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**TOWN OF NEEDHAM
MASSACHUSETTS**

BOARD OF APPEALS

A Street Residential, LLC

Record owner: Needham Nine Owner, LLC

0 Street Map 300, Parcel 17

77 A Street, Map 300, Parcel 18

156 B Street, Map 300, Parcel 19

189 B Street, Map 300, Parcel 27

October 20, 2015

A Street Residential, LLC, c/o Normandy Real Estate Partners, 99 Summer Street, Boston, Massachusetts 02110, prospective purchaser, applied to the Board of Appeals for a comprehensive permit under M.G.L. Chapter 40B, for construction of a multi-family residential project of 390 units, 98 of which are affordable, on 5.13 acres of land in the New England Business Center Zoning District, at the corner of Second Avenue and A Street. A public hearing was held October 20, 2015 pursuant to notice thereof published in a local newspaper and mailed to all parties of interest.

Documents of Record

- Application Packet for Special Permit, received September 25, 2015, containing:
 1. Application dated September 23, 2015.
 2. A three-ring binder entitled "Second Avenue Residences Application for a Comprehensive Permit" submitted by A Street Residential, LLC including: Introduction; Project Summary; Applicant Status; Project Eligibility Letter from Department of Housing and Community Development dated August 14, 2015; Development Team; Purchase and Sale Agreement effective February 25, 2015; Department of Housing and Community Development Subsidized Housing Inventory as of December 5, 2014; Sample Regulatory Agreement; List of Exceptions/Waiver Requests dated September 16, 2015; Existing Conditions Narrative; Aerial Photo; Unit Summary Table; Executive Summary Phase I Environmental Report prepared by Environ International Corporation, Boston, Massachusetts dated October 2014.
 3. Comprehensive Permit Plans, Second Avenue Residences, A Street and Second Avenue, prepared

- by Tetra Tech: "C-1 Cover Sheet", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-2 Existing Conditions Plan", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-3 Site Context Plan", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-4 Site Layout Plan", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-5 Grading & Drainage Plan", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-6 Utility Plan", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-7 Site Lighting Plan", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-8 Detail Sheet", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-9 Detail Sheet" signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-10 Detail Sheet", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-11 Detail Sheet", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-12 Stormtech Recharge Area Details", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "C-13 Stormtech Recharge Area Details", signed and stamped by Glenn K. Dougherty, RPE, dated September 21, 2015; "L-1 Landscape Plan", signed and stamped by Jane Cummings RLA No. 1406 prepared by TerraInk dated April 8, 2015, revised September 21, 2015; "L-2 Landscape Details Planting" signed and stamped by Jane Cummings RLA No. 1406 prepared by TerraInk dated April 8, 2015, revised September 21, 2015.
4. Set of Architectural Plans prepared by Elkus Manfredi Architects, Boston, MA with drawings titled "A101 Floor Plan Level 1", "A102 Floor Plan Level 2", "A103 Floor Plan Level 3", "A104 Floor Plan Level 4", "A105 Floor Plan Level 5", "A106 Floor Plan Roof", "A200 Building Elevations", "A201 Building Elevations", "A202 Building Elevations", "A300 Building Sections", "A310 Enlarged Elevations and Wall Sections", "A311 Enlarged Elevations and Wall Sections", "A600 Enlarged Unit Plans", all signed and stamped by David Manfredi Registered Architect No. 5553 dated September 21, 2015.
 5. Center 128 Chapter 2-Transportation prepared by Epsilon Associates, Inc. dated August 31, 2015.
- Materials received before the October 20, 2015 hearing:
 6. Memo from Lt. John Kraemer, Police Department dated October 14, 2015.
 7. E-mail from Tara Gurge, Needham Health Department dated October 14, 2015.
 8. E-mail from Irene Finkelshteyn dated October 20, 2015.
 9. E-mail from Anthony DelGaizo, Town Engineer dated October 19, 2015.
 10. E-mail from Chief Condon, Fire Department dated October 19, 2015.
 11. Letter from Glenn Dougherty, TetraTech dated October 19, 2015 with Plan of Land prepared by TetraTech, signed and stamped by Robert F. Daylor RLS No. 20108 dated July 10, 2015 attached.
 12. E-mail from Ryan McKee dated October 19, 2015.
 13. E-mail from Elizabeth Kaponya dated October 20, 2015.
 - Materials received before the November 10, 2015 hearing:
 14. Letter from Roy Cramer dated November 2, 2015 with attachments Planning Board Decision dated April 2, 2015; estimated rents; and Letter from Stephen Cusma dated October 15, 2015.
 - Materials received before the November 19, 2015 hearing:
 15. Letter from Mark Zuroff, Attorney at Law.
 16. E-mail from Ryan McKee dated November 8, 2015.
 17. Letter from Lee Newman, Director of Planning and Community Development dated November 17, 2015.
 18. Planning Board Decision dated November 10, 2015.
 19. Planning Board Amendment Decision dated November 10, 2015.

October 20, 2015

The Board included Jon Schneider, Chairman; Jonathan D. Tamkin, Member; and Howard Goldman, Member. Also participating was Kathy Lind Berardi, Associate Member. Mr. Schneider opened the hearing at 8:32 p.m. by reading the public notice.

Mr. Roy Cramer, attorney for the applicant, A Street Residential LLC, said that Normandy Real Estate Partners was applying for a comprehensive permit for a 390-unit residential project on a five-acre parcel. This project is through the Local Initiative Program (LIP) a special program under Chapter 40B and has already been approved by the Selectmen. This project is part of the redevelopment of the 27-acre General Dynamics site. The five-acre parcel will be subdivided off by the Approval Not Required process. Approvals of the rest of the development are before the Planning Board.

Kevin Daly, project manager, Normandy Real Estate said the five-acre parcel is part of a large master plan. The redevelopment goal is a mixed-use area with residential, hotel, retail and office space where people can work and live. Trip Advisor, the Marriot, and parking garage are part of Center 128 West. A proposed hotel and development of two existing buildings; Center 128 East are currently under review by the Planning Board.

Glenn Dougherty, the project engineer from Tetra Tech, described the project. The site is currently a bituminous parking lot with 471 surface parking spaces with sparsely landscaped islands providing about 10% open space. Currently there is no treatment for the parking lot run-off. It drains untreated and uncontrolled through existing storm drains discharging into the Charles River. The proposed project is a five-story residential building with two interior courtyards and parking garage: 577 parking spaces are inside the garage and eight surface parking spaces are in front of the building; totaling 585 parking spaces. A pool and other amenities will be in the courtyards. 22% of the site will be open space; significantly more than existing. New sidewalks connect the residential area to the rest of the park. Existing sidewalks will be upgraded to concrete. The landscape plan is only conceptual. A new water line will loop around the property. There will be four fire hydrants.

The storm water management plan is designed as part of the larger project and the Town Engineer has approved the plan. There will be five water quality treatment units and three subsurface infiltration recharge-to-ground units. The roof run-off will be collected and used for landscape irrigation. The design significantly reduces pollutants and run-off going into the Town's drain system. The entire system meets the Charles River Management Association's criteria by treating and infiltrating rainwater greater than one inch per square-foot and reducing phosphorous load to 65%.

As part of the negotiation, the applicant has agreed to extend the sewer line down Second Avenue and connect it to an existing but currently broken sewer line. The applicant will fix that break and redirect the flow so that sewer main can be used again.

The storm water plan meets the standards of Department of Environmental Protection's Infiltration and Inflow program (I and I). In the Memorandum of Understanding agreed upon by the applicant and the Selectmen, the applicant is providing a fund for mitigation that can be used for I and I designated projects.

Nancy Dougherty, traffic engineer from Tetra Tech, said that a traffic analysis was done for the entire 128 complex. It was a comprehensive study and complied with Mass DOT requirements since the site connects to Highland Avenue. There are 11 different ways to get in and out of the site. The residents will primarily use A Street and the Second Avenue Extension.

Today, there are 514,000 square-feet of office space generating 600 trips during peak hours. The new project that includes 420,000 square-feet office space, retail space and hotel is projected to generate 600 trips. The A Street Residences will add an additional 160 trips during each peak hour. Because much of this space is being converted from office space, the net number of new trips is 100 during morning peak hours and 180 during evening peak hours. According to the Zoning By-law, there could be 1.1 million square-feet of office space allowed by-right generating 1400 trips during each peak hour. The projected 760 trips is significantly less than what it could be. The proposed uses complement one another since the residents will be leaving when the office workers are arriving.

There will also be internal trips as they hope people working in the park will also live in the park which will mean fewer trips out onto Highland Avenue. Mass DOT is planning improvements for Highland Avenue. Normandy Real Estate has already contributed to and implemented roadway improvements in the area in anticipation of the entire development.

In terms of mitigating traffic from the residences, Normandy will institute a Transportation Demand Management Program encouraging residents to participate in the MassRide carpooling program. There will be 30 fuel efficient parking spaces, 4 electric charging stations, 146 compact spaces and storage for 30 bicycles. 2500 feet of new sidewalk is proposed throughout the complex. There are two bicycle sharing programs in the complex, one operated by Normandy and the other by Trip Advisor. They will be monitoring intersections as the buildings come on-line to best manage the traffic. In addition, the applicant is improving the Third Avenue and B Street intersection and making improvements along the Third Avenue corridor.

The Board confirmed that the traffic study took into account all the proposed uses in the entire park. They have accounted for proposed 19,000 square-feet of retail space attached to the hotel. A restaurant is possible, but would need a special permit. The hope is that the retail serves the people that are already there and that people will walk.

There will be a new light at First Avenue to take the pressure off Second Avenue. Once the Kendrick Street interchange is complete much of the traffic from this entire park will be able to access Route 128 without going on to Highland Avenue. Ms. Dougherty thinks that Mass DOT's plan will work.

David Manfredi of Elkus Manfredi Architects described the project as transforming a light industrial district to a true mixed-use district with more urban edge and less suburban spread. The building has three parts and two interior courtyards: two five-story sections with residences and a three-story section which houses the entry and the amenities. The project has amenities that make a vibrant community to attract talent to the offices. The residential part wraps the parking garage on three sides which helps to mask size and scale of parking. There are studio, one-bedroom, two-bedroom and three-bedroom apartments. The affordable units are spread throughout the building with either interior or exterior views. The diversity of scale and materials brings the mass down to a personal scale, rather than one large building with a lot of monotony.

Mr. Manfredi presented elevations showing how the architectural element help break up the mass and scale of the building. Mr. Schneider asked what the parking garage would look like. Mr. Manfredi explained the five levels of parking garage will be naturally ventilated and will be made of concrete and metal.

Because this project has been presented with the support of the Selectmen, Mr. Schneider asked Mr. Matt Borelli, Vice-Chairman of the Board of Selectmen to speak. Mr. Borelli said that this is the type of project the Selectmen would like to see in this area. The Board likes the mixed-use concept of a walkable

area where people can work, play, live and shop. There have been significant mitigation payments to the Town by the applicant. The Selectmen unanimously support this project.

Mr. Schneider said that, if this project is completed, the Town will be over the 10% threshold of affordable housing and will no longer be at the level of compulsion required under Chapter 40B which takes away a significant amount of control from the Town.

Mr. Schneider acknowledged letters from Town Departments.

The Town Engineer outlined three concerns and some drainage recommendations. Tetra Tech responded, answering the concerns and said they would address the drainage concerns.

Mr. Schneider read the police comments. The comments conclude that they recommend no parking along the curve at Second Avenue and they are currently accessing staffing needs as several large projects become occupied.

The Health Department reminds the applicant they will need a pool permit and they need to make sure the fire pit does not become a nuisance.

Mr. Schneider acknowledged letters from residents.

Irene Finkelshteyn, 260 Hunting Road, does not support the project.

Mr. Schneider read comments from Elizabeth Kaponya, 27 Highland Terrace. She said that 390 units across the street from Charles River Landing is not suitable. The area is gridlocked despite traffic studies and improvements that say otherwise. She would rather see smaller 40B complexes throughout town.

Ryan McKee, 18 Highview Street, wrote asking that the Board consider the local neighbors. Traffic is almost impossible. Noise from garbage pick-up and snow removal echoes throughout the complex. He requests mitigation from the noise. Although he supports a bigger tax base for the town, he also feels that the neighbors need to be protected.

Mr. Schneider asked for public comment.

Charles Long, 121 Walpole Street, Dover, owns property and operates a law practice at 105 Chestnut Street in Needham. He is interested in the Town's economic development. He thinks these units should be condos because they can be taxed at a higher rate and condominium owners are more likely to invest in the community. He thinks the tax benefits outweigh the number of affordable units that are counted towards the 10% threshold. He is concerned of crime in large developments where people can be anonymous.

Mark Zuroff, attorney from 175 Highland Avenue, spoke on behalf of Janice Epstein, Robert Deutsch, and Nina Prohodski. When the leaves are down, these neighbors have direct view of the complex. Even though Chapter 40B compels the Town to have affordable housing, he questions whether there is a need for the apartments since Charles River Landing has vacancies. He doesn't believe in the live, work, play concept as Charles River Landing does not do that. He reminds the Board that they have a right to peer review; it would be prudent given the size of the project. He thinks that because young people do not want cars and tend to use public transportation - 585 parking spaces are too many. His clients are interested in mitigation, light spillage, removal of garbage and snow, the number of parking spaces, traffic and the size and scale of the buildings. The developer has answered some questions. Until the building is built we really don't know what the traffic will be. All these issues would benefit from peer review. The Applicant is using the waiver request as a blank check. There is no applicable residential zoning in this

area. The height is out of character with the immediate abutting neighborhood. Although Chapter 40B does have limitations, the Board still has the power to ask for significant mitigation. He would like to see some mitigation that benefits the neighbors as interests of the neighbors should be given consideration.

Elizabeth Kaponya, 27 Highland Terrace, said that there is a warrant in the Special Town Meeting proposing a 250-unit limit in the proposed mixed-use zone. If this is approved, there will be two large 40B projects across the street from each other in her neighborhood. She asks why this neighborhood is being handicapped. Mr. Schneider said that 40B projects are not subject to zoning. Ms. Kaponya said that 390 units is a lot. It seems that the 250-unit limit was picked for a reason; so that should be the limit of this project.

Janice Epstein, 75 Highland Terrace, if only 250-units are needed to reach the 40B threshold and just this evening another 40B project was approved, a much smaller project is appropriate. Normandy is not going to manage the property, so whatever is said now may not happen. She feels there is room to move the building back to allow room for more landscaping. She is concerned that the residential component is being permitted through this Board while the rest of the development is being permitted through the Planning Board. It is important for both Boards to know what is going on. In addition there has been no discussion about dumpster locations, snow removal, air conditioning units or landscaping. She requests the construction hours be 8:00 a.m. to 5:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturdays. She does not think the applicant should get a waiver from site plan review. The Trip Advisor parking lot lights are too bright. We should require the parking garage to be enclosed like it was at Charles River Landing. With the widening of Highland Avenue there is a lot going on here in the next two years. It is difficult to do a accurate traffic study with so much change.

Diane Abbott, 69 Highland Terrace, asked about the number of affordable units currently in Needham. She also wondered why this project is so large when just this evening another 40B project was approved. She can see Trip Advisor's LED lights in the parking garage. She is concerned about light from this project spilling into her neighborhood. With this development's construction and the highway construction, she is concerned about a drop in property values.

John Negosian, 1101 South Street, owns property off Wexford and manages property on Highland Terrace. He is concerned about the traffic because now it is very difficult to exit out of Wexford. He said he did not know about the new light. He understands the light is for the industrial park which will congest Wexford more. He realizes that the homes on Highland Terrace abut a commercial zone, but he asks the Board to remember there are homes there. He did not realize that the commercial zoning would change. The Town should reach the 10% affordable housing, but there is no reason to go above it.

Noreen McQuade, 41 Lexington Avenue, asked how these new developments will effect school committee plans as some of the schools are already over crowded. Also, she hopes that the traffic plan takes into account the currently undeveloped portion of this park so, in the long term, the traffic flow will work. Ms. McQuade said that poor planning in a Waltham office park made traffic movement through the park is very difficult.

Mr. Schneider said that it is the town's responsibility to absorb any new students that move into Town. Chapter 40B does not allow decisions to be made on account of the project's impact on the schools. Charles River Landing has a few school-aged children, but they are spread through out the grades.

Robert Duetsch, 14 Highland Street, said that the extra children do have consequences such as longer bus rides. He also said that they did buy a house next to a commercial property and he agrees it comes with a risk. However, he expects the Town to take up their cause. Mr. Schneider said the Board has an

obligation to all property owners. They expect people to be allowed to make reasonable use of their property. Mr. Duestch said that he just wants to flush out due process.

Geoff Engler, from SEB, consultant to the A Street Residential project explained the Local Initiative Program (LIP). Under the state rules, the application cannot move forward without the approval of the Board of Selectmen. During the LIP process the applicant works with the Town and a mitigation package was negotiated. There has been a lot of work done ahead of this hearing. Most 40B projects are not like this and are often more adversarial. Several people asked that if the Town needs only 250 more affordable units, then why is this project 390 units? The percentage of affordable units is recalibrated every 10 years with new census information. Because the Town wants to be sure to be over the threshold for several years, the Town decided that 390 units make sense. It is important to get beyond the 10% affordable units so it remains above. With this project Needham will be well above and will remain so for 20 years or more. His firm does the marketing for Charles River Landing; it is the most successful and sought housing in the area. The occupancy rate is high. There is a huge demand in Needham and the 128 corridor. People come and go, so they are often advertising at Charles River Landing.

The Board discussed the project.

Mr. Tamkin said that he would like to hear more about the mitigation negotiated with the Town for the entire project and not just the affordable housing project.

Mr. Goldman said that he would like to know the expected market and affordable rental rates.

Mr. Cramer said that in the Memorandum of Understanding (MOU) signed by the Town and the developer allocated \$2.25 million for mitigation. Number 8 in the MOU outlines how the money can be used.

Center 128 West which includes Trip Advisor, allocated \$1 million into a traffic improvement fund and an additional \$1 million for traffic improvements within the park. They have already spent \$0.25 million of this on traffic improvements on Second Avenue and Highland Avenue. Center 128 East is not closed with the Planning Board. However, they anticipate that they will be widening the Third Avenue and B Street intersection. In addition the developer is required to contribute money to the Town for inflow and infiltration funds. As buildings come online they will continue to contribute to the fund.

Mr. Goldman said he would like a summary of the mitigations as well as the Planning Board decisions regarding this larger project. He asked how the applicant was addressing the buffer between this project and the residences.

Mr. Dougherty said that landscape plan was only conceptual, but shows where the plantings will be located. They do not own the piece of land that directly abuts the residential neighbors, so they can only landscape their own site by buffering their street edge.

Mr. Tamkin asked what the developer is doing to fix the light problem in the Trip Advisor parking garage. The applicant said they are looking at screening the parking garage; this will be in the Planning Board's amended decision. The neighbors can see the Trip Advisor parking garage across the parking lot and above the nearby buildings. The proposed residential parking garage is on the backside of the residential units, away from the neighbors. The parking garage will be screened from the neighbors by the rest of the building. None of the parking garage will be visible from the residential neighbors.

Mr. Tamkin said that there was confusion because this Board was not privy to the discussions that the Planning Board and the Board of Selectmen had with the applicant. It is difficult to focus on the

residential portion when it is part of a much greater project. Since the entire project has been negotiated with the community, it would be easier to understand how the neighbor's concerns have been addressed if this Board had the whole picture. Mr. Tamkin said he was supportive of the project, but he has some questions about how this project fits together with the rest of the projects.

Mr. Cramer said there is Center 128 West which is the Trip Advisor and they have just closed the hearing for Center 128 East and amended 128 West. The Planning Board is currently writing the decision.

Mr. Goldman asked how the applicant arrived at the number of units. Mr. Daly said they initially considered 425 units. They worked with the Board of Selectmen to get the massing of the building and the number of units to 390.

Ms. Berardi asked about the projected occupancy rate. Mr. Engler said that, once the tenancy has stabilized, they expect a 95% occupancy rate. He reminded the Board that it is customary to advertise all the time because there is a large number of units and short leases. There may be an upcoming vacancy that the management anticipates. More than 50% of the units are either one-bedroom or studios. The smaller units are more affordable and they are targeting the working millennials. Ten percent of the units will be three-bedroom as required by 40B regulations.

The Board asked for projected rents, a summary of the entire project including the negotiated concessions and mitigations as well as the related Planning Board decisions.

The Board and applicant agreed to continue the hearing until 8:15 p.m. November 10, 2015.

The hearing was closed at 9:48 p.m.

November 10, 2015

The Board included Jon Schneider, Chairman. Mr. Schneider opened the hearing at 8:17 p.m. by reading the public notice. Because the public meeting was not noticed in time, the hearing was continued to 9 p.m. on November 19, 2015 in the Charles River Room.

November 19, 2015

The Board included Jon Schneider, Chairman; Jonathan D. Tamkin, Member; and Howard Goldman, Member. Also participating was Kathy Lind Berardi, Associate Member. Mr. Schneider opened the hearing at 9:23 p.m. by reading the public notice.

Mr. Schneider said that at the last hearing the Board heard extensive testimony. Some Board members concluded that they would like more information about how this project relates to the rest of the development. A few weeks ago, Mr. Cramer sent a memo explaining the entire development. The memo was very comprehensive and their questions were satisfied. The Planning Board has issued a decision on the second portion of the development known as Center 128 East which will include office, hotel and retail space.

Mr. Schneider asked about the location of the air conditioners and emergency generators. Mr. Daly said a series of small air conditioners are on the roof; one for each unit. They are back away from the edge, so

they should not be visible. The noise is very low; they are cognizant about noise because residential units are immediately below. If they were to have emergency generators, they would be located near the dumpsters by the loading dock as shown on the plans submitted with the application. The building would screen the area from the neighbors.

Mr. Goldman asked for details about how the light will be shielded from the neighbors. The applicant said the garage faces away from the neighbors and is wrapped on three sides. The height of the roof parking deck is lower than the adjacent roofline so the roof deck lighting will be shielded from the neighbors. They will not be using the same lights as was used in the Trip Advisor parking garage. There will be general pedestrian light poles and bollards throughout the campus.

The Planning Board sent three comments late this afternoon.

They requested that the applicant participate in the transportation program. Mr. Daly said that they have met with the 128 Business Council to discuss the possibility of participating as no residential transportation program exists. They do not want the participation to be a requirement of the decision because they do not know the costs or the specific logistics of the program. They are not sure that the program will be able to support their needs. They do acknowledge that the residents would benefit from transit to places such as the Riverside T stop. Charles River Landing does not have transportation service. In general, they would like to offer the residents access, but do not want to commit to participating without working out the details.

The second request is that the applicant minimizes lighting impact. The applicant has agreed that they are minimizing the light glare.

Finally, the Planning Board asked for assurances that there will be adequate funds to cover transportation improvements. The applicant said they have given significant dollars and there are plenty of funds to complete the needed work. Mr. Cramer said he felt that this comment was not in the spirit of cooperation that they had been working under a MOU that was carefully negotiated by the Selectmen and the applicant. Mr. Schneider said that, given the very late receipt of the Planning Board comments and the lack of clarity of what they are asking; the Board will not be able to pursue this request.

Mr. Cramer said that he had received the letter from Attorney Zuroff and he feels they have addressed his issues.

Mr. Schneider summarized concerns previously expressed by neighbors: they want a smaller project; they are concerned about increased traffic, about excessive lighting, and construction noise. He expects that the Board will limit construction, dumpster servicing and delivery hours similar to what was outlined in the Planning Board decision.

Mr. Schneider asked for concerns from the public that have not already been expressed.

Janice Epstein, 75 Highland Terrace, asked that the construction hours be the same as the Planning Board's decision for 128 East. The Board confirmed they would be the same. She also said that she would like the air conditioner units enclosed similar to Charles River Landing. Mr. Daly said that Charles River Landing's air conditioners are on the roof and are not enclosed. Mr. Cramer showed an aerial photograph of Charles River Landing showing the air conditioners on the roof. Mr. Bill Lovett explained that the air conditioner units are similar to a single-family home unit only slightly smaller. They are efficient and generally quieter.

Ms. Epstein asked that, since Normandy will not be owning and managing the property, that the new company be required to have the same restrictions as outlined in the Planning Board's 128 East Decision. She also asked if some kind of restriction is violated who they call. Mr. Schneider said that the Building Inspector enforces the conditions of the decision. Ms. Epstein also said she was concerned about noise from snow removal at night. The Board said that the snow needs to be removed, so it is difficult to impose restrictions.

Attorney Mark Zuroff suggested conditions the Board should impose. He said that he appreciates that the lighting has been addressed. He suggested the Board look at whether the number of parking spaces is appropriate as the number seems too high. He is a concerned of the visual impact of the building's height. The residents would like to see traffic calming measures for both pedestrian and vehicular traffic on Second Avenue; would like to see long term monitoring of affordable units to assure the tenant mix is appropriate; would like a construction management plan; restrictions on noise pollution; restrictions on abutting parcels. Mr. Schneider said that restrictions on abutting parcels have already been decided through the Planning Board's decision. Mr. Zuroff said that there should be substantial gift money directed to the neighbors as they are directly affected. The Town should hire a technical consultant to oversee the project. He said that a blanket waiver is like a blank check. Mr. Schneider said the Board would not grant a blanket waiver; if the applicant needs more waivers they would have to come back to the Board for an amendment. Mr. Zuroff said that this comprehensive permit changes the use of the area and sets a precedent affecting other parcels.

The hearing was closed for further evidence and the Board deliberated.

Mr. Tamkin said that the applicant worked in partnership with the community and the project is a tremendous improvement for the entire community. Seeing the whole master plan was helpful and the development will have a positive impact on the town. He understands that the neighbors have concerns, but he thinks most of the concerns have been addressed. The plan brings vibrancy to the area and a broader tax base for the town. The Board of Selectmen supports the project. There will be a lot of turmoil initially with the transportation improvements and the construction. Mr. Tamkin said he supports the project.

Mr. Goldman said that he also supports the project. The Board of Selectmen did much of the work ahead of time with substantial contributions to the Town. It provides needed housing options. He appreciates the thought that went into the design to mitigate the lighting. He also acknowledges the difficulty during the transition period while these projects come online. He believes that the various agencies involved will do their best to ease the transition. This project achieves the goal of the new zoning as it brings vibrancy to the area.

Ms. Berardi said that she appreciates the effort of the applicant and the Town vetting the project to hammer out the details ahead of time. The plan is detailed and succinct. She appreciates the neighbors coming out and providing input. She also understands this is not entirely what they want, but she thinks it will be an improvement to the current asphalt parking lot. Many aspects of the project are well thought out, such as the screening of the garage in order to lessen the noise and light impact to the neighbors. She thinks the aesthetics are pleasing and she supports the project.

Mr. Schneider said the Town has determined to re-develop the area. This re-development is supported by the Planning Board, the Board of Selectmen as well as Town Meeting as they rezoned the area to encourage such projects. Although he understands the neighbors' concerns, he does not see how this Board can stand in the way of the Town. Importantly, this project brings 98 affordable residential units to the Town. He is supportive of more rental and affordable units. He is in favor of the project.

The Board reviewed proposed conditions. A draft of proposed conditions was circulated in advance of the meeting to the applicant and Board members.

The Board proposed that all utilities be underground. Mr. Cramer pointed out that above-ground utilities already exist. He suggests that only new utilities be underground.

The Board proposed that there will be no glare on adjacent residential neighborhoods. Mr. Cramer said he was concerned that they would not be able to block all light. Mr. Schneider said the By-law specifically says glare and he thinks that glare can be blocked. Robert Duetsch suggested some trees to be planted to block the light.

The Board discussed the monitoring of the affordable components. Mr. Geoff Engler from SEB said that the Department of Housing and Community Development typically is the monitoring agent for LIP projects. Mr. Schneider said that the Town Manager asked for language that allows the Town to be involved in the monitoring. Mr. Engler said that the Town would be notified of the annual review and certification of affordability. The Town would like the applicant to maximize the local preference and to have an opportunity to comment on the marketing plans.

Mr. Cramer suggested a change in condition number 21 to more efficiently handle project changes after the construction begins. He remembers having to return to the Board a number of times in connection with the Charles River Landing permit, which was time-consuming and expensive for the applicant and time-consuming for the Board. He suggests that the Building Commissioner be authorized to make the initial determination as to whether a change is substantial or insubstantial. The Board agreed that it would be best if the Building Commissioner has leeway to decide whether something is a substantial change, rather than having every change be determined by the Board Chair. This allows the flexibility for the Building Commissioner to evaluate during the inspection and if the change is substantial, the applicant has to come back to the Board.

The applicant agreed to create a construction management plan and construction hours are limited to 8 a.m. to 5 p.m. Monday through Friday, 9 a.m. to 5 p.m. Saturday and no work on Sunday unless an emergency. There will be no construction vehicles standing and all equipment must be stored on site. Contact information of a construction manager will be provided to the Building Commissioner and the Board.

The Building Commissioner has the discretion of issuing and temporary occupancy permit. It is up to him to decide if the site is safe for temporary occupancy.

The Board does not want to convene for review of signs, so the applicant will need to go to the Design Review Board which normally handles approval of signs.

The Board will allow the other waivers requested by the applicant, but will not give a blanket waiver. If there is a new waiver, the applicant needs to come back.

The whole project must be owned by the same entity.

Mr. Schneider said that he would like the Board to be involved in any transfer of the permit and ownership, but Mr. Cramer submitted regulation 760 CMR Section 56 which says the state approves the transfer and the Board will be notified.

Mr. Goldman clarified that we are issuing a permit that will be transferred to Toll Brothers. Mr. Cramer said they were up front with the Town that Normandy would not own nor manage the building. They are

allowed to transfer with the approval of the subsidizing agency. The applicant has to have site control to apply for the permit and once the project is complete the permit runs with the land. The applicant and Board agreed that that transfer to Toll Brothers should not be included in the decision as it is a separate business deal.

Mr. Schneider asked for information concerning Toll Brothers. Mr. Bill Lovett, Senior Development Manager from Toll Brothers City Living, a subsidiary of Toll Brothers, Inc. explained the organization and portfolio. They will contract with a third party to construct the project and they will own and manage the development.

Mr. Schneider asked the neighbors if their concerns have been addressed in the conditions.

Ms. Elizabeth Kaponya asked for a confirmation of the dumpster servicing hours. Mr. Schneider said that the dumpster service would be limited to 7:00 a.m. to 6:00 p.m.

Mr. Deutsch expressed concern about noise from snow removal and whether the snow will be removed off-site. Mr. Daly said it that depends on how much snow. Generally, they plan to move it off-site because they do not have very much room. The only snow removal needed will be the top floor of the parking garage and the eight spaces outside. Mr. Daly said that last year the parking lot was used as a snow farm because it was an unusual winter. Normandy removed snow at its own expense from nearby streets to improve traffic flow as those roads became very narrow. A resident from Charles River Landing said that they were dumping snow all night and it was very difficult to sleep. He asked if it would be used again as a snow farm this winter. Mr. Daly said that, if there are historic storms they might need to widen the streets again, so they won't rule it out.

Robert Deutsch said that he welcomed the development, but he would like the noise to be mitigated during construction. Mr. Schneider said that, if Mr. Deutsch has concerns, he should make Building Commissioner aware of the concerns and review the construction management plan.

Ms. Epstein said that, since the Town was getting \$3.7 million worth of mitigation, she thought it wasn't too much to ask for \$20,000 worth of trees for the neighbors. The Board said that they do not control the negotiated funds. In any event, the funds were intended for traffic improvements. Mr. Daly responded that the applicant does not have control over the properties immediately adjacent to the residential neighborhood. Charles River Landing did own the land and landscaped it to create a buffer. Normandy does not want to get involved in landscaping neighbors' properties. The Board encouraged the applicant to work with the neighbors on screening.

Mr. Goldman made a motion that the A Street Residential LLC's petition for a comprehensive permit under M.G.L. Chapter 40B, for construction of a five-story multi-family residential project of 390 units, 98 of which are affordable, on 5.13 acres of land in the New England Business Center Zoning District, at the corner of Second Avenue and A Street be allowed, subject to the various conditions that were discussed and agreed to.

Mr. Tamkin seconded the motion and the Board unanimously approved.

Findings

On the basis of the evidence presented at the hearings, the Board makes the following findings:

1. The site (the "Site") contains approximately 5.13 acres at the southwest corner of A Street and Second Avenue in the New England Business Center Zoning District. The Site is bordered to the north and east by Second Avenue; to the south by the building known as 189 B Street; and to the west by the building known as 77 A Street. The Site is currently a paved parking lot.
2. The Site is currently a portion of a 27.25 acre parcel owned by Needham Nine Owner, LLC which has entered into a purchase and sale agreement to sell 5.13 acres to the Applicant. After the Site is sold to the Applicant, the remaining 22.12 acres is to be developed into office space, a hotel and retail space. The remaining parcel is referred to as Center 128 East and the proposed development of Center 128 East has been authorized under a Master Site Plan Special Permit dated November 10, 2015 issued by the Planning Board.
3. Center 128 East is adjacent to Center 128 West which has been recently developed with an office building for Trip Advisor, other office/R&D buildings, a 128 unit hotel and two related parking garages. The Site, Center 128 East and Center 128 West are being developed on an integrated basis to form a pedestrian friendly campus.
4. This development scheme is consistent with a strategy adopted by the Town for the redevelopment of the industrial park as supported by the Planning Board, the Selectmen and the Town Meeting through the approval of zoning amendments. They seek to have a mix of uses including offices, hotels, research and development, and residences. The area was known as the Needham Industrial Park and the New England Business Center and has now been re-named "Needham Crossing" to reflect the proposed mixed use.
5. The project is across the street from 350 unit apartment project developed in 2006 under Chapter 40B known as Charles River Landing.
6. The project is proposed under the Local Initiative Program which means that it is supported by the Selectmen.
7. The Applicant proposes to construct a five story multi-family apartment building of 390 units, 98 of which are affordable, pursuant to M.G.L. Chapter 40B. The project will include 49 studio apartments, 153 one-bedroom apartments, 149 two-bedroom apartments, and 39 three-bedroom apartments. There will also be a parking garage surrounded on three sides by the residential building, a swimming pool and two interior courtyards.
8. The Applicant has expressed an intention to transfer ownership of the project to Needham Residential LLC, an affiliate of Toll Brothers Apartment Living ("Toll Brothers"). Toll Brothers is an experienced builder. Toll Brothers owns or manages over 9000 apartment units and will be bound by all conditions set forth in this Comprehensive Permit.
9. The Applicant has obtained a Project Eligibility Letter from the Commonwealth of Massachusetts Department of Housing and Community Development ("DHCD") dated August 14, 2015.
10. The Applicant is a limited dividend organization.

11. The Applicant has control over the site as evidenced by a Purchase and Sale Agreement between Needham Nine Owner, LLC (owner and seller) and the Applicant (buyer) dated February 25, 2015.
12. The Applicant will conform to the limited dividend requirements of Chapter 40B, which will limit the Applicant's annual return on equity to no more than 10%.
13. The Applicant has agreed that 25% (98) of the units will be made permanently "affordable" for "moderate income renters" within the meaning of M.G.L. Chapter 40B.
14. Needham currently has 7.6% of its housing stock defined as "affordable" as reflected in the housing inventory published by the Massachusetts Department of Housing and Community Development ("DHCD") dated December 5, 2014. As a result, under Chapter 40B any applicant who proposes to build housing providing the requisite percentage for affordable housing will be entitled to an exemption from local zoning unless there is a supportable finding "that there is a valid health, safety, environmental, design, open space, or other Local Concern which supports such denial, and then that such Local Concern outweighs the housing need." 760 Code Mass Regs, Section 56.07(2)(b)(2)(2012). The burden of proof is on the Town and, where the Town fails to have 10% affordable housing, there is "compelling evidence that the regional need for housing does, in fact, outweigh the objections to the proposal. The Town of Needham (the "Town") is below the 10% standard for low and moderate income housing mandated by the state under Chapter 40B. Approval of this project will put Needham in excess of the 10% standard.
15. The Applicant has worked with the Selectmen, the Department of Public Works, the Planning Board, the Police Chief, and the Board of Health to develop a safe and well planned project.
16. The project is consistent with the Affordable Housing Plan prepared by Needham in 2007 and Chapter 40B Guidelines prepared by Needham in 2012.
17. The proposed project is consistent with local needs.
18. Traffic is a significant problem in the area. Highland Avenue which is the main artery for entry to Needham Crossing on the north is very crowded with stop and go traffic during much of the day. Kendrick Street which is on the south side of Needham Crossing is also congested at various times of the day. This project and the development of Center 128 East will add a substantial amount of traffic.
19. Significant improvements are planned for Highland Avenue including widening from two to four lanes from Webster Street to the Newton line and the addition of a left turn option for vehicles approaching Highland Avenue from First Street.
20. Major improvements are also planned that will encourage traffic to exit the project and the Center 128 developments toward Kendrick Street (and away from Highland Avenue). Construction is under way for entrances to and exits from Route 128 directly to Kendrick Street. There are plans for an additional turning lane from Third Avenue onto Kendrick Street and a traffic light at Fourth Avenue and Kendrick Street. The Applicant is making mitigation payments in connection with Center 128 West, Center 128 East and this project in excess of \$3,572,000 to assist with the cost of traffic improvements.
21. The Applicant has submitted a traffic study dated August 31, 2015, prepared by Tetra Tech. The traffic study was prepared as part of the Supplemental Draft Environmental Impact Report prepared for the entire Center 128 development including this project. The Second Avenue Residences project will generate approximately 2,390 vehicle trips on weekdays, with approximately 160 vehicle trips during the morning peak hour and 170 vehicle trips during the afternoon peak hours. Project related traffic flows are

predominantly outbound from the Site during the morning peak hours and inbound to the Site during the afternoon peak hours, contrary to traffic generated by the existing commercial buildings in the district. The traffic impact from this project, while significant, is less than the impact from additional office buildings that could be built of right. The traffic study concludes that traffic will be less congested than present after all the projected traffic improvements are completed and the buildings in Center 128 East and this project are fully occupied.

22. The existing drainage system is old and outdated, consisting of catch basins, manholes and pipes that collect, convey and discharge storm water directly to the Town's drainage system. There is virtually no water quality treatment or quality controls in the existing system. The proposed storm water management system was designed in conjunction with the overall Center 128 East project and has been reviewed and approved by the Town Engineer. The system consists of deep-sump hooded catch basins, drain manholes, high-density polyethylene pipe (HDPE), five water quality treatment units, five large subsurface infiltration/recharge areas and three underground cistern tanks that utilize the rainwater harvesting concept by collecting and storing building roof runoff for re-use with the landscape irrigation system. Easements between the owner of Center 128 East and the prospective owner of the 5.13 acre parcel will be prepared, signed, and recorded at the Norfolk Registry of Deeds to memorialize rights of access to use, maintain, repair and replace elements of the storm water management system located on Center 128 East land that will serve the project.

23. All utilities are readily available to the Site and located in A Street or Second Avenue. The Site can be served by municipal water and sewer, as well as electricity, gas, telephone and cable.

24. The owners of Center 128 will also grant easements for pedestrians and the vehicular access over portions of Center 128 East land for the benefit of the project.

25. The Site has easy access to the highway, some public transportation and the proposed use as residential apartment units meets current "smart growth" guidelines and goals.

26. Applicant has requested waivers from the following provisions of the Zoning By-Law.

- a) Multi-family Residential Use (Section 3.2.4): Multi-family residential use is not allowed as of right or by special permit in the New England Business Center ("NEBC") District. A waiver was requested to allow multi-family residential use in the NEBC District.
- b) Accessory Uses (Section 3.2.4.1(k)): Accessory uses in the NEBC District are allowed only if "incidental to lawful principal uses." Because the multi-family residential use within the NEBC is not a lawful principal use, all accessory uses would also be unlawful. A waiver was requested to authorize accessory parking, the swimming pool, and all other uses accessory to the main residential use.
- c) Parking Garage Use (Section 3.2.4.3) (if applicable): Parking garages are allowed by special permit only. To the extent the section is applicable to the proposed parking garage, a waiver was requested from this section to allow parking garage use.
- d) Special Permit, Intensity of Use (Sections 3.2.4.4 and 6.8): Projects with a floor area ratio beyond what is permitted by right require a special permit under Section 6.8 of the Zoning Bylaw. The proposed floor-area ratio of 2.13 is in excess of what is allowed either by right or by special permit. A waiver from the requirements of Sections 3.2.4.4 and 6.8 was requested. Specifically included in this waiver request, without limitation, was the payment of the Traffic Improvement Fee, the payment for or implementation of

any on-site and/or off-site mitigation and the creation of any Transportation Demand Management (TDM) programs, described in Section 6.8.1 of the By-Law.

- e) Uses in the Wireless Communications Facility Towers Overlay District (Section 3.7.3): A waiver was requested to allow multi-family residential use in the Wireless Communications Facilities Towers Overlay District.
- f) Minimum Side Setback (Section 4.8): The By-Law requires a minimum side setback of 20 ft. by right or 15 ft. by special permit. The minimum side setback of the proposed project is 15 ft. A waiver was requested to allow a minimum side setback of 15 ft.
- g) Minimum Rear Setback (Section 4.8): The By-Law requires a minimum rear setback of 20 feet by right or 15 ft. by special permit. The minimum rear setback of the proposed project is 15 feet. A waiver was requested to allow a minimum rear setback of 15 ft.
- h) Maximum Floor Area Ratio (Section 4.8): The By-Law requires a maximum floor area ratio of 1.00 by right and 1.75 by special permit. The floor-area ratio for the proposed project is 2.13. A waiver was requested to allow the proposed floor-area ratio.
- i) Surface Parking Locations (Section 4.8.1 (2)): The By-Law requires that all surface parking shall be located to the side or rear of the principal building(s), that a landscaped buffer be at least 20 ft. in width along the street frontage, street trees be planted at least every 40 ft. along the frontage, and that not more than 6 spaces be provided at the main entrance of the building for short term drop off parking, etc. A waiver was requested from the provisions of this section.
- j) Minimum Open Space (Section 4.8.1(4)): The By-Law requires that a minimum of 25% of total lot area must be open space. That percentage can be reduced to 18.75% by special permit. The open space for the proposed project is 22.6%. A waiver was requested from the provisions of this section.
- k) Public Entrance Facing Street (Section 4.8.1 (5)): The By-Law requires that “Buildings must have a public entrance facing one or more of the streets on which the building fronts.” There are no public entrances on either A Street or Second Avenue. The public entrance to the building is located at the south side of the building. A waiver was requested from the provisions of this section.
- l) Maximum Uninterrupted Façade Length (Section 4.8.1 (6)): The By-Law requires that the maximum uninterrupted façade length is 300 ft. The maximum uninterrupted façade length for the proposed project (along the southwesterly boundary of the property) is 315 ft. A waiver was requested from the provisions of this section.
- m) Parking Plan and Design Requirements (Section 5.1.3): With respect to parking plan and design requirements, the parking garage is comprised of 577 parking spaces. In addition, there are 8 surface parking spaces located on the south side of the building adjacent to the main entrance.
 - (i) Section 5.1.3 (h) (“Parking Space Layout”): With respect to the 8 surface parking spaces, the parking spaces themselves are located on-site and are accessed by a driveway that is located on an adjacent parcel. If Section 5.1.3 (h) is interpreted such that the driveway is considered a “private way” then there may be non-compliance because

vehicles will enter or exit the surface parking spaces by traveling over said driveway. If and to the extent necessary, a waiver was requested to allow access to the parking over an off-site driveway.

(ii) Section 5.1.3(i) ("Width of Maneuvering Aisle"): With respect to the surface parking spaces, only a portion of the maneuvering aisle is provided on-site. A waiver was requested to have the benefit of the maneuvering aisle on the adjacent parcel. To the extent necessary, a waiver was requested with respect to the width of said maneuvering aisle.

(iii) Section 5.1.3 (j) ("Parking Setbacks): Section 5.1.3 (j) requires a 4 ft. setback of parking spaces, maneuvering aisles, and driveways from the rear and side lot lines. The proposed 8 surface spaces are located adjacent to the maneuvering aisle accessing the building and the lot line is immediately adjacent to the maneuvering aisle. As a result, there is no 4 ft. parking setback. A waiver was requested with respect to the 4 ft. setback.

(iv) Section 5.1.3 (k) ("Landscaping"): Because the 8 parking spaces are not set back a distance of 4 ft. as described in Section 5.1.3 (j), there is no 4 ft. wide landscaped area between the lot line and the parking area/maneuvering aisle area. In addition, Section 5.1.3 (k) states that "in any parking area requiring 10 or more spaces, 10% or more of such area shall be maintained as landscaped area. In parking areas requiring 20 or more spaces, a minimum of 1/4 of this amount shall be located in the interior of the parking area. Requiring landscaped setback area shall count toward the minimum 10% requirement; provided, however, that the interior landscaped area requirement shall be met." If this section of the By-Law is interpreted to include all of the parking spaces on the lot (the 577 garage spaces plus the 8 surface spaces) instead of only the 8 surface parking spaces (notwithstanding that Section 5.1.5 exempts enclosed parking structures from the provisions of Sections 5.1.3(k) and (l) of the By-Law), then these landscaping requirements are not met and a waiver was requested from the stated provisions. If the section is interpreted to relate only to the 8 surface parking spaces, the quoted provision is inapplicable, since the threshold for parking areas subject to the quoted section is 10 spaces for the landscaping requirement and 20 spaces for the interior landscaping requirement.

Given the unique configuration of the lot in relation to the 8 surface parking spaces, a waiver was requested from the provisions of Section 5.1.3 of the By-Law to the extent applicable to the proposed project.

- n) Applicability for Parking Structures (Section 5.1.5): A waiver was requested from this section to the extent that the parking structure does not comply with Section 5.1 of the By-Law.
- o) Design Review (Sections 7.2.5 and 7.7). A waiver was requested from all requirements pertaining to review of the proposed project by the Design Review Board.
- p) Site Plan Review (Section 7.4). A waiver was requested from all requirements pertaining to site plan review of the proposed project by the Planning Board.

27. The Applicant has requested waivers from the following provisions of the General By-Law:

- a) Town of Needham General By-Laws concerning signage permits and permitted signage. (Sign By-Law, Article 5 of Town of Needham General By-Laws). A waiver was requested from all requirements pertaining to review and permitting of signage by the Design Review Board.

28. Additional waivers requested by the Applicant:

- a) Storage of Inflammables. A waiver from the requirement to obtain a license, permit and/or approval from the Board of Selectmen or the Fire Department for the storage of inflammables to allow for the parking of motor vehicles in the parking area shown on the Plan was requested.
- b) General Waiver Request. To the extent that the Plans show the need for additional waivers not expressly set forth above, waivers from the By-Law and other local requirements were requested.

Decision

On the basis of the foregoing findings, in open session, by unanimous vote, after motion duly made and seconded, the Board hereby grants the Applicant a comprehensive permit pursuant to M.G.L. Chapter 40B, for the construction of a 390 unit rental apartment development on the 5.13 acre parcel to be created at the corner of A Street and Second Avenue (the "Development") subject to the following conditions:

1. Construction will be substantially in accordance with the architectural plans entitled "2nd AVENUE RESIDENCES, Needham, MA", dated September 21, 2015, prepared by Elkus/Manfredi Architects, 25 Drydock Avenue, Boston, MA 02210 and the engineering and landscape plans entitled "Comprehensive Permit Plans" dated September 21, 2015 prepared by Tetra Tech, all of which were filed with the application.
2. The project will contain 390 rental units, 49 of which shall be studios, 153 will be one-bedroom units, 149 will be two-bedroom units, and 39 will be three-bedroom units. The floor area of the building will be approximately 475,000 square feet. 585 parking spaces will be provided on the site, including eight outside surface parking spaces. The balance will be located in a multi-level parking garage that will be a part of the building, all as shown on the plans filed with the Application.
3. Construction shall be subject to final approval by the Town Engineer of drainage, engineering plans and lighting.
4. All new utilities on the site shall be underground. The existing above-ground utilities within the Eversource easement running through a portion of the site and adjacent properties may remain above ground on poles and overhead wires.
5. Lighting shall be constructed and shielded to so there is no glare in adjacent residential neighborhoods.
6. All construction will be subject to building codes and to building permits issued by the Building Commissioner and will be subject to the usual fees (including, without limitation, the affordable units).

7. All water, sewer, drain connection and street occupancy permits will be issued by the Public Works Department, subject to the usual fees and plan requirements, and shall not be issued pursuant to the Comprehensive Permit process.
8. The applicant shall obtain approval of its final plans from DHCD and enter into a Regulatory Agreement, Monitoring Agreement and suitable restriction for the affordable units in a form approved by DHCD. The Town is a party to the Regulatory Agreement. The affordable units will remain affordable on a permanent basis. Prior to the issuance of a building permit, executed copies of these agreements shall be filed with the Board. It is acknowledged that the Town may wish to serve as a Monitoring Agent for the project. Should the Town seek to serve in such capacity, the Applicant shall cooperate with such request, provided that it is also acknowledged that the ultimate decision on such request is at the discretion of the Applicant's subsidizing agency.
9. Twenty-five percent of the units shall be designated permanently as affordable units pursuant to the terms of the Regulatory Agreement approved by DHCD. The instrument ensuring perpetual affordability shall be recorded in the Norfolk County Registry of Deeds and proof of such recording to be provided prior to the issuance of any building permit.
10. No building permit will be issued until the Building Commissioner receives a letter from the Chairman of the Board, or his designee on the Board, that the conditions in paragraph 8 and 9 have been fulfilled
11. The Applicant will make a good faith effort to obtain local preference in the marketing of the affordable units to the maximum extent allowable. Marketing plans, once approved by DHCD, will be submitted to the Board. In the event the Board requests changes in the local preference or marketing plans, the Applicant will work with the Board and use its best efforts to obtain approval of requested changes. In the event the changes are not approved, the Applicant may proceed in accordance with the plans approved by DHCD.
12. Prior to the issuance of a building permit, the applicant shall file seven sets of plans for the project stamped by a registered engineer and approved by DHCD as final plans, together with a narrative indicating any changes from plans previously submitted to the Board. The final plans shall be consistent with the plans previously approved by the Board. Consistent with 760 CMR 56.05(11), and as delegated by the Board, if the Chairman of the Board determines, within 20 days from the date of submittal, that the filed final plans are not consistent with prior approved plans, he shall decide whether the changes are substantial. If not substantial, he may approve the plans. If the Chairman determines that the plans are substantially different, he shall notify the Applicant accordingly and the Board shall hold a public hearing within 30 days of the Chairman's determination to consider the changes and shall issue a decision within 40 days of the termination of the hearing.
13. Prior to the issuance of a building permit, the Applicant shall submit, for the Building Commissioner's review and approval, a construction mitigation plan that addresses noise, trucking routes, dust control, hours of operation and such other issues as he deems relevant to reduce and manage the disruption arising from construction. The Building Commissioner shall consult with the Town Engineer, Police Department and such other municipal parties as he deems appropriate and shall allow interested parties who request participation in writing an opportunity to comment on the plan before giving his approval. The approved construction mitigation plan shall be provided to every contractor and subcontractor working on the project.
14. Construction hours shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Friday and 9:00 a.m. through 5:00 p.m. on Saturdays. There will be no construction on Sundays or outside the approved

hours unless necessary to deal with an emergency. There will be no construction on federal, state or municipal holidays unless approved by the Building Commissioner or necessary to deal with an emergency. No construction vehicles may stand with engines running before the designated hours of construction. There will be no parking of construction vehicles on Second Avenue. All construction staging shall be on-site. Prior to beginning construction, the Applicant will provide to the Building Commissioner, Chief of Police and the Board the name and telephone number of the person in charge of construction and responsible for maintenance of the site.

15. The applicant shall use vinyl fencing, covered dumpsters or other appropriate means to keep debris from leaving the site and will be responsible for cleaning up debris on adjacent properties in a timely manner.

16. The landscaping shall be substantially in accordance with the landscape plan approved by the Board and shall be maintained by the owner in good condition. Any tree or plant material that dies or becomes diseased shall be replaced by the owner.

17. The owner of the project shall be responsible for snow plowing and removal so that all parking spaces remain available.

18. The owner shall implement the following maintenance plan with such changes as may be approved by the Town Engineer:

- a) parking lot sweeping twice per year after the snowmelt and in the fall;
- b) catch basin cleaning and inspection twice per year in the spring and the fall;
- c) oil/gas separators in the drainage system to be inspected monthly and cleaned four times per year, once in each season.

19. All deliveries and trash dumpster pick up shall occur only between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday, not at all on Sundays and holidays.

20. After the issuance of a building permit, in the event that any changes are proposed to the approved plans, the Building Commissioner shall be charged with making the initial determination as to whether the changes are substantial or insubstantial. In the event that the Building Commissioner is unable to make that determination, the Board's Chairman shall be charged with making the determination as to whether the changes are substantial or insubstantial. Any substantial changes can only be approved by the entire Board after a duly noticed public hearing, as the Board in its sole discretion shall deem appropriate.

21. Prior to the issuance of an occupancy permit, the Applicant shall establish compliance with the public education requirements regarding storm water stipulated under the NPDES Storm water Phase II Program.

22. Prior to the issuance of an occupancy permit, the Applicant shall file three wet-stamped copies of the following with the Building Commissioner:

- a) An as-built plan supplied by the engineer of record certifying that the project was built substantially according to the approved documents submitted to the Board and Department of Public Works. The as-built plan shall show all structures, all finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements in their true relationship to the lot lines for all on-site and off-site construction. In

addition, the as-built plan shall show the final location, size, depth and material of all public and private utilities on the site and their points of connection to the individual utility, and all utilities which have been abandoned. In addition to the engineer of record, the as-built plan shall be certified by a Massachusetts Registered Land Surveyor.

- b) A statement by the registered professional engineer of record certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements on-site and off-site, have been constructed to the standards of the Town of Needham, Department of Public Works and in accordance with the approved plans for the project.
- c) An as-built landscaping plan showing the final location, number and type of plant material, final landscape features, parking areas, and lighting installations for the project. The plan shall be prepared by the landscape architect of record and shall include a certification that such improvements were completed substantially according to the approved documents.

23. Prior to the issuance of an occupancy permit, the Applicant shall provide written evidence to the Board of the recordation of the access easements described in paragraphs 22 and 24 of the Findings above.

24. No building may be occupied or parking lot used prior to the issuance of an occupancy permit by the Building Commissioner. The Building Commissioner, in his discretion, may issue one or more certificates for temporary or partial occupancy of a building or use of parking garage prior to the completion of the entire project if he determines that such occupancy or use will be safe and that he has adequate assurance that the project will be completed. In connection with any temporary or partial permit, the Building Commissioner may require that a bond be filed with the Board in an amount not less than 135% of the value of the unfinished work on the project.

25. The Board grants the waivers as requested by the Applicant and listed in paragraphs 17 and 19(a) of the Findings. The Board does not grant the waiver requested in paragraph 18 and all signs shall be subject to approval of the Design Review Board. The Board does not grant the blanket waiver requested in paragraph 19(b). The Board will consider further waivers if requested by the Applicant.

26. The Applicant's profit shall be limited to the terms and conditions in the Regulatory Agreement.

27. Fee ownership of the project shall remain in one entity.

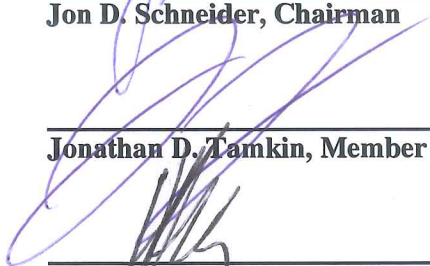
28. The Applicant shall provide written notice to the Board if this Comprehensive Permit is transferred upon written approval of the subsidizing agency.

29. This Comprehensive Permit shall lapse if applicant does not proceed with construction within three years of the date this permit becomes final (meaning the date of this decision if no appeal is filed, or 30 days after the date any appeal is resolved if and appeal is filed). "Proceed with Construction" for the purposes of this paragraph shall mean the construction of at least one foundation for one of the approved buildings in the Project and the continuous prosecution of construction thereafter with reasonable diligence to completion.

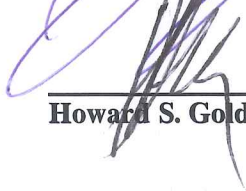
30. Failure to comply with any terms of this Comprehensive Permit shall be grounds for revocation of any building permit or certificate of occupancy issued hereunder. No order of revocation shall be issued by the Board without prior notice to the holder of the Comprehensive Permit and an opportunity to be heard at a public hearing. As an alternative, the Town may enforce compliance with this Comprehensive Permit by injunctive relief issued by a court of competent jurisdiction.



Jon D. Schneider, Chairman



Jonathan D. Tamkin, Member



Howard S. Goldman, Member