second Avenue.
 - Lisa Callahan, 300 Second Avenue.

Mr. Schneider opened the meeting to the public.

John Negoshian, 1101 South Street, supported the location of the dog park at the front of the property. He disagreed with the rationale for not placing the park in the front because of the location of utilities and sewer lines. Mr. Bianchetto reported that the decision not to locate the park at the front was based not only on the utility and sewer line disturbance, but also the heavy activity and traffic in the area, the close proximity to the Charles River walkway and the removal of large mature trees.

Mr. Negoshian thought the proposed site was too close to residential neighbors. He thought barking dogs would create too much noise. He was concerned about the disposal of bags with dog waste on his property and his trash barrels. He wanted the applicant to provide a facility to flush dog waste. Mr. Schneider questioned whether there was a relation between the proposed park and the problem of dog walkers throwing dog waste on Mr. Negoshian's property. Mr. Negoshian was opposed to the park being located in the rear parking lot area.

Mr. Koukoulis said that the run would be utilized by a maximum of five dogs at any given time. The park will be restricted to resident dogs. He argued that the ambient noise created by trucks (85dh) was louder than that made by dogs (80dh).

Elizabeth Kaponya, 27 Highland Terrace, reported that there are 90 dogs residing at the complex and they bark when they are in contact with each other. She thought that the amenity

will attract more dog owning tenants increasing the demand for the park and the need for a larger area in the future. She supported other options like the park being located at the front, sharing the Kendrick's dog park, providing a shuttle to the Needham Dog Park, and/or purchasing a parcel in the Industrial Park for dog use.

Robert Deutsch, 14 Highview Street, suggested calling it the "barking lot." He expressed appreciation to UDR for working on the lighting problem. He was in opposition to the dog park because of its proximity to the residential neighborhood. He questioned the need of a private dog park when the complex was in proximity to the Charles River walkway which is already a good recreational amenity for dogs. Mr. Schneider responded that the proposed park allows an off-leash option. Mr. Deutsch requested information on the park operation hours.

Mr. Koukoulis restated the rules and regulations that would be listed on the park's signage which could be conditioned further. He stated this is a simple exercise area and not a kennel. UDR is a pet friendly company and a dog park is an amenity they provide at their properties throughout the country. He reported that a new complex in Boston has a dog run on the fifth floor of the building. The hours of use will be limited and the park will be monitored and controlled. Residents of their properties know each other and their dogs. The average tenancy of their tenants is three to four years. The park will have noise attenuation through a vegetative buffer, trees and fence. Mr. Koukoulis was open to adding more noise attenuation features.

Mr. Deutsch raised concerns about how issues that come up once the project is completed will be addressed. Mr. Schneider proposed a condition that, if there were future issues, the item could be addressed before the Board.

Janice Epstein, 75 Highland Terrace, was opposed to the dog park. She was aggrieved that the project would be next to residential neighbors when the Needham Dog Park was not. She questioned the marketing rationale of the dog amenity as they are 98% full with nearly 100 residential dogs. The current dog owning tenants probably chose the complex because of its proximity to the Charles River walkway and don't need the additional dog park. She wondered what the DCR's position was on the proposed dog park. She thought siting the park on the front was the best option.

She cited the lack of response to the light spillage into the neighborhood as an example of problems that arise even when conditions are set. She didn't think the distance or the fence was adequate noise attenuation.

Mr. Schneider closed the public hearing of the meeting. The Board discussed the proposal.

Ms. Berardi was concerned that deliberations would be on a conceptual plan. Ms. Berardi wondered what criteria of Section 7.5.2.1 of the By-Law applied as she was hearing a lot of neighborhood opposition and concern that they will be adversely impacted by the project. She felt that if there had been a better relationship with the neighborhood and a dog park sited closer to the building complex, the project might be less problematic.

Mr. Tamkin noted that the 40B project had a contentious history with a neighborhood whose

opposition was exacerbated by the revolving property owners over the years who failed to create ongoing community connections. He noted the current applicant has made efforts to improve the relationship. He thought a dog run at the front of the building away from the neighbors would not be problematic. He was not clear that the new location of the dog run was significantly better than the original location. He wasn't sure that a dog run, with its associated barking wouldn't adversely impact the neighborhood. He raised the possibility of making the Decision contingent on the successful adherence of conditions on the park. He felt he did not have enough information to support the project today. He would like to visit the site to better understand the revised location and the implication on the neighbors.

Ms. Berardi wanted to hear more about why the dog amenity next to the building wasn't an option.

Mr. Schneider said that any location along the back parking lot would not significantly improve the distance to residential neighbors.

Mr. Tamkin wanted to see more concrete plans and to make a site visit. He requested that the concrete plans be provided to the neighbors for their understanding and comment.

Mr. Schneider was concerned about the proximity of the dog park to the neighbors and the associated barking. Mr. Tamkin and Ms. Berardi were sympathetic to the neighbors' concerns about the location. They agreed that they had dogs in their neighborhoods, but they don't all congregate together in a dog run by their homes.

Mr. Dougherty requested a continuance to allow the applicant to revisit other locations more agreeable to the neighbors. Mr. Schneider requested that they look at locating the dog run to the front of the building or next to the commercial neighbors.

Mr. Tamkin requested a site visit open to the neighbors. Mr. Koukoulis was amenable to a site visit at an agreeable time to the Board. Mr. Schneider noted that the timing of the dog park was unfortunate with the history of unaddressed facility maintenance (dead trees and broken fence) and the installation of the harsh exterior lighting, issues that preceded the applicant's ownership. Mr. Koukoulis said that as soon as they became aware of the lighting problems they made efforts to address them.

Mr. Schneider inquired about putting the dog park on the roof of the garage. Mr. Bianchetto said they cannot locate the dog park on the roof because they are required to separate storm water runoff from water for sewage. Mr. Schneider suggested that they could put a roof over the dog park to divert rain water or put the dog park on a lower floor in the garage.

The hearing was continued to June 20, 2019, Charles River Room, Public Services Administration Building, 500 Dedham Avenue.

The meeting adjourned at 10:15pm

June 20, 2019

The Board included Jon D. Schneider, Chairman; Jonathan D. Tamkin, Member; Howard S.

Goldman, Member; Kathy Lind Berardi, Associate Member; and Peter Friedenberg, Associate Member. Mr. Schneider stated that Mr. Tamkin and Ms. Berardi would be the voting on this matter because they had been present at all the public hearings.

Mr. Schneider opened the hearing at 8:33 p.m. by reading the public notice.

John Dougherty, attorney representing the applicant, said that the applicant was committed to being a good neighbor responsive to neighbors' concerns. The applicant was submitting a revised plan which proposes to locate the dog run on the roof of the parking garage. The problem regarding separating the storm water runoff from park waste was solved.

Scott Winkler, architect for the applicant, reported that the dog run is proposed on the roof of the parking garage at one of furthest points from any residential neighbors. The run will be covered by a permanent tent of heavy fabric over a metal aluminum framed structure. The structure will be 8 ½ feet tall. The tent will allow for rain water to drain into the existing storm drain system that services the garage. The dog run will be sprinkled daily and that waste water collected inside the dog run will be connected to the sewer system. This proposal was discussed with the Building Commissioner and the Plumbing Inspector. The modified dog run, though slightly smaller than the previous proposals, will be essentially the same as the previous proposals in terms of materials, fencing, play structures, sprinkler and water system, and design and layout. Ten parking spaces will be taken for the dog run from the least popular spaces in the parking garage. The elevator and garage stairwell will bring the dogs and walkers to the run. A designate walkway will be installed with either a painted pattern or thin paver material to identify the circulation to the run which will have a double door access. A slope walkway will provide access to the entrance as the dog run is raised above the surface level of the garage. Planters and benches may be installed to dress up the path. The surface of the parking lot will be changed to discourage drivers from turning around in the area.

The run will be accessed by a fob and will have security cameras. The same rules presented for the previous dog run will apply. The dimension of the run will be 22 feet by 58 feet, covered by the tent measuring 25 feet by 60 feet. This new location will make the run inaccessible to non-residents.

Mr. Dougherty reported that the harsh roof parking light poles have been disabled and new wall pack lighting has been installed on the parking garage roof's four foot parapet perimeter wall with downward facing lights. This roof lighting will remain unchanged with the proposed dog run.

Mr. Schneider asked the neighbors for their opinion. The neighbors expressed unanimous support for the proposed dog run.

Mr. Goldman asked what was motivating offering this amenity. Mr. Winkler reported that dog amenities are common at large apartment complexes and that for the applicant this was their third dog run installation. The applicant intends to install dog amenities at all their New England properties.

Janice Epstein, 75 Highland Avenue, requested that after installation the project be reviewed

for issues that may arise impacting the neighborhood particularly light and sound. Mr. Schneider informed that the conditions of the Special Permit are explicit about zero light spillage onto the neighbors. If light becomes a problem, the neighbors should discuss it with the owner. If not resolved, the neighbors should take it directly to the Building Commissioner for enforcement.

Mr. Winkler explained that the dog park is surrounded by apartment buildings which will block sound traveling to the neighbors. Also, the garage has a partial wall that will block sound. The Board agreed that, if there are multiple written complaints concerning sound, the Board will hold an informal hearing in six months to discuss possible mitigation measures. Ms. Epstein was agreeable to this condition.

Elizabeth Kaponya, 27 Highland Terrace, suggested plantings be installed to buffer any sound. The Board thought it was premature imposing mitigation measures. The Board agreed to wait and allow the dog run be in operation to see if any issues arise.

Ms. Berardi moved to grant the applicant an Amendment to the Comprehensive Permit to (a) allow the construction of a 22 by 58 foot dog park located on the garage roof covered by a tented aluminum structure regulated by a posted set of rules comparable to those presented; the park shall include an irrigation system, perimeter fencing, gated entry, recreational structures, trash receptacles with dog waste bags, accessible by key fob only, restricted to the residents of the building, operated from dawn to dusk, with surface materials as presented in the plans, all with condition that a hearing will be held if more than one written complaint regarding noise is received during the first six months of the dog park operation to discuss possible mitigation measures; and (b) allow the removal of ten parking spaces in connection with the construction. Mr. Tamkin seconded the motion. The motion was unanimously approved.

The meeting adjourned at 9:00 p.m.

Findings:

Based upon the evidence presented at the hearings, the Board finds as follows:

1. The applicant is the owner of a 350-unit apartment building known as Charles River Landing located in the New England Business Center District. The project was built pursuant to a Comprehensive Permit under M.G.L. Chapter 40B issued by the Board on December 14, 2006 and amended on February 26, 2007, December 18, 2008, September 17, 2009 and January 10, 2010 ("Comprehensive Permit").
2. The applicant proposed to build a dog exercise area of approximately 2900 square feet where dogs owned by residents of the apartment would be able to run off-leash. The dog exercise area would require the elimination of several parking spaces.
3. The applicant originally proposed to build the dog exercise area at the northerly end of the parking lot adjacent to a residential neighborhood. Substantially all the residents of the neighborhood opposed the proposed dog exercise area. The opponents principal concerns were the noise from barking dogs and the safety of waste disposal.

4. The first hearing was continued at the request of the Selectmen. At the second hearing on May 16, 2019, the applicant proposed to move the location slightly farther from the nearest abutting home and nearer the Charles River.
5. At the end of the second hearing, the Board closed the evidence and began to deliberate. It appeared that the Board unanimously opposed the dog exercise area at the proposed location. The Board offered, and the applicant accepted, a continuation of the hearing to consider other locations.
6. The applicant now proposes to build a 20 x 58 foot dog exercise area on the roof of the existing parking garage at the northwest corner. The exercise area will have a roof to collect rain water that can be sent into the existing system for rain water and the dog waste will be collected and sent into the existing sewage system. The area will have a 4-foot fence and double entry door. Use will be limited to residents of the apartment who will have a key fob for entrance to the area. Use will be restricted to no more than dawn to dusk. There will be rules and video monitoring to enforce the rules. There will be an irrigation system to wash the artificial grass surface at least once a day.
7. None of the residents of the neighborhood present at the third hearing on June 13, 2019 objected to the new proposal for a dog exercise area on the roof of the parking garage. They requested that there be an opportunity to have the Board consider mitigating measures if the dog exercise area created unreasonable noise.
8. The dog exercise area will cause the loss of ten parking spaces in the garage. With this reduction, there will be 577 remaining spaces in the garage and on outside lots. The By-law requirement for the apartment is 525 spaces. The owners represent that there are always many unused spaces and that 577 is more than adequate.
9. The proposed dog exercise area is a reasonable and desirable amenity for the apartment project and consistent with the intent of the By-Law. A large apartment project approved under M.G.L. Chapter 40B just opening across the street has a similar dog exercise area. It appears that substantially all the noise will be blocked by an apartment building between the dog exercise area and the abutting neighborhood and by the concrete parapet on the sides of the garage.

Decision:

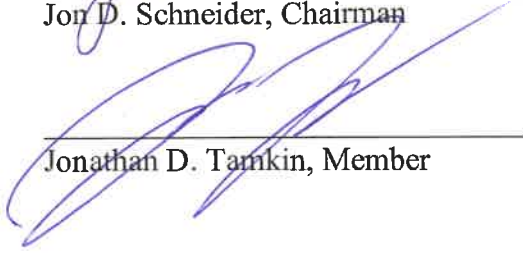
On the basis of the foregoing findings, following motion made and duly seconded, after due and open deliberations, the Board by unanimous vote grants an amendment to the Comprehensive Permit to allow the construction of a 20 x 58 foot dog exercise area on the northwest corner of the roof of the parking garage substantially in accordance with the plans presented at the hearing and the elimination of ten parking spaces in the parking garage for the construction of the dog exercise area, subject to the following conditions:

1. The dog exercise area will be enclosed with fence at least four feet in height.
2. Entrance will be through a double gated door and will be restricted to those with an

electronic fob or other similar device issued by the applicant.

3. Use will be limited to residents of the apartment complex.
4. The area will be open no more than dawn to dusk (and may be for such shorter period as the applicant deems appropriate).
5. The area will have artificial grass and an irrigation system. The grass will be washed down no less than once each day. The waste will be collected and sent into the sewer system.
6. The area will have a receptacle for collection of solid waste and the receptacle shall be emptied no less than once each day.
7. The applicant shall impose reasonable rules for use of the area similar to those discussed at the hearings (which may be amended from time to time by the applicant). The rules shall address a limitation on the number of dogs and the age of those who may be present. The applicant will have video monitoring of the area and shall enforce the rules.
8. The applicant shall control the noise from the dog exercise area so it does not unreasonably disturb residential neighbors. In the event the Board receives written complaints from two or more neighbors that the noise from the dog exercise area is causing an unreasonable disturbance prior to January 31, 2020 (and the complaints are not otherwise resolved), the Board will conduct a hearing to consider imposition of additional conditions to control noise upon notice to the applicant, the complaining parties and such other such other parties as the Board deems appropriate. The Board reserves the right to amend this decision after such hearing to impose such additional conditions as it deems appropriate including, but not limited to, limitation on hours, limitation on the number of dogs, and erection of sound barriers.
9. Failure of the applicant to observe any of the foregoing conditions may result in the revocation of the right to operate the dog exercise area after a hearing upon notice to the applicant and such other parties as the Board deems appropriate.


Jon D. Schneider, Chairman


Jonathan D. Tamkin, Member


Kathy Lind Berardi, Associate Member

electronic fob or other similar device issued by the applicant.

3. Use will be limited to residents of the apartment complex.
4. The area will be open no more than dawn to dusk (and may be for such shorter period as the applicant deems appropriate).
5. The area will have artificial grass and an irrigation system. The grass will be washed down no less than once each day. The waste will be collected and sent into the sewer system.
6. The area will have a receptacle for collection of solid waste and the receptacle shall be emptied no less than once each day.
7. The applicant shall impose reasonable rules for use of the area similar to those discussed at the hearings (which may be amended from time to time by the applicant). The rules shall address a limitation on the number of dogs and the age of those who may be present. The applicant will have video monitoring of the area and shall enforce the rules.
8. The applicant shall control the noise from the dog exercise area so it does not unreasonably disturb residential neighbors. In the event the Board receives written complaints from two or more neighbors that the noise from the dog exercise area is causing an unreasonable disturbance prior to January 31, 2020 (and the complaints are not otherwise resolved), the Board will conduct a hearing to consider imposition of additional conditions to control noise upon notice to the applicant, the complaining parties and such other such other parties as the Board deems appropriate. The Board reserves the right to amend this decision after such hearing to impose such additional conditions as it deems appropriate including, but not limited to, limitation on hours, limitation on the number of dogs, and erection of sound barriers.
9. Failure of the applicant to observe any of the foregoing conditions may result in the revocation of the right to operate the dog exercise area after a hearing upon notice to the applicant and such other parties as the Board deems appropriate.

Jon D. Schneider, Chairman

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Kathy Lind Berardi, Associate Member