

COMMONWEALTH OF MASSACHUSETTS  
HOUSING APPEALS COMMITTEE

IN THE MATTER OF WALPOLE ZONING BOARD OF APPEALS  
AND  
WALL STREET DEVELOPMENT CORPORATION

INTERLOCUTORY APPEAL OF THE WALPOLE ZONING BOARD OF APPEALS

INTRODUCTION

Pursuant to the provisions of 760 CMR 56.03(8), by letter dated June 2, 2022, the Walpole Zoning Board of Appeals (“Board”) provided notice to the Department of Housing and Community Development (“DHCD”), with a copy of the letter to Wall Street Development Corporation (“Applicant”), that the Town of Walpole’s decision is consistent with local needs, as that term is found at G.L. c. 40B, § 20 and 760 CMR 56.00, *et seq.*, pursuant to the Town’s certified two-year Housing Production Plan (“HPP”), as defined under 760 CMR 56.03(1)(b), (4). The Board provided the factual basis for its assertion and supporting documentation relative to the HPP. By letter to DHCD dated June 13, 2022, the Applicant challenged the Board’s assertion of consistency with local needs on the basis that a building permit had not issued for one of the Town’s SHI-eligible projects, Cedar Crossing/Cedar Edge. DHCD reviewed the building permit issuance and, because that developer had not yet applied for a building permit for Cedar Crossing/Cedar Edge, DHCD sent a letter to the Town dated June 22, 2022, purporting to “suspend” the Town’s HPP Certification, with that suspension to be effective with retroactive application as of April 26, 2022. Therefore, on July 7, 2022, DHCD concluded that the Board did not meet its burden of proving grounds for asserting that its HPP had been certified for two years, and concluding that the Board’s decision regarding consistency with local needs was consequently denied. DHCD’s July 7, 2022 Decision is attached hereto as **Exhibit 1**.

As grounds for this interlocutory appeal of DHCD’s decision, the Board states that DHCD erroneously concluded that the Town of Walpole is not “consistent with local needs” pursuant to its certified two-year HPP, with regard to the application for a comprehensive permit filed by Wall Street Development Corporation, because DHCD had no authority to revoke or suspend the certified HPP under the enabling legislation or regulations, which provide that the certified HPP “shall” be in effect for two-years. It does not provide that they “may” be in effect for two years, unless sooner revoked or suspended by DHCD. The HPP is frozen at that two-year point in time. Even assuming *arguendo* that DHCD could revoke or suspend the Town’s certificated HPP, it erroneously concluded that the date of suspension is as of April 26, 2022, as the Town must be credited with the time Cedar Crossing/Cedar Edge was pending on appeal, with the final resolution of the appeal resulting in the issuance of a modified comprehensive permit dated July 14, 2021, and therefore, no building permit could issue until the resolution of the final appeal on August 20, 2021. A copy of the Decision on Stipulation and Entry of Judgment, dated August 20, 2021, is attached hereto as **Exhibit 2**.

Accordingly, the Housing Appeals Committee must reverse DHCD’s decision which committed errors of law and fact in concluding that the Board has not met its burden of proving “consistency with local needs” by virtue of its certified HPP.

### **FACTS AND PROCEDURAL HISTORY**

1. On or about April 28, 2022, the Applicant filed a comprehensive permit application with the Walpole Zoning Board of Appeals (“Board”) for the development of a project known as The Residence at Darwin Commons in Walpole, Massachusetts.
2. The Board opened the public hearing on the application on May 25, 2022, in accordance with G.L. c. 40B, § 21 and 760 CMR 56.05(3).

3. At that time, the Board voted to declare, pursuant to G.L. c. 40B, § 20 and 760 CMR 56.03(8)(a), that a denial of the requested comprehensive permit or the imposition of conditions or requirements would be consistent with local needs, based on the Town's receipt of a Certification of Approval, dated September 10, 2021, issued by DHCD, certifying the Town of Walpole's compliance with its HPP, approved for a two-year period from April 27, 2021, to April 26, 2023.
4. By letter dated June 2, 2022, the Board submitted written notice of its declaration of consistency with local needs pursuant to the Certified HPP to the Applicant and to DHCD. A copy of the notice is attached hereto as **Exhibit 3**.
5. With its notice, the Board included documentation supporting its claim of consistency with local needs pursuant to the Certified HPP.
6. On June 13, 2022, the Applicant challenged the Board's assertion of safe harbor by appealing to DHCD. The Applicant averred that, as of June 2, 2022, all building permits had not yet issued for the Cedar Crossing/Cedar Edge development within the one-year time frame from the issuance of the initially-approved comprehensive permit for that project, and as such, the HPP certification that incorporated Cedar Crossing/Cedar Edge was invalid.
7. The building permits could not have issued during the one-year time frame from the date of the initially-approved comprehensive permit, in part, because the Cedar Crossing/Cedar Edge development was subject to an appeal by the developer to the Housing Appeals Committee that tolled the timelines for issuance. The Town and the developer engaged in a stipulation of dismissal, with a revised comprehensive permit issued by the Board dated July 14, 2022. By decision of the Housing Appeals Committee dated August 20, 2021, the appeal approving the modified comprehensive permit was resolved. See Exhibit 2. The Town is unable to properly plan for, and has no control over, when an applicant chooses to apply for a building permit.
8. Regardless, however, DHCD does not have the statutory or regulatory authority to revoke a Certified HPP. To the extent DHCD purports to grant itself authority to revoke a Certified HPP under "Guidelines" it has issued, those Guidelines are invalid and *ultra vires* because they were not promulgated with notice and public comment, and purport to be binding authority. Additionally, they are inconsistent with the statutory and regulatory scheme.
9. Pursuant to those guidelines, on July 7, 2022, DHCD issued its decision finding that the Board had not met its burden of proof in establishing consistency with local needs pursuant to its certified HPP. DHCD's conclusion was based on the fact that a building permit did not issue for Cedar Crossing/Cedar Edge development within one year, and

as such, DCHD purported to revoke or suspend the Town's certification of approval before the mandatory two-year certification period was set to lapse.

10. The Board timely appeals DHCD's decision to the Housing Appeals Committee pursuant to 760 CMR 56.03(8)(c).

## **CLAIMS OF ERROR**

### **Count I**

#### **The Town is Consistent with Local Needs Pursuant to the Certified HPP for a Two-Year Period**

11. The Board repeats, re-alleges, and incorporates fully herein the allegations contained in paragraphs 1-10 above.
12. DHCD erroneously concluded that the Town of Walpole failed to meet its burden to demonstrate that it has achieved the statutory minima for its certified HPP.
13. The regulations provide that “[a] decision by a Board ... shall be upheld if one or more of the following grounds has been met as of the date of the Project's application ... (b) the Department has certified the municipality's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4).” 760 CMR 56.03(1)(b) (emphasis added).
14. Here, in accordance with 760 CMR 56.03(4), the Town of Walpole's compliance with the goals of its approved Housing Production Plan were certified by DHCD on September 10, 2021.
15. The regulations further provide that, “[i]f [DHCD] determines the municipality is in compliance with its HPP, the certification shall be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2) .... If [DHCD] finds that the municipality has increased its number of SHI Eligible Housing units in a calendar year by at least 1.0% of its total housing units, the certification shall be in effect for two years from its effective date.” 760 CMR 56.03(4)(f).
16. Here, DHCD certified that the Town of Walpole had increased its number of SHI eligible housing units by at least 1.0%, and as such, approved the certification for a two-year period.
17. Neither the statute nor the regulations authorize DHCD to revoke a municipality's certification, which provides that the certification, once given “shall be in effect for two years from its effective date.” 760 CMR 56.03(4)(f). The use of the word shall in the regulations means that there is no discretion to revoke or suspend this two-year period from the effective date of certification. City of Quincy v. Massachusetts Water

Res. Auth., 421 Mass. 463, 468 (1995) (“the term ‘shall’ is made mandatory rather than discretionary”).

18. Notwithstanding the mandatory language provided in the regulations, DHCD has purported to grant itself the *ultra vires* authority to revoke or suspend the certification of a HPP, sooner than the mandatory two-year certification period.
19. Specifically, in the decision dated July 7, 2022, DHCD relied upon its guidelines, promulgated without notice and a public comment period and making binding rules that contravene the plain language of the regulations, to retroactively revoke the Town’s certified HPP. See Exhibit 1. Citing Section II.B.9 of the “guidelines,” the letter states that “[i]f the units by which the municipality has achieved its certification become ineligible for the SHI, then the certification shall lapse as of the date that the units become ineligible for the SHI.” See Exhibit 1, at p. 2.
20. The decision, relying on the provision of the regulations relative to SHI-eligibility, then states that because “more than one year elapse[d] between the date of issuance of the comprehensive permit ... and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued.” See Exhibit 1, at p. 3.
21. The regulations or statute, however, do not contain authorization to suspend or lapse a certification based on units that become ineligible for the SHI, and the guidelines do not have the force of law to create a binding rule allowing the revocation of certification, where it contradicts the plain terms of the regulations which provide that a certification “shall be in effect for two years.” 760 CMR 56.03(4)(f).
22. If agencies wish for their guidelines to have the force of law, and to contradict the requirements contained in the validly-promulgated regulations, they must be adopted as regulations pursuant to lawful administrative procedures. Promulgation and application of the guidelines to revoke the Town’s certified HPP is an *ultra vires* end-run around these statutory rule-making requirements.
23. The guidelines alter the substantive and procedural law of G.L. c. 40B and 760 CMR 56.00, *et seq.*, to the detriment of the Town and application of the guidelines to the Town’s assertions of safe harbor violates due process of law. Such Guidelines must be invalidated and/or declared inapplicable unless adopted in compliance with proper (statutory) rulemaking procedures and unless consistent with G.L. c. 40B, §§ 20-23.
24. Where the Town has attained certification of its approved HPP for a two-year period – a laudable goal – and this certification “shall be in effect” through 2023, DHCD erroneously concluded that the Town had not achieved safe harbor pursuant to its certified HPP, in violation of the regulations and by applying invalid and unlawful guidelines.

## Count II

### **Even if DHCD Could Impose its Guidelines to Lapse the Approved HPP, it Erred by Failing to Credit the Time That SHI-Eligible Housing Was Under Appeal**

25. The Board repeats, re-alleges, and incorporates fully herein the allegations contained in paragraphs 1-24 above.
26. The regulations provide that, “[i]f [DHCD] determines the municipality is in compliance with its HPP, the certification shall be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2) .... If [DHCD] finds that the municipality has increased its number of SHI Eligible Housing units in a calendar year by at least 1.0% of its total housing units, the certification shall be in effect for two years from its effective date.” 760 CMR 56.03(4)(f)
27. Here, DHCD found that the municipality increased its number of SHI Eligible Housing units by at least 1.0% by virtue of the approval the Cedar Crossing/Cedar Ridge project. As such, DHCD certified compliance with the HPP. DHCD determined that the certification period would be deemed effective on April 27, 2021 and run for the two-year period through April 26, 2023.
28. Thereafter, an appeal was filed by the developer from the Board’s grant of a comprehensive permit for the Cedar Crossing/Cedar Ridge project.
29. In connection with the developer’s appeal, the Board agreed to issue a revised comprehensive permit dated July 14, 2022. The revised comprehensive permit was incorporated into the Housing Appeals Committee’s stipulation of dismissal and entry of judgment dated August 20, 2021, resulting in the appeal being fully resolved on August 20, 2021. See Exhibit 2. A second appeal was filed by abutters, which was resolved on January 27, 2022. A copy of that resolution is attached hereto as **Exhibit 4.**
30. The regulations provide that, “[i]f more than one year elapses between the date of issuance of the Comprehensive Permit ... and final resolution of any pending appeal by a party other than the Board, the units will become ineligible for the SHI until the date that the last appeal is fully resolved.” 760 CMR 56.03(2)(c).
31. In this regard, however, more than one year did not elapse between the issuance of the comprehensive permit for the Cedar Crossing/Cedar Ridge project on April 27, 2021, or the revised comprehensive permit on July 14, 2022, and the final resolution of any pending appeal by a party other than the Board, which occurred on August 20, 2021 and January 27, 2022, respectively. As such, the project did not become ineligible for SHI during this time. 760 CMR 56.03(2)(c).

32. Additionally, during such time as the appeals were pending, no building permit could be issued for the project. Therefore, the one-year period cannot be calculated to include such time as it was legally impossible for a building permit to issue, for it would be inconsistent with the regulations. The one-year period, then, is tolled to August 20, 2021 and then to January 27, 2022, the dates on which the appeals were finally resolved, the revised comprehensive permit issued for the project took effect, and the project became eligible for the issuance of a building permit.
33. Therefore, to the extent that the Housing Appeals Committee may find that DHCD has authority to suspend a two-year certification for the non-issuance of a building permit within one year, which it does not, the Town must be credited with the time that an appeal was pending in that calculation of the one-year period.
34. As such, the one-year period upon which the SHI units could lapse for the non-issuance of a building permit (which is not authorized by the regulations on HPPs) would run from January 27, 2022 to January 27, 2023.
35. Because the Applicant applied for a comprehensive permit well before January 27, 2023, at which point the submission is “frozen” in time, just as the certified HPP is frozen in time for a two-year period, the Town was plainly within the safe harbor provision of its certified HPP and demonstrated consistency with local needs.

WHEREFORE, the Walpole Zoning Board of Appeals respectfully requests that the  
Housing Appeals Committee:

- 1) reverse the decision of DHCD in this matter, finding that the Town of Walpole is “consistent with local needs” based on achievement of a two-year certification of approval for its HPP, pursuant G.L. c. 40B, § 20 and 760 CMR 56.00, *et seq.*;
- 2) declare DHCD as being without authority, under the governing statute or regulations, to retroactively “revoke” the Town’s certification of approval with its HPP;
- 3) declare the guidelines applied as binding authority by DHCD to be *ultra vires* and in conflict with the governing statute and regulations, as well as inapplicable to proceedings before DHCD and the Housing Appeals Committee unless adopted in compliance with proper rulemaking procedures and unless consistent with G.L. c. 40B, §§ 20-23; and/or,
- 4) declare that DHCD must credit the Town with the time that the Cedar Crossing development was under appeal and therefore, extending the time for the one-year building permit requirement to lapse – to the extent it is valid (which it is not) – to January 27, 2023.

Respectfully Submitted,

ZONING BOARD OF APPEALS OF THE  
TOWN OF WALPOLE,

By its attorneys

/s/ George X. Pucci

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Dated: July 26, 2022

823692/WALP/0398



CERTIFICATE OF SERVICE

I, George X. Pucci, hereby certify that on the below date, I served a copy of the foregoing Interlocutory Appeal of the Walpole Zoning of Appeals, by electronic mail, to the following:

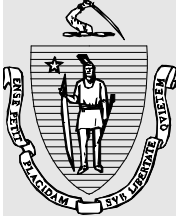
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Wall Street Development Corporation  
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Dated: July 26, 2022

/s/ George X. Pucci  
George X. Pucci

# **Exhibit 1**



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

July 7, 2022

Mr. John Lee, Chair  
Walpole Zoning Board of Appeals  
Town of Walpole / Walpole Town Hall  
135 School Street  
Walpole, MA 02081

*Re: Walpole Safe Harbor Decision, Residences at Darwin Commons, Darwin Lane, Walpole MA*

Dear Mr. Lee:

The Department of Housing and Community Development (DHCD) is in receipt of a June 13, 2022 letter from Louis Petrozzi, President of Wall Street Development Corporation, (Applicant), which has proposed a Chapter 40B project known as Residences at Darwin Commons, Darwin Lane, Walpole, MA. The Applicant challenges the June 2, 2022 letter by the Walpole Zoning Board of Appeals (Board), which notified the Applicant that the Board considers the denial of the Applicant's application for a Comprehensive Permit to be consistent with local needs.

The Board claims that the denial is consistent with local needs based on the following assertion: certified Housing Production Plan (HPP) as defined under 760 CMR 56.03(1)(b) and 56.03(4).

**Procedural Background: 760 CMR 56.03(8)**

Pursuant to 760 CMR 56.03(8), if a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must do so according to the following procedures. Within 15 days of the opening of the local hearing for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation. If the Applicant wishes to challenge the Board's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the Board's notice, including any documentation to support its position. The Department shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials.

The Board shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the Department to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

**Regulatory background: Certified Housing Production Plan as Defined under 760 CMR 56.03(1)(b), 56.03(4)(c) and(f), and 56.03(2)(b) and (c):**

760 CMR 56.03(1): *A decision by a Board to deny a Comprehensive Permit... shall be upheld if one or more of the following grounds has been met as of the date of the Project's application... (b) the Department has certified the municipality's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4).*

760 CMR 56.03(4)(c): *Affordable Housing Goals. The HPP shall address the matters set out in the Department's guidelines, including: 1. a mix of types of housing, consistent with local and regional needs and feasible within the housing market in which they will be situated, including rental, homeownership, and other occupancy arrangements, if any, for families, individuals, persons with special needs, and the elderly; 2. a numerical goal for annual housing production, pursuant to which there is an increase in the municipality's number of SHI Eligible Housing units by at least 0.50% of its total units (as determined in accordance with 760 CMR 56.03(3)(a)) during every calendar year included in the HPP, until the overall percentage exceeds the Statutory Minimum set forth in 760 CMR 56.03(3)(a).*

760 CMR 56.03(4)(f): *Certification of Municipal Compliance. A municipality may request that the Department certify its compliance with an approved HPP if it has increased its number of SHI Eligible Housing units in an amount equal to or greater than its 0.5% production goal for that calendar year. SHI Eligible Housing units shall be counted for the purpose of certification in accordance with the provisions for counting units under the SHI set forth in 760 CMR 56.03(2). Requests for certification may be submitted at any time, and the Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request. If the Department determines the municipality is in compliance with its HPP, the certification shall be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2). A certification shall be in effect for a period of one year from its effective date. If the Department finds that the municipality has increased its number of SHI Eligible Housing units in a calendar year by at least 1.0% of its total housing units, the certification shall be in effect for two years from its effective date. (See 760 CMR 56.03(2) citations below.)*

DHCD's HPP and DHCD's G.L. c. 40B Guidelines (the "guidelines") also state as follows:

*Term of Certification.* *So long as the units produced are SHI Eligible Housing units (see 760 CMR 56.03), a certification shall be in effect for a period of one year from its effective date if the community has increased its SHI Eligible Housing units 0.5% of the total year round housing units or two years from its effective date if it has increased its number of SHI Eligible Housing units 1.0% of total year round housing units. If the units by which the municipality achieved its certification become ineligible for the SHI, then the certification shall lapse as of the date that the units became ineligible for the SHI. If such units become eligible for the SHI during the remaining term of the certification period, then the certification shall be re-instated for such remaining term.<sup>1</sup>*

760 CMR 56.03(2)(b): *Units shall be eligible to be counted on the SHI at the earliest of the following:*

- 1. For units that require a Comprehensive Permit under M.G.L. c. 40B, § 20 through 23, or a zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, the date when:
  - a. the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c); or*
  - b. on the date when the last appeal by the Board is fully resolved;**
- 2. When the building permit for the unit is issued;*
- 3. When the occupancy permit for the unit is issued; or*
- 4. when the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)*

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<sup>1</sup> Section II.B.9 of the guidelines, available at <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>, also contained within stand-alone HPP guidelines, available at <https://www.mass.gov/doc/housing-production-plan-guidelines/download>.

760 CMR 56.03(2)(c): *Time Lapses. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, as that date is defined in 760 CMR 56.03(2)(b)1., and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued. If more than 18 months elapse between issuance of the building permits and issuance of the certificate of occupancy, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued...*

### **Notice Requirements under 760 CMR 56.03(8)**

DHCD finds that the Board submitted notice to the Applicant within 15 days of opening the local hearing (May 25, 2022) through its June 2, 2022 letter. DHCD notes copies were sent to DHCD via certified mail and electronic mail. DHCD finds that the Applicant challenged the Board's assertion within the proper timeframe, 15 days from receipt of the Town's notification, through its June 13, 2022 letter. DHCD notes that copies of the Applicant's letter were sent to DHCD via certified mail and electronic mail. DHCD notes that although the State of Emergency has ended, DHCD continues to request electronic submission of documents.

### **The Board's Submission**

The Board's submission consisted of a June 2, 2022 safe harbor assertion notification letter based on Walpole's September 10, 2021 HPP Certification and an attachment. The attachment was the September 10, 2021 DHCD HPP Certification Approval letter. In the September 10, 2021 DHCD letter, the following findings were made:

1. *Walpole has a valid HPP. The effective date for the HPP is April 23, 2019 the date that DHCD received a complete plan submission. The HPP has a five-year term and will expire on April 22, 2024.*
2. *The project for which certification was requested for is known as Cedar Crossing/ Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.*
3. *DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).*
4. *The certification period will run from April 27, 2021 to April 26, 2023.*

DHCD's September 10, 2021 HPP Certification Approval letter also states:

"Please note that all units must retain eligibility for the SHI for the entire certification period. If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification."

### **The Applicant's Submission**

The Applicant's submission consisted of a June 13, 2022 formal appeal letter that also includes the procedural history of Darwin Commons, various exhibits including but not limited to the September 10, 2021 DHCD HPP Certification Approval letter, the Town's HPP certification request with accompanying documentation that the Town submitted for inclusion of the Cedar Crossing/Cedar Edge units on the SHI, excerpts from the DHCD guidelines, and a copy of a June 2, 2022 email from Walpole's Building Commissioner confirming that building permits had not been issued for Cedar Crossing/Cedar Edge.

The Applicant's main argument against the validity of the Board's safe harbor assertion is that, as of the date of the Applicant's Comprehensive Permit application for Darwin Commons April 28, 2022, building permits for the Cedar Crossing/Cedar Edge development had not been issued within the required time frame under the terms of the HPP Certification, 760 CMR 56.03(2)(b.1)&(c), and the guidelines.

## **Findings and Discussion**

### **HPP Certification**

DHCD finds that the Board did not have grounds to claim an HPP Certification safe harbor. A minimum of 90 SHI-eligible units were needed to achieve a two-year certification, and through its September 10, 2021 DHCD HPP Certification Approval letter, DHCD deemed 226 units to be SHI-eligible in accordance with the counting policy under the guidelines and countable towards HPP certification as of April 27, 2021. However, as referenced above, said letter informed Walpole that all units must maintain eligibility for the SHI during the two-year term of certification, which is consistent with DHCD's regulations and guidelines. Pursuant to 760 CMR 56.03(4)(f), SHI Eligible Housing units shall be counted for the purpose of certification in accordance with the provisions for counting units under the SHI set forth in 760 CMR 56.03(2); 760 CMR 56.03(2)(b.1)&(c) in turn provide that if more than one year elapses between the date of issuance<sup>2</sup> of the Comprehensive Permit (or other zoning approval as further described under the regulation), and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued.

The guidelines also make clear that if the units by which the municipality achieved its certification become ineligible for the SHI, then the certification shall lapse as of the date that the units became ineligible for the SHI. In summary, since building permits were not issued within one year of April 27, 2021, the issuance date of the comprehensive permit, the Cedar Crossing/Cedar Edge units became ineligible for inclusion on the SHI as of April 26, 2022 and were also not eligible to be counted towards certification as of that date until building permit issuance occurred.

DHCD sent an email to the Town on May 24, 2022 requesting building permit issuance information for Cedar Crossing/Cedar Edge. DHCD has not received a response to this request from the Town, although the Applicant's submission shows, through a copy of Applicant's email correspondence with the Town's Building Commissioner, that building permits had not been issued for Cedar Crossing/Cedar Edge. Thus, at the time the Residences at Darwin Commons Application was filed with the Board on or about April 28, 2022, the units were no longer SHI Eligible Housing units and the HPP Certification consequently lapsed. Furthermore, as DHCD had no record of building permit issuance for Cedar Crossing/Cedar Edge, it removed the units from the SHI and sent a letter to the Town on June 22, 2022, informing the Town that its HPP Certification was suspended as of April 26, 2022, the date of said lapse.

### **Conclusion**

DHCD finds the board has not met its burden of proving satisfaction of the grounds for asserting the certified Housing Production Plan safe harbor as defined under 760 CMR 56.03(1)(b) and 56.03(4). If either the Board or the Applicant wishes to appeal this decision pursuant to 760 CMR 56.03(8), that party shall file an interlocutory appeal with the Housing Appeals Committee (HAC) on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)(11), within 20 days of its receipt of the decision, with a copy to the other party and to the Department.

DHCD notes the HAC issued "Standing Order 2020-01: Filing and Service in Cases before the Committee" and "Housing Appeals Committee Rules for Electronic Filing," both of which became effective April 15, 2020 and have been posted on the Committee's webpage at <https://www.mass.gov/service-details/housing-appeals-committee-hac>.

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<sup>2</sup> Defined at 760 CMR 56.03(2)(b.1.a) as the date the permit or approval is filed with the municipal clerk, notwithstanding an appeal by a party other than the Board, but subject to the time limit for counting such units as set forth at 760 CMR 56.03(2)(c).

If you have further questions, please contact Phillip DeMartino, Technical Assistance Program Coordinator, at (617) 573-1357 or [Phillip.DeMartino@mass.gov](mailto:Phillip.DeMartino@mass.gov).

Sincerely,

A handwritten signature in blue ink that reads "Caroline 'Chris' Kluchman". The signature is fluid and cursive, with the name "Caroline" written in a larger, more prominent script than the rest of the name.

Caroline "Chris" Kluchman  
Deputy Director, Division of Community Services

Cc: James Johnson, Town Administer, Walpole  
George Pucci, Esq., Town Counsel, Walpole  
Patrick Deschenes, Director of Economic Development, Walpole  
Louise Petrozzi, President, Wall Street Development Corporation  
Jay Taleran, Esq., Meade, Taleran & Costa  
Dean Harrison, 40B Consultant

# **Exhibit 2**



COMMONWEALTH OF MASSACHUSETTS

HOUSING APPEALS COMMITTEE

_____	)	
55 SS, LLC,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 2021-02
	)	
WALPOLE ZONING BOARD OF	)	
APPEALS,	)	
	)	
Appellee.	)	
_____	)	

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**DECISION ON STIPULATION  
AND  
ENTRY OF JUDGMENT**

On or about January 15, 2020, 55 SS, LLC applied to the Walpole Zoning Board of Appeals for a comprehensive permit to create 300 units in a mixed rental and ownership development to be located at 51, 53 and 55 Summer Street, Walpole, Massachusetts. Twenty-five percent of the units were to be affordable units subsidized by the Massachusetts Housing Finance Agency.

The Board issued a written decision, granting a comprehensive permit with conditions and denials of certain requests for waivers affecting both the rental and sale aspects of the proposed project. The Board’s Decision was filed with the Town Clerk on April 27, 2021.

On May 12, 2021, the developer filed this appeal requesting that the Committee modify the Board’s Decision. After the initial conference of counsel, I issued an order of referral to mediation, and the parties engaged in mediation in an effort to resolve this matter. The parties now report they have reached an agreement.

In order to effectuate this agreement, on July 30, 2021, 55 SS, LLC and the Board filed a Joint Motion to Issue Revised Comprehensive Permit, enclosing thereto the “Revised Decision on Chapter 40B Comprehensive Permit Application, G.L. c. 40B, §§ 20-23,”

Applicant 55 SS LLC” (Revised Decision). In that motion, the parties request that the Presiding Officer render a decision issuing a Revised Comprehensive permit in the form attached to the motion. The parties further requested that, “[a]s provided in 760 CMR 56.07(5)(c)3, as the Secretary of Environmental Affairs has not issued a certificate of compliance, the Decision shall be subject to the following additional conditions: a. that the Comprehensive Permit shall not be implemented until the Committee has fully complied with MEPA, and b. that the Committee shall retain authority to modify the Decision based upon findings or reports prepared in connection with MEPA.”

Following an August 6, 2021 conference with counsel to discuss the Joint Motion, 55 SS, LLC and the Board have agreed that the Presiding Officer shall enter a Decision on Stipulation modifying the Board’s Decision by striking it in its entirety and replacing it with the Revised Decision.

I have reviewed the parties’ Joint Motion, as well as the Revised Decision attached thereto, and I find them satisfactory. I note that the Revised Decision provides for a total of 268 units, comprising 212 rental units (53 affordable units) and 56 ownership units (14 affordable units). I hereby incorporate by reference the Joint Motion, and the Revised Decision as part of this Decision on Stipulation, and attach them hereto.

Pursuant to 760 CMR 56.07(5)(c), the comprehensive permit shall not be implemented until the Committee has fully complied with MEPA, and the Committee will retain the authority to modify the Revised Decision in accordance with the findings or reports prepared in accordance with MEPA requirements. This Decision on Stipulation is subject to the following additional conditions:

1. the Comprehensive Permit shall not be implemented until the Committee has fully complied with MEPA; and
2. the Committee shall retain authority to modify the Revised Decision based upon findings or reports prepared in connection with MEPA.

The Board is directed forthwith to file the Decision on Stipulation and Entry of Judgment with the Walpole Town Clerk and, in accordance with 760 CMR 56.07(6), to take any further steps necessary to formalize the permit for recording or other purposes. If the Board fails to act within thirty days of this decision, this decision shall be deemed, pursuant

to G.L. c. 40B, § 23 and 760 CMR 56.07(6)(a), to be the Comprehensive Permit issued by the Board.

**HOUSING APPEALS COMMITTEE**



August 20, 2021

---

Shelagh A. Ellman-Pearl, Chair  
Presiding Officer

HOUSING APPEALS COMMITTEE  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

DOCKET NO. 21-02

_____	)
55 SS LLC,	)
Appellant,	)
	)
v.	)
	)
WALPOLE ZONING BOARD	)
OF APPEALS,	)
Appellee	)
_____	)

**JOINT MOTION TO ISSUE REVISED COMPREHENSIVE PERMIT**

55 SS LLC and the Walpole Zoning Board of Appeals (collectively the “Parties”), respectfully represent that following mediation they have resolved this matter by agreement and, waiving all rights of appeal, jointly move that the Hearings Officer finally determine all issues in the above matter by agreement of the Parties pursuant to her authority under 760 CMR 56.06(7)(e) 2.d and render a decision (Decision) issuing a Revised Comprehensive Permit in the form attached hereto pursuant to the authority of the Housing Appeals Committee under 760 CMR 56.07(6).

As provided in 760 CMR 56.07 (5)(c)3, as the Secretary of Environmental Affairs has not issued a certificate of compliance, the Decision shall be subject to the following additional conditions: a. that the Comprehensive Permit shall not be implemented until the Committee has fully complied with MEPA, and b. that the Committee shall retain authority to modify the Decision

based upon findings or reports prepared in connection with MEPA.

Respectfully submitted,

55 SS LLC,  
Appellant,  
By Its Attorneys,  
D'AGOSTINE, LEVINE, PARRA & NETBURN,  
P.C.

WALPOLE ZONING BOARD OF  
APPEALS,  
Appellee,  
By Its Attorneys,  
KP LAW

By: Louis N. Levine

Louis N. Levine, BBO #296880  
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By: Amy Kivesell/By Louis N. Levine

101 Arch Street, 12<sup>th</sup> Floor  
Boston, Massachusetts 02110  
(617) 654-1811  
[akwesell@k-plaw.com](mailto:akwesell@k-plaw.com)

Date: July 30, 2021





John Lee, Chairman  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
Drew Delaney, Member

**Town of Walpole**  
**Commonwealth of Massachusetts**  
**Zoning Board of Appeals**

**REVISED DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT**  
**APPLICATION**  
**G.L. c. 40B, §§20-23**

**APPLICANT**  
**55 SS LLC**

**LOCATION OF PROPERTY INVOLVED**  
**51-53-55 Summer Street**  
**Walpole Assessors Map: 52; Lots 59, 60 and a portion of 78**

---

**I. PROCEDURAL HISTORY**

1. An application for a Comprehensive Permit was submitted by 55 SS, LLC (“Applicant”) to the Walpole Zoning Board of Appeals (“Board”) on January 15, 2020. As originally proposed by the Applicant, the project consisted of the construction of two-hundred and forty (240) rental apartments and sixty (60) single-family home ownership units (the “Project”) totaling 300 units on property located at 51, 53 and 55 Summer Street, Walpole, Massachusetts (the “Property”). The rental portion of the Project, labeled “Cedar Crossing”, consisted of four (4) four-story buildings (each containing forty-eight (48) units with parking under) and forty-eight (48) rental townhomes. The rental apartments would consist of one-hundred and twelve (112) one-bedroom units and eighty (80) two-bedroom units, and the rental townhomes will consist of twenty-four (24) two-bedroom units and twenty-four (24) three-bedroom units. The single-family home ownership portion of the Project, labeled “Cedar Edge”, consists of three-bedroom single-family homes. .
2. During the hearing process, the Applicant revised the Project. A plan dated January 27, 2021 depicts Lot 1 (Cedar Crossing) having the apartments in two (2), six-story buildings with parking under: Building 1 containing one hundred eight (108) units; and Building 2 containing eighty-four (84) units. There are additionally fifty-two (52) rental townhouses in eleven (11) buildings. Lot 2

(Cedar Edge) contained of sixteen (16) townhouse units within eight (8) duplex style buildings and forty (40) single-family homes. Lots 1 and 2 totaled 300 units. There are 400 bedrooms in the buildings on Lot 1 and 149 bedrooms in the buildings on Lot 2 for a total of 549 bedrooms.

3. The Board's hearing on the application was duly opened on March 4, 2020 and was continued April 15, 2020 (no testimony taken); May 20, 2020 (no testimony taken); June 17, 2020 (no testimony taken); July 27, 2020; August 17, 2020; August 26, 2020 (no testimony taken); September 21, 2020; October 5, 2020; November 2, 2020; November 5, 2020; November 9, 2020; November 30, 2020; January 6, 2021; February 10, 2021; February 22, 2021; March 1, 2021; March 15, 2021; and March 29, 2021. The hearing was closed on March 29, 2021. The Board deliberated on the application on April 5, 2021 and April 14, 2021. All but one of the hearings were held via a virtual platform (zoom webinars) due to the Governor's March 10, 2020 declaration of a State of Emergency and limits on public gatherings. All submittals concerning the Project are part of the administrative record kept at Walpole Town Hall and incorporated herein. All waivers requested and votes taken are listed on **Exhibit A** and incorporated herein.
4. The Project is located at 51, 53 and 55 Summer Street, Walpole, Massachusetts and is identified on Walpole Assessors Map 52, Parcel 59, Parcel 60 and a portion of Parcel 78.
5. The Property is located in the Limited Manufacturing (LM) Zoning District. The Property consists of three parcels totaling 54.73 acres. There are no existing buildings or improvements on the Property. Additionally, an easement was purchased from the abutter located at 87 Summer Street to facilitate a second means of emergency access and looped water service for the development. The Property extends to the east side of the railroad tracks. On the north side there is a Park, School, Recreation & Conservation (PSRC) zoned area encompassing a large wetland area. On the west and south sides there is Residence B (RB) zoned properties. The Property contains a mix of woodlands, isolated vegetated wetlands, bordering vegetated wetlands, vernal pools, and open grassed areas. The site hydrology consists of upland areas flowing to both isolated and bordering vegetated wetlands existing across the entirety of the Property.
6. The Applicant provided certain materials, reports, and revised plans during the course of the public hearing on the Application. During the public hearing, the Applicant was represented by David Hale of 55 SS LLC and the engineering consultants: Howard Stein Hudson Associates, Inc., Mangel Architects, Oxbow



Revised Decision on Chapter 40B Comprehensive Permit Application  
55 SS, LLC  
51, 53, & 55 Summer Street, Walpole, MA  
July 14, 2021  
Page 3 of 59

Associates, Inc., Bayside Engineering, and legal counsel, D'Agostine, Levine, Parra and Netburn P.C. and Macchi & Macchi LLC.

7. The Board utilized the services of Tetra Tech, Inc. for civil, stormwater peer review and traffic peer review. Judi Barrett of Barrett Planning Group LLC also advised the Board as its technical consultant through the Massachusetts Housing Partnership Technical Review program. Town Counsel also attended the public hearings and advised the Board.
8. During the hearings, there was significant public input on a number of neighborhood concerns. The Board heard input from abutters and other interested persons throughout the hearing process on topics including, but not limited to, the density of the Project, increased traffic and safety concerns mainly regarding the one road access exceeding 750 feet in length and the height of the apartment buildings. The following Board members were present for the entire public hearing process: Chairman John Lee, Vice Chairman Susanne Murphy, Mary Jane Coffey, and Drew Delaney. Robert Fitzgerald was absent from one public hearing but complied with G.L. c. 39, § 23D.
9. A Decision was filed with the Town Clerk on April 27, 2021. The Applicant appealed the Decision to the Housing Appeals Committee ("HAC") on May 12, 2021. On June 4, 2021, the Board filed a Corrected/Amended Decision correcting a scrivener's error. After the Conference of Counsel, the HAC issued an Order of Referral to Mediation on May 28, 2021. The parties conducted mediation on July 12, 2021. On July 14, 2021, the Board met in executive session to discuss settlement based on a revised plan, conditions and waivers and voted to approve this Revised Decision.

## II. JURISDICTIONAL FINDINGS

10. The Applicant received Project Eligibility Letters ("PELs") from MassHousing dated January 13, 2020 and submitted copies to the Board with the original application. According to the PELs, the Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
  - a. The Applicant has formed a limited dividend organization (as defined in 760 CMR 56.02), 55 SS, LLC, which has a principal place of business of 6 Lyberty Way, Suite 203, Westford, Massachusetts. The Applicant has agreed to conform to the limited divided requirements of M.G.L Chapter

40B.

- b. The Applicant owns a portion of the Property (parcels 52-59 and 52-60) via Deed from WRG Cofsky Realty to 55 SS, LLC, dated August 28, 2019 and recorded with the Norfolk Registry of Deeds in Book No. 37105 and Page No. 482. The Applicant owns the remainder of the Property (parcel 52-78) via Deed from Baker Hughes Process Systems LLC to 55 BH LLC, a related entity, dated October 31, 2019 and recorded with the Norfolk Registry of Deeds in Book No. 37303 and Page No. 11 and registered with the Norfolk County Land Court as Document No. 1,433,280 Certificate No. 201454. The Applicant transferred ownership of this portion of the property from 55 BH LLC to 55 SS LLC via Deed dated February 5, 2021 and recorded with the Norfolk Registry of Deeds in Book No. 38968 and Page No. 91. According to the PEL, the Applicant has shown threshold evidence of site control sufficient to qualify as an Applicant for a Comprehensive Permit.
  - c. The Applicant has agreed to execute a Regulatory Agreement that limits its total profit and directs the redistribution of excess profit in accordance with the regulations adopted by the Massachusetts Department of Housing and Community Development (“DHCD”).
11. On April 25, 2019, the DHCD approved Walpole’s Housing Production Plan pursuant to 760 CMR 56.03(4).

### III. FACTUAL FINDINGS

12. The Board engaged peer reviewers to review issues concerning civil engineering, traffic, site design, architecture and stormwater impacts of the Project. The Board also sought comments from Town Departments and abutters in the surrounding area.
13. The Board is aware that the goal of G.L. c. 40B is to promote the development of affordable housing while considering the Local Concerns. Pursuant to 760 CMR 56.02, Local Concerns involve 1) the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality; 2) to protect the natural environment; 3) to promote better site and building design in relation to the surroundings and municipal and regional planning; 4) or to preserve Open Spaces. With the Project as conditioned, and the substantial waivers granted, the Board is of the opinion that this decision will promote affordable housing while taking into consideration Local Concerns.

14. The ZBA's independent peer reviewer, Tetra Tech has noted that the Project was proposed with only one means of access serving the entirety of the 300-unit project whose highest density areas are located approximately 2,500 feet from the main entrance off Summer Street. The single access was a concern as it provided no alternate means of access or egress should the primary entrance be blocked. Tetra Tech recommended the Project provide an emergency access separate and suitably remote from the main entry that can be available for use on demand by emergency responders and could serve as an alternate general entry in an emergency. In response, the Applicant secured an easement over a portion of the abutting property, 87 Summer Street, to facilitate a second means of emergency access and a looped water service for the development.
15. The Project will result in the near doubling of the size of the South Walpole community. Given the proposed development is substantially larger than otherwise would be allowed under current zoning it is unlikely that the original design of the municipal water and sewer systems would have contemplated demands of the magnitude proposed. In response, the Applicant provided documentation supporting the conclusion that water and sewer capacity in the local municipal infrastructure is sufficient to serve Project needs safely and without significant impact to existing users and the Project now includes a remote water connection at the new emergency access which was reviewed and supported by the Board's peer review engineer.
16. The civil engineering peer review and the Walpole Fire Department and other local officials identified numerous issues of concern, including the width and configuration of the access road (an issue for fire vehicle access), length of roadway, lack of visitor parking, and garage parking. The Fire Department noted a significant concern with regard to the two proposed six-story buildings, both with garages under, one consisting of 108 residential units and the other with 84 residential units, and stated that the buildings have "the possibility to create an extreme challenge for a fire department staffed as Walpole Fire currently is". (See Fire Department comments dated 2/22/2021). The Fire Department further stated that there is a significant concern with regard to the dead-end street and further stated "[w]hile this 300 unit site is not proposed as a subdivision, it will function as one." *Id.* The Board recognizes that the Fire Department comments signify issues concerning health and safety of the potential occupants of the Project which is a Local Concern.
17. The Board was also presented with concerns about impacts upon Summer Street (and the immediate area) which will provide the sole access and egress for the

Project, and the close proximity of the Project to the Boyden School, Gillette Stadium, the existing neighborhood single-family residences and the impacts to the neighborhood during construction. The Walpole Police Chief notes that significant public safety advancements are required to the surrounding area due to the large size of the proposed Project in a confined area, increasing traffic, and adding pedestrians, many of which will be adolescent age. The Police Chief further notes that the Summer Street infrastructure including sidewalk connections to Delapa Circle are not adequate. The roadway is hilly, winding, and can be unsafe crossing the street or for vehicular travel and that more sidewalks and improved signage and infrastructure needed. Additionally, the Police Chief requested that the Applicant meet with MADOT to reduce the speed limit on Washington Street as the Applicant had committed to do at a meeting with Department Heads. The Applicant subsequently stated that he is not willing to use the traffic study to work with MADOT to reduce the speed limit. (Police Chief comment letter dated 10/30/2020). The Applicant responded that the suggested improvements are not related to the Project. The Board disagrees as the Project as proposed will add 300 housing units and several hundred more residents to this area. Further, the Applicant's traffic analysis indicates the Project will result in a significant degradation in level of service at the intersection of Summer, Washington and Neponset Streets and has offered proposed off-site measures to mitigate Project impacts. The Applicant has investigated several options for improving capacity and pedestrian safety at the intersection of Summer, Washington and Neponset Streets including traffic flow modifications, one-lane and two-lane traffic circles and a reconfigured signalized intersection. The options were reviewed by representatives of the Walpole Fire, Police, Planning and Engineering Departments, the Selectboard (as Road Commissioners) and Tetra Tech from which a reconfigured signalized "T" intersection was unanimously preferred. Further, the Walpole Selectboard, as Road Commissioners have requested that the signalized "T" intersection be required as part of the Project. The Board recognizes that the comments of the Police Chief and Tetra Tech signify issues concerning health and safety of the potential occupants of the Project as well as the residents of Walpole, which is a Local Concern.

18. The revised roadway and building layout still include several instances where fire truck access is compromised. Most notably, parking layout adjacent to the now 6-story buildings significantly compromises the ability for emergency responders to stage a response or to access the building with equipment or personnel. At a minimum the Project must provide adequate area in which a responding fire truck and its personnel can immediately and reliably access the structure including providing a second means of accessing below building parking. Similarly, access

roads should be designed in a manner that, if avoidable, does not require fire trucks to back up in order to change direction preferably by utilizing turnaround circles at the end of roadways as described in town subdivision guidance. Units 9-12 present a very awkward and difficult access scenario for fire trucks requiring the truck to back up more than 200 feet along a curve and execute a multi-point turn in order to exit. The Fire Department has been consistent in its requests that all roads include circular turnarounds at the end to allow fire trucks to change direction. Current site plans show parking along the entire front of Building's 1 and 2 which significantly impairs the Fire Department's ability to access the building or stage an emergency vehicle. In response, Applicant has provided emergency vehicle staging areas at the end of Building's 1 and 2 opposite the proposed vehicle entrance and has provided additional space for emergency personnel to access the building's main entry. The Applicant has also modified the design of the Units 1-12 to provide a means for fire apparatus to access the Property without having to back up.

19. For the rental portion of the Project, Lot 1 (Cedar Crossing), the Applicant proposed the following number of parking spaces: two (2) spaces for each townhouse units (one (1) in the garage and one (1) surface for a total of one hundred and four (104) spaces), and ninety-five (95) garage spaces and two hundred and two (202) surface spaces for the apartment units. Additionally, the Applicant is proposing forty-three (43) visitor spaces and fourteen (14) spaces at the clubhouse. This amounts to a total of 458 parking spaces for the rental portion of the Project. For the home ownership portion of the Project, Lot 2 (Cedar Edge), the Applicant is proposing 4 parking spaces for each townhouse unit and single-family house (two in the garage and 2 surface) plus 9 surface spaces, or a total of 233 spaces. Thus, the Project in total proposed a total of 691 parking spaces.
20. The Conservation Agent expressed concern regarding the proposed activity in the wetland resource areas and buffer zone and provided testimony and recommendations to the Board. In addition to wetland related buffers, the Board discussed extensively the need for appropriate set-back related buffer zones.
21. The proposed Project is located in the Water Resource Protection Overlay District ("WRPOD") the purpose of which is to a) protect, preserve and maintain the existing and potential groundwater supply within the known aquifers of the Town; b) preserve and protect present and potential sources of water supply for the public health and safety; and c) conserve the natural resources of the Town. The Board finds that the Project as proposed exceeds the as-of-right impervious area permitted under the Zoning Bylaw. While the protection of the natural

environment is a Local Concern, the Board has, in light of the other conditions of this Decision, granted a waiver from the special permit requirement under the Zoning Bylaw (*See Exhibit A*).

22. Although the Project does not involve a subdivision, the Project will function as such and the Board is concerned over the fact that the proposed dead-end roadway serving the Project exceeds the 750-foot maximum dead-end roadway length required under the Town's subdivision regulations. This raises fire access/public safety concerns as noted to the Board during the public hearing. The Applicant is encouraged to consider modifications to the Comprehensive Permit plans which would satisfy the 750-foot maximum length requirement, including reduction of the height of the apartment buildings, reduction of the number of buildings and dwelling units if this would improve safety conditions. This would not only address fire safety concerns, but would also enhance open space components of the site plan and would lessen the impact of the Project on the existing neighborhood.
23. With regard to the Local Concern related to promoting better site and building design in relation to the surroundings, the Architectural Peer Reviewer noted that the surrounding existing residential uses appear to be small scale, single family homes, there are no multi-family residential developments close to the scale of the proposed Project and even the Project's five (5) single-family homes (located along Summer Street) are placed very close to each other relative to other homes in the area. Additional concerns identified by the Architectural Peer Reviewer included that the areas available for landscaping are not adequate, and that the shared open space does not appear to be large enough given the number of units who will utilize it. Finally, the Architectural Peer Reviewer notes that "the proposed development does not resemble the existing residential pattern of development in the nearby area. Rather than an extension or enhancement of existing development, it is proposed to be more of a campus setting with its own building types and streetscapes." (Davis Square Architects Letter 11/20/2020).
24. In consideration of the need for affordable housing in Walpole and the Local Concerns discussed above, the Board finds that granting this Comprehensive Permit with the conditions and waivers contained below, provides a significant number of affordable housing units consistent with Local Needs.
25. The Applicant was afforded ample opportunity to address the conditions discussed during the public hearing and did not challenge the conditions on the grounds that they either singly or in the aggregate rendered the Project

uneconomic. Therefore, the Board finds that such conditions will not render the project uneconomic.

26. The Board acknowledges concerns raised by abutters and other interested parties, including concerns relating to construction impacts, Project design, project density, public safety, increased traffic and parking demand, wetland impacts, and stormwater runoff. The Board has addressed these concerns by the imposition of appropriate conditions.
27. The Board's grant of this Comprehensive Permit shall not be construed to either confirm or deny any property rights with regard to the Project or neighboring properties.

#### IV. CONDITIONS

##### A. **General**

- A.1 Except as may be provided for in the following Conditions, particularly Condition A.3 below, or in the Final Plans referenced below, the Project, including all Project driveways and emergency vehicle access/staging accommodations, shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.1, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project ("Approved Plans"). The Approved Plans consist of the following:

"Proposed Multifamily Development, Summer Street, Walpole MA", prepared by Howard Stein Hudson, 114 Turnpike Road, Suite 2C, Chelmsford, MA 01824, dated January 10, 2020, with revisions through April 13, 2021.

The Plan Set consists of the following sheets:

Sheet C.1 Cover Sheet  
Sheet C.2 Site Plan Notes  
Sheet C.3 Locus  
Sheet C.4 to C.8 Existing Conditions Plans 1-5  
Sheet C.9 Erosion Control and Demolition  
Sheet C.10 Proposed Subdivision/Overall Plan last revised 4/13/21  
Sheet C.11 Open Space & Recreation Plan  
Sheet C.12 to C.16 Layout & Materials Plan 1-5  
Sheet C.17 to C.21 Grading & Drainage Plan 1-5  
Sheet C.22 to C.25 Plan & Profile Driveway "A" 1-4  
Sheet C.26 Plan & Profile Driveway "A" (Single Family Loop)

Revised Decision on Chapter 40B Comprehensive Permit Application  
55 SS, LLC  
51, 53, & 55 Summer Street, Walpole, MA  
July 14, 2021  
Page 10 of 59

Sheet C.27 Plan & Profile Driveway "B"  
Sheet C.28 to C.32 Plan & Profile Driveway "C1" 1-5  
Sheet C.33 Plan & Profile Driveway "C2"  
Sheet C.34 to C.38 Plan & Profile Driveway "D" 1-5  
Sheet C.39 to C.40 Plan & Profile Driveway "E" 1-2  
Sheet C.41 Plan & Profile Driveway "E" Southern Cul-De-Sac  
Sheet C.42 Plan & Profile Driveway "E" Northern Cul-De-Sac  
Sheet C.43 to C.44 Plan & Profile Emergency Access 1-2  
Sheet C.45 to C.49 Utility Plan 1-5  
Sheet C.50 to C.54 Landscaping Plan 1-5  
Sheet C.55 to C.59 Lighting Plan 1-5  
Sheet C.60 to C.68 Fire Truck Turn Plan 1-9  
Sheet C.69 to C.73 Sight Distance Plan 1-5  
Sheet C.74 to C.93 Detail Sheet 1-20  
Additional Plans:  
Roadway B Plan dated: 2/22/21  
Setback Plan dated: 3/31/2021  
Architectural plans dated: 1/7/2020 & 3/4/2020

- A.2 The Applicant shall be a Limited Dividend Organization as required by Chapter 40B and it and its successors and assigns, shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.
- A.3 The Project shall consist of not more than two hundred and sixty-eight (268) units in the following configuration:
- Lot 1: Building 1, five stories maximum height with 90 apartment units;  
Building 2, five stories maximum height with 70 apartment units;  
Four (4) buildings containing six townhouse units each;  
Seven (7) buildings containing four townhouse units each; and  
One (1) Clubhouse building.  
One (1) maintenance building  
One (1) mail hut
  - Lot 2: Thirty-eight (38) single-family homes; and  
Nine (9) duplex buildings with two townhouse units each.  
One (1) mail hut

The number of parking spaces shall be at least 1.88 parking spaces per dwelling unit.



- A.4 All parking spaces are to be shown on the Final Plan as hereinafter defined in generally the same configuration as shown on the Approved Plans. Visitor parking, except as designated on the Approved Plan, and all other forms of parking are prohibited in the Project driveway. The Applicant and/or any subsequently established Homeowner's Association is required to provide resident and visitor parking stickers to all residents. Any parked vehicle without a sticker will be subject to towing by the Homeowner's Association. The Applicant and/or any subsequently established Homeowner's Association shall work with the Walpole Police Department to create a plan with regard to events at Gillette Stadium. Said plan shall be administratively approved by the Board.
- A.5 Affordable units shall be interspersed evenly throughout the Project, as approved by the Subsidizing Agency during Final Approval.
- A.6 Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, those waivers from the Walpole Zoning Bylaw and other local by-laws and regulations as specified therein. Some of the waivers granted by the Board have been granted conditionally, as set forth in Exhibit A. Those conditions are expressly incorporated by reference as conditions of approval to this Comprehensive Permit. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§20-23, and no waivers of any requirements otherwise within the Board's jurisdiction under G.L. c.40B, §§20-23 have been granted except for those expressly granted by the Board as set forth in Exhibit A. To the extent the Approved Plans reflect a waiver not expressly granted in Exhibit A, the terms and conditions of Exhibit A shall govern. No waiver of building permit or inspection fees has been granted except as specifically stated and conditioned. Any subsequent non-de minimis revision to the Final Plans, including but not limited to revisions that are apparent in the Final Plans that require additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).
- A.7 The Project shall comply with all local regulations of the Town of Walpole and its boards, commissions and departments unless specifically waived herein.
- A.8 The Applicant shall copy the Board, through the Board Secretary and the Community and Economic Development Director, on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.

- A.9 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Building Inspector or other Town Departments, the Building Inspector or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission. For submissions that require assistance from an outside consultant, as determined by the Building Inspector or applicable Department Head, the thirty-day time period shall not begin until the consultant's fee has been fully funded by the Applicant.
- A.10 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.
- A.11 The sidewalks, driveways, roads, utilities, drainage systems, and all other infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town of Walpole shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal, drainage and landscape maintenance. In this regard, the driveway within the Project shall not be dedicated to or accepted by the Town.
- A.12 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.
- A.13 The Applicant shall submit to the Building inspector and Board prior to any construction or site development activities (including site clearing, tree removal, grading, etc.):
- a. Final Architectural Plans prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts. Said plans shall be reviewed by the Building Inspector, as to whether or not the final plans conform to the approved Plans and the conditions of approval. If the Building Inspector takes no action within 60 days of receipt, the plans shall be deemed to conform.
  - b. Final Engineering Drawings and Plans ("Final Plans") that conform to the

requirements of this Comprehensive Permit and incorporate the conditions herein. The Final Plans shall also incorporate all conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record and the Professional (Civil) Engineer of record. The Final Plans shall be submitted to the Building Inspector at least sixty (60) days prior to the anticipated date of the submission of an application for building permit(s) (the "Final Site Plan Submission Date").

Final Plans shall include the location of walkways to outer doors of each unit or building if and as applicable which shall include walkways to stairs, deck, paths and access at the rear of each unit or building if and as applicable. Final Plans shall provide grading detail between the common driveways and the buildings.

The Final Plans shall be in accordance with the conditions of this Decision. If no written response or comments have been given to the Applicant by the Building Inspector concerning the Final Plans within sixty (60) days after the Final Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved. The Final Plans may be submitted and reviewed separately for the Ownership and Rental portions of the Project.

The Final Plans submittal shall include the following detail and supporting information:

- i. Final construction plans including at a minimum current versions of all plans and details included in the Approved Plans and any supplemental details or plans needed to document compliance with the conditions. (See Section C below)
- ii. Final Stormwater Report documenting compliance with the Massachusetts Stormwater Management Standards and Stormwater Handbook.
- iii. Water system design and analysis demonstrating expected system performance as described in Applicant's related submittals to the Building Inspector and the Board.
- iv. Sewer system design and analysis including pump station and force main sizing calculations, and related design details demonstrating the proposed sewer system will reliably serve the project residents and including provisions for a gravity connection to the public sewer system.

- A.14 Applicant must obtain rights of access for work proposed on any property outside of its ownership and/or control and that any mitigation requested by abutters whose property will be used by the Applicant shall be shown on the Final Plans.
- A.15 There shall be no other permanent marketing or identification signage other than that shown on the Final Plan consisting of two signs.
- A.16 Signage indicating Property boundary shall be installed and on lot 2, a vegetative buffer shall be planted and maintained by the Applicant and/or successor behind units 41-54 and behind units 1 and 2. Plantings will be 8 foot tall Thuja Green Giant arborvitae (*Thuja standishii x plicata*) planted 10 feet on center for the entire length behind units 41-54 and units 1 and 2. Additional screening consisting of fencing shown on the approved plans will also be located behind units 41-54 and units 1 and 2.
- A.17 Access to Existing Trails in the River Front Area - Between 30 minutes before sunrise and 30 minutes after sunset, and with such reasonable restrictions as imposed by the HOA, the public shall have pedestrian access to and the right to pass over the trails in the River Front Area. The pedestrian access to the unimproved trails shall be via the trails on the property of others, or over the property driveways via three locations: 1) the northern cull de sac of Driveway E, 2) the one-way section of driveway D, and 3) along the northeastern side of Driveway C in the general vicinity of the Dog Park. In addition, with reasonable notice to the HOA, representatives of the Walpole Trails Committee or the Walpole Conservation Commission may maintain the trails so long as all work is done lawfully, and any required permits are obtained. It is understood that neither the HOA nor any associated property owners will be responsible to obtain any permits, or have any responsibility or any liability, for such maintenance work.
- A.18 Trail access signs -A sign, not less than 8" x 12" will be set at each of the 3 above mentioned locations where access is allowed to the unimproved trails at the intersections with the common driveways. The sign shall read "Walking Trail Access – Unimproved Trail -Footing may be soft or uneven. Please remove dog waste and trash" or as mutually agreed with the Walpole Conservation Commission.

**B. Affordability**

- B.1 A minimum of 25% of both the rental and the home ownership units shall be low- or moderate-income units, meaning that they shall be sold or rented to, and occupied by, households whose income is not more than 80% of the Area Median Income (“AMI”), as determined by the United States Department of Housing and Urban Development (“HUD”) and DHCD (“Affordable Units”). Affordable units shall be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency. The Applicant shall be responsible for maintaining records sufficient to comply with DHCD guidelines for the location of Affordable Units in the Project and occupancy of such Units by income-eligible households.
- B.2 Upon completion of the Project, and in perpetuity, 100% of the rental units (both apartment and townhouse units); 4 homeownership duplex units; and 10 single-family home ownership dwellings shall meet the criteria for inclusion in the DHCD’s Subsidized Housing Inventory.
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an affirmative fair housing marketing plan prior to the sale or rental of any units and shall ensure that the Project complies with the Subsidizing Agency’s fair housing requirements.

**C. Submission Requirements**

- C.1 Prior to any construction or site development activities (including site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit, the Applicant shall:
- a. Deliver to the Board a check for \$25,000.00 to be used for the Building Inspector to retain outside experts for technical and legal reviews required under these conditions. Said funds shall be deposited by the Building Inspector in an account pursuant to G.L. c. 44, s. 53G and shall only be used for technical reviews associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the Project. In no event shall the Applicant be required to expend any additional funds for any further technical and/or legal reviews. . .
  - b. Obtain any and all Federal, State and local permits and approvals required for the construction and operation of the Project.
  - c. The Board and Fire Department shall be provided a copy of the

Stormwater Pollution Prevention Plan submitted along with the National Pollutant Discharge Elimination System permit filing. The Applicant shall employ a competent person on the Property during all construction activities trained in handling and reporting potential fluid spill.

- d. Provide the Board and Building Inspector with recording information documenting the fact that an Order of Conditions for the Project issued by the Conservation Commission or MassDEP has been recorded in the Norfolk Registry of Deeds and that all appeals have been exhausted.
- e. Provide the Board and Building Inspector a copy of all agreements granting access over any property in which work is proposed or access is required to complete the work shown on the Final Plans.
- f. Submit Final Plans and supporting documentation for review and approval by the Building Inspector and its review consultant. Including all materials described in A.13 and demonstrating compliance with the following conditions:
  1. At least 20 feet is maintained between the limit of inundation during the 100-yr storm event and any adjacent home or connecting driveway or walk and that limit of inundation be clearly shown on the Final Plans.
  2. Compliance with all applicable provisions of the Massachusetts Stormwater Management Standards and Handbook.
  3. All parking spaces must have a minimum dimension of 9'x19' and must not encroach on any public right of way or on any path of public accommodation (travel way or sidewalk).
- g. Determine the volume of cuts/fills needed for the Project and provide such information to the Board, signed by the Registered (Civil) Engineer of record.
- h. A construction management plan shall be submitted to the Building Inspector for review and approval, including, but not limited to, (1) project phasing, (2) methods to ensure public safety and site security, (3) operating hours, (4) contractor parking and equipment and material laydown, (5) controls to limit noise and vibration, (6) controls to manage air, dust, stormwater, and sediment, (7) waste disposal and materials re-

use and (8) traffic management. The Applicant shall also include in its construction management plan, a plan for ensuring health and safety concerning disturbance and stockpiling of potentially contaminated soils on site as required by applicable state regulations. At least four monitoring wells shall be provided by the Applicant as stipulated in D.7. The Applicant has utilized EPA testing methods 8260C (hydrocarbons) to determine baseline as reported in Enstrat Subsurface Investigation report previously submitted dated 9-20-19.

- i. Other than site work and such other work as may be authorized in writing by the Building Inspector, no other construction of units shall commence and no building permits shall be issued under this Comprehensive Permit until the Building Inspector has approved the Final Plans as being in conformance with this Decision.
- j. The construction management plan shall also provide a 24-hour contact person for the Applicant who will be available to respond to local officials or area residents reporting issues or problems that may arise during construction.
- k. Applicant shall also make the following submissions:
  1. Submit to the Building Inspector a construction schedule outlining the entire development of the Project.
  2. Submit to the Board and the Fire Department a Site-Specific Safety Plan including but not limited to emergency contacts information for the job team, muster point for emergency personnel, emergency response plan, sign-in area for all site visitors, designated employee parking area, and designated fueling area. All employees on site shall be responsible for understanding the plan and, at any point during the construction process, the Project shall be subject to inspection by the Building Inspector for compliance of all site personnel.
- l. Provide a construction sequencing plan to the Building Inspector prior to issuance of building permit. Plan should show construction trailer location, stock-piling areas, equipment fueling areas, equipment nightly storage plan, material laydown areas, emergency muster point, emergency access locations, temporary construction dumpster locations, and hazardous material storage area if any.

C.2 Prior to the issuance of any building permits, the Applicant shall:

- a. Record this Comprehensive Permit with the Norfolk Registry of Deeds, at the Applicant's expense, and provide proof of such recording with the Walpole Building Inspector, Community and Economic Development Director and Town Clerk.
- b. Submit to the Board and the Building Inspector evidence of Final Approval from the Subsidizing Agency, MassHousing, as required by the Project Eligibility Letters and the Chapter 40B regulations.
- c. Submit to the Board and the Building Inspector fully executed copy of the Regulatory Agreement and Monitoring Services Agreement for each or the ownership and rental portions of the Project and evidence of recording the same. The Building Inspector shall also be provided with evidence of a subsidy funding commitment by MassHousing or an approved New England Fund lender prior to the issuance of any building permit.
- d. Submit a sign application to the Building Inspector and include location and details of every sign to confirm its compliance with this Decision.
- e. Submit Final Plans and required supporting material to the Board and Fire Department for its review and approval by the Fire Department prior to the submittal of any building permits or construction of any utility infrastructure.
- f. Intentionally omitted.
- g. Obtain and file with the Building Inspector a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.
- h. Obtain all necessary electrical, plumbing, and other permits required to begin construction on the building for which the building permit is sought.
- i. The Applicant shall provide security in sum of one hundred twenty-five percent (125%) of the bona fide estimate of the cost of sediment control and site stabilization. These funds will be used to stabilize the Property should the Project be abandoned, or should no construction activity take place for twelve consecutive months.

C.3 Staging area(s) for construction equipment and deliveries must be constructed



before any buildings are started. Area(s) must be on the Property and not block access in and out of the Property.

**D. Construction Completion/Certificate of Occupancy**

- D.1 The Applicant shall conform to all local, State, and Federal laws regarding noise, vibration, dust, and blocking of Town roads.
- D.2 The Applicant shall adhere to strict compliance with this Decision to minimize inconvenience to residents in the general area.
- D.3 Adequate provisions shall be made by the Applicant to control and minimize dust on the Property during construction in accordance with the construction management plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project and shall employ water-based street sweeping so as to avoid clouds of dust in and around the public and private ways and surrounding neighborhood.
- D.4 During the construction process, up-to-date Material Safety Data Sheet must be kept on site with any materials brought onto the site and used on site by the construction team.
- D.5 Prior to issuance of certificate of occupancy for specific dwelling unit(s), the Applicant shall with respect to said dwelling unit(s) as applicable to the portion of the site where the dwelling unit(s) is/are located:
- a. Submit engineer's interim certification of compliance with utilities plan and profiles (as applicable) to the Walpole Building Inspector.
  - b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the as-built Project has been constructed in compliance with the Final Plans in all material respects, or noting where there are differences.
  - c. Obtain acceptance from the Walpole Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units and that all fire hydrants are in place at proper grade and functioning.

- d. Prior to the first certificate of occupancy for the first dwelling unit, submit to the Board's counsel the Homeowner's Association documents for Lots 1 and 2 and the Condominium Master Deed, Condominium Declaration of Trust and accompanying condominium plans (together, the "Condominium Documents") for Lot 2. Such Homeowner's Association Documents and Condominium Documents shall incorporate all the conditions of this Decision by reference.
  - e. Submit as-built plan of stormwater basins and infiltration units associated with the portion of the site seeking a certificate of occupancy along with certification by Applicant's Civil Engineer of compliance with the conditions of approval for the stormwater management system set forth in the final approved stormwater management plans that have been approved by the Town's peer review engineer.
- D.6 Prior to issuance of the certificate of occupancy for the last residential unit, the Applicant shall:
- a. Submit to the Building Inspector, in digital file format, a final as-built utilities plan showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in a form acceptable to the Building Department. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.
  - b. Submit to the Building Inspector as-built plans for all buildings in the Project.

- c. Submit to the Board, Building Inspector and Chief of Police all information relating to the Homeowner's Association rules and regulations and the management company being retained to act as the property manager that the Applicant submits to the Subsidizing Agency as part of the Final Approval process. Such property management agreement and Homeowner's Association rules and regulations shall, at a minimum, address building security, public access, pet policy, staffing, trash removal, smoking policies, snow and ice removal, and snow storage.
  - d. Submit verification that the stormwater management system including but not limited to catch basins, infiltration units, pipes and detention basin, has been inspected and cleaned.
  - e. Submit to the Board a certification of compliance with all terms and conditions of this Comprehensive Permit.
  - f. Certification by the Town Engineering Department that all off-site measures (if any) are complete.
  - g. Certification from the Town's DPW Water and Sewer Department that all sewer and water systems have been installed, tested, and that all valve covers and other related items are at grade and are in proper working condition.
- D.7 Any evidence of illegal dumping or contamination of soil or groundwater encountered during construction shall be reported as required under applicable federal, state or municipal regulations to the Massachusetts Department of Environmental Protection ("MassDEP") and the Walpole Board of Health. At least four (4) monitoring wells be maintained on site at locations approved by a Licensed Site Professional which are suitable for monitoring groundwater across the site.

**E. Project Design and Construction**

- E.1 Prior to the commencement of any work on the site, the Applicant and the site general contractor shall attend a preconstruction conference with the Building Inspector and other Town staff. If Applicant has obtained a demolition permit, Applicant may proceed with demolition of existing structures in accordance with the terms and conditions of the permit. Applicant shall further meet monthly with the Building Inspector and other Town staff if requested by the Building Inspector and/or any other Town Staff member until construction is complete.

- E.2 At reasonable times and after notice to the Applicant, representatives of the Board may observe and inspect the Property and construction progress until such time as the Project has been completed at their own risk.
- E.3 The proposed construction shall be in accordance with applicable Federal and State laws, rules and regulations.
- E.4 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer and shall be equipped with a 4 foot chain link fence for safety purposes.
- E.5 During construction, the Applicant shall comply with the construction management plan referenced in Condition C.1.
- E.6 Appropriate signage shall be shown on the Final Plans. The Board has approved certain waivers from the Town of Walpole Bylaws regarding signs. All other sign regulations shall be abided by.
- E.7 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the final plans provided to the Board and Building Inspector.
- E.8 If the Applicant uses natural gas for the Project or any part thereof, gas service locations shall be included on the Final Plans.
- E.9 Lighting shall be installed as follows:
  - a. All proposed exterior lighting shall comply with all applicable federal, state, and local laws, rules, and regulations, including but not limited to, applicable sections of the Massachusetts Building Code, the Walpole Zoning Bylaws, and the Walpole Town Bylaws. In event of a conflict among such requirements, the most restrictive provision shall apply. A proposed lighting plan shall be submitted to the Building Inspector and Board. The lighting plan submitted shall show all locations of proposed street lighting fixtures, exterior mounted light fixtures, signage lighting, and landscape lighting. The lighting plan proposed shall include, but not be limited to, a site plan depicting the property lines of all properties for which lighting is proposed, the location and specification of all exterior light fixtures to be installed within the Property, their lumen values, mounting heights, shielding, directionality and controls, protections

provided to minimize light pollution, the uses of properties associated with parties in interest, other relevant site conditions, and any additional information required to demonstrate compliance with applicable standards. The lighting plan submitted shall include a proposed photometric calculation to ensure public safety and minimize light trespass from the proposed project property line.

- b. *Permanent Street Lighting*  
No free-standing light fixtures shall be installed to a height exceeding 15 feet. All illumination shall be directed and/ or shielded so as not to shine beyond the perimeter of the site or interfere with traffic. (Walpole ZBL Section 13 Sub-Section 10.A(5))
- c. *Permanent Exterior lighting mounted to building structures*  
Broad lighting will be highly discouraged while soft lighting aimed down will be highly encouraged. (Walpole ZBL Section 13 Sub-Section 12.H(1)). Exterior mounted fixtures must be partially shielded directional light fixtures, placed not less than 4 feet apart or 12 feet in height from the surface area to be illuminated.).
- d. *Signage Lighting*  
All signage lighting shall comply with Walpole Zoning By-laws per Section 7.  
All signage lighting shall be limited to white steady, stationary light of reasonable intensity that is directed solely at the sign and shielded from abutting parcels.
- e. *Seasonal Lighting & Landscape Lighting*  
Landscape lighting shall be limited to lighting of trees, shrubs, or other plant material. Lighting shall be “low-level light fixtures” (3 feet or lower) and only be directed in a downward facing direction. Seasonal Lighting shall not be permitted for longer than a six-week period in any calendar year.
- f. *Construction & Temporary Lighting*  
Temporary lighting used for security or illumination purposes shall be shielded and down-ward facing. Temporary lighting of the interior buildings must be contained with-in the building structure or shut off between the hours of 10:00 pm to 6:00 am.

g. Photometric Survey:

Upon completion of said Project a photometric study shall be conducted by a registered professional engineer license in the Commonwealth of Massachusetts at the cost of the Applicant to ensure compliance with the conditions of this Section E9. All exterior light fixtures shall comply with IDA fixture seal of approval. All proposed lighting shall promote Dark Skies and minimize glare while reducing light trespass and skyglow. All products proposed shall be required to be fully shielded and minimize the amount of blue-light in the nighttime environment. Light trespass shall be limited to 0.5 foot-candle at the property line and there shall be no unshielded point sources of light visible from adjacent streets and properties.

E.10 Utilities, including but not limited to telephone, electric, and cable, shall be located underground from Summer Street.

E.11. No exterior work shall be conducted except snow management or work to prepare the site for a weather event, on Sunday or on the following National holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas.

- E.12 Due to close proximity to existing residences, along with school children and people walking about the area on weekdays, construction activities shall be conducted between the hours of 8:00 a.m. and 7:00 p.m., Monday through Friday. Construction activities shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. on Saturdays. When Walpole Public Schools are not in session such as school breaks, summers and certain holidays not listed below, construction activities shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. Interior construction activities may be conducted at any time. Additionally, the construction management plan shall take into account the Boyden School pickup and drop-off hours and shall restrict vehicles larger than a pickup truck from passing by the Boyden School during its pickup and drop off times. Upon the direction of the Building Inspector and/or Police Department, the Applicant shall utilize a uniform police detail at the entrance of the construction site during school morning and afternoon pickup hours if construction operations are unreasonably impeding traffic flow on Summer Street. Any work causing noise over 85 decibels at any segment of a property line which is 215 feet or closer to an adjacent residential dwelling shall be further restricted to hours of 11:00 a.m. to 3:00 p.m. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, vehicle fueling; vehicle access to and from site; delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and erection of new structures. All off-site utility work shall be coordinated and approved by the Building Department and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on site during construction.
- E.13 Burning or burial of construction or demolition debris on the Property is strictly prohibited. All such materials are to be removed from the Property in accordance with applicable law, and Applicant shall provide manifests/bills of lading to the Town certifying the removal of any waste or contaminants from the Project site. The Applicant shall also include a dumpster location and management plan for approval by the Building Inspector prior to commencement of work at the Property including a dumpster emptying and removal protocol from a duly licensed and insured private contractor approved by the Building Inspector. Due to the Project's location above and adjacent to a Town aquifer, all construction dumpsters shall be covered nightly to prevent blow out of trash debris. Covers shall be rain-repellant to mitigate water infiltration into the dumpsters and run-off of liquids from the dumpsters.

- E.14 During construction, the construction area shall be secured against unauthorized entry or vandalism by construction security fencing, and all construction materials shall be stored or stockpiled in a safe manner.
- E. 15 Applicant shall also identify the proposed location for any construction trailer on site during the course of construction for the Building Inspector's approval. Applicant shall renew the building permit for the construction trailer every six (6) months. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- E.16 No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by paving or loaming and seeding exposed areas. All 2:1 slopes or steeper areas shall be permanently stabilized with rip rap or vegetated cover.
- E.17 All retaining walls visible from a public way or direct abutters, as determined by the Building Inspector based upon the time of year when such walls would be most visible, shall be constructed in an aesthetic manner. Specifically, retaining walls shall avoid the use of exposed concrete (except for modular concrete block wall systems) to the greatest extent practicable.
- E.18 Except for reasonably sized windrows along pavement edges, snow shall be stored within the areas of the Property designated on the Approved Plans, and shall not be stored anywhere on the interior roadways or wetland resource areas, in compliance with all applicable DEP regulations and in a manner that maintains Fire Department access at all times. To the extent snowfall exceeds the capacity of the designated snow storage on the site, the Applicant shall truck the excess snow off-site. The Final Plans shall include a snow management plan, and the Applicant shall remove from Construction Site Drawings (Site Plans Rev 10) Site Notes No. 12 Page C.2 "Snow Storage is not limited to the areas denoted in the layout and materials plans. All Snow storage shall be a minimum of 50' from any wetland."



- E.19 The Applicant shall comply with all applicable state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP's Noise Policy contained in DAQC Policy 90-001. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements.
- E.20 The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways and driveways providing access to residents of the Project, as well as emergency vehicles.
- E.21 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris deposited due to such use during the duration of construction.
- E.22 All construction vehicles shall be parked on the Property. No construction equipment can be staged on Summer Street or other public ways.
- E.23 The Construction Management plan shall also include provisions securing the site so that children are kept out of the site and are protected against unsafe conditions. Permanent fencing shall comply with the plans and any Order of Conditions or Superseding Order of Conditions.
- E. 24 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall submit a dust mitigation plan and air quality management plan to the Building Inspector. Water must be used to mitigate any dust caused by rock crushing, soil sifting, or any other dust creating operation.
- E.25 Construction security fencing shall be utilized at least until the first certificate of occupancy is issued to ensure the safety and security of the site for the benefit of the surrounding neighborhood and the Applicant. Six (6) foot tall chain-link fencing shall be utilized with access gate at the entrance of the site. Walpole Fire Department shall have access to a lock box placed at the entrance to the gate during the construction process. Security personnel shall be utilized to open and close the site daily according to hours of operation as stated in this Comprehensive Permit.

- E.26 A proper truck pad shall be created and maintained at the entrance to Summer Street to wash and diminish the tracking of any debris from the site onto Summer Street.
- E.27 All construction equipment must be off-loaded on the Property. No equipment or material shall be off-loaded on Summer Street.
- E.28 The Applicant shall submit a trucking routes plan which shall restrict vehicles larger than a pickup truck from passing by the Boyden School during its pickup and drop off times, subject to the review and approval of the Town Engineer which shall not be unreasonably withheld and delayed.
- E.29 Applicant shall restrict idling of construction equipment during construction phase of project for more than 5 min per MassDEP requirements. All construction equipment shall be limited to starting times dictated by the construction permit and order of conditions set forth herein.

**F. Roadway and Traffic Safety Conditions**

- F.1 Access and egress to the Project shall be consistent with the Approved Plans.
- F.2 Any reduction in the number of parking spaces for the Project, absent a corresponding reduction in the number of units, shall constitute a substantial change pursuant to 760 CMR 56.05(11).
- F.3 Internal sidewalks shall be constructed as shown on the Final Plans. Applicant shall install ADA compliant wheelchair ramps with detectable warning panels at the sidewalk transitions to the internal driveways.
- F.4 The internal driveways to each unit shall be designed and constructed in accordance with the Approved Plans, excluding the waivers granted by the Board.
- F.5 All individual unit driveways shall have a minimum depth of 19' as measured from the face of building/edge of pavement to the nearest path of public accommodation (ie. travel way or sidewalk).
- F.6 Appropriate directional and safety signage shall be installed and maintained on the internal driveways as shown on the Final Plans approved by the Fire Department. All stop signs to be installed shall be consistent with the current Manual on Uniform Traffic Control Devices (MUTCD) standards and guidelines.

- F.7 Applicant shall maintain the sight distance at the entrance by limiting/trimming vegetation. The sight distance shall be maintained under the Town Engineer's supervision.
- F.8 Internal Cross walks – Internal crosswalks shall comply with the current MUTCD.
- F.9 The Applicant and/or its successor shall be responsible for providing personnel at the entrance to the Project for stadium events. Additionally, if the Walpole Chief of Police determines that additional police presence at the Property is necessary he may require such up to fifteen (15) times per year. The police detail would commence one hour before the scheduled stadium event and conclude one hour after the event ends. For the police ordered details, the Police Department will request payment from the stadium and if the stadium refuses to pay within a reasonable time period, the Applicant and/or its successor shall pay for the detail(s) not to exceed \$10,000.00 per year.
- F.10 A Transportation Coordinator ("TC") will be assigned the responsibilities of coordinating the Transportation Demand Management ("TDM") program and will also promote alternative transportation modes by posting local commuter rail schedules and encouraging residents to use public transportation. Further, the TC will also promote ridesharing via carpools for residents. The Applicant will recommend that residents interested in car-pooling provide their contact information.
- F.11 Bicycle racks will be located throughout the site to encourage the use of bicycles.
- F.12 The Applicant will develop accommodations for car sharing services (e.g., ZipCar).
- F.13 5 parking spaces at each of Building 1 and Building 2 will be reserved for low-emission vehicles and will be located closer to building entrances to promote the use of clean fuel vehicles.

**G. Police, Fire, and Emergency Medical Conditions**

- G.1 Sprinkler systems shall be installed in all buildings with more than two dwelling units.
- G.2 The Project shall comply with NFPA-13 and applicable building codes.

- G.3 Posted no parking restrictions on internal Project driveways with appropriate markings and signs shall be provided, as shown on the Final Plans.
- G.4 The Applicant has agreed to provide an emergency access roadway connecting the Property to Summer Street through an adjacent parcel sufficiently remote from the main entrance to reasonably ensure emergency access to/from the Property can be maintained. The emergency access must be constructed and useable prior to issuing the first occupancy permit.
- G.5 The Applicant has agreed to install an uninterrupted fence for the entire length of the project's developed boundary with the railroad right-of-way. Therefore, prior to the issuance of a certificate of occupancy, the Applicant shall install a continuous (uninterrupted) fence running along the entire boundary of the railroad tracks with fence endings designed to return into the developed site unless otherwise specifically precluded or as restricted from doing so in writing by the Walpole Conservation Commission or DEP as the case maybe.
- G.6 Due to the close proximity of the railroad crossing to the Project entrance driveway, prior to the issuance of a certificate of occupancy, the Applicant and the Town shall send a letter to the Massachusetts Department of Transportation ("DOT") and the Massachusetts Bay Transportation Authority ("MBTA") mutually requesting extension of the control arms on the Project side of the crossing to halfway across the adjacent travel way or provide written documentation from DOT, MBTA or other responsible agency indicating otherwise. This decision recognizes that making changes within the rail right of way is outside the purview of the Board and beyond the control of the Applicant. Therefore, if the DOT and MBTA do not reply in the affirmative within 90 days, or if the Town refuses to cooperate in sending the letter when requested by Applicant, the Applicant will have fulfilled its obligation. However, if at any time prior to the issuance of the last certificate of occupancy the DOT or MBTA does reply in the affirmative, this condition must be fulfilled. Further, the Town is to be copied on all correspondence to the DOT and MBTA.
- G.7 Storage areas for any chemicals and/or hazardous materials more than household quantities used for maintenance, cleaning or any other reason if any shall be shown on the Final Plan (location) and described in a report to the Building Inspector, Walpole Conservation Commission and Fire Department which shall be updated as needed. Said report shall contain a waste stream profile for any hazardous material generated on site during construction. Removal of hazardous materials from site to be conducted by MassDEP approved vendor.

**H. Water, Septic, Stormwater and Utilities**

- H.1 The Applicant shall be responsible for the design and installation of the utilities servicing the Project.
- H.3 Fire hydrants shall be placed as shown on the Approved Plans, subject to the final approval of the the Walpole Fire Department. . If the Walpole Fire Department approves different hydrant locations, such modification shall be accepted as an insubstantial change pursuant to 760 CMR 56.05(11).
- H.4 The service size for the domestic water service for each individual building should be verified by the Water Department and information on the fire service size and requirements should be verified by the Fire Department prior to the issuance of the building permit for the individual building in question. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Water Department and the Fire Department respectively.
- H.5 All water and sanitary sewer improvements necessary to serve the Project must be shown on Final Plans including all details and supporting information required for review by the Water and Sewer Departments. The water and sanitary sewer improvements servicing individual structures are to be completed, and interim as-built plans must be submitted to and approved by the DPW Water / Sewer Department, before any certificate of occupancy for said individual structures may be issued. All operation, maintenance and repair of water and sewer infrastructure within the Project will be the sole responsibility of the Applicant and/or its successor. As-built Plans shall show layout and construction details of all proposed water and sewer infrastructure installed per town standards. A detailed hydraulic analysis shall be submitted to the Building Inspector that complies with applicable regulations.
- H.6 The Project shall meet all applicable stormwater management standards to be documented on the Final Plans and approved by the Peer Reviewer prior to issuing a building permit. Stormwater management facilities shall be constructed as shown on the Final Plans.
- H.7 The Final Plans must depict at least 20 feet separation between any building or connecting driveway or walkway and the limit of inundation during 100-year storm event of any above grade stormwater management feature and that the limit of inundation be shown on the Final Plans or supplementary figure.

- H.8 The area of infiltration systems shall be excavated to remove fill down to natural soils and shall be witnessed by an agent of the Town prior to the installing crushed stone and the underground infiltration system.
- H.9 Soil conditions below Drip Edge Systems shall be inspected by a licensed soil evaluator at the time of foundation excavation and an affidavit for the combined systems be provided by a licensed engineer confirming that as-found conditions are consistent with those used in the model or additional justification provided proving performance prior to issuance of a certificate of occupancy for any building served by a Drip Edge System.
- H.10 The Walpole Conservation Commission or DEP Conditions:
- a. The Applicant shall comply with all terms and conditions of the Order of Conditions or Superseding Order of Conditions for the Project. No work may proceed pursuant to this Comprehensive Permit until the Order of Conditions or Superseding Order of Conditions is recorded in the Norfolk Registry of Deeds.
  - b. All terms and conditions of an Order of Conditions issued for the Project are expressly incorporated as conditions to this Comprehensive Permit and shall remain enforceable conditions under the Comprehensive Permit. Should an appeal of the Order of Conditions result in a modification of the final plans and/or any condition herein, such modification will be subject to 760 CMR 56.05(11).
  - c. Any fill used in the Project shall be clean fill, and shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or part of any of the foregoing.
  - d. The proposed culvert/bridge wetland crossings shall meet Massachusetts Stream Crossing Standards unless directed otherwise by the Walpole Conservation Commission or MassDEP and those crossings shall be shown in detail on the Final Plans.

H.11 Fertilizers and/ or pesticides by residents or the maintenance company must be appropriate for use near wetland resource areas. Any road de-icing material used by facility management must meet regulatory requirements and any Order of Conditions or Superseding Order of Conditions for use near wetland resource areas.

**I. Completion of Infrastructure:**

I.1 As security for completion of the infrastructure shown on the Final Plans, including, but not limited to the roadways, sidewalks, parking, stormwater management system, lighting, water and sewer systems, landscaping and utilities (collectively the "Infrastructure"), the Applicant shall provide security consistent with the provisions of G. L. 41, § 81U, solely for that portion of the Project for which certificates of occupancy are requested and subject to the following:

- a. No certificate of occupancy for a dwelling unit shall be issued until: (1) the portion of the roadway shown on the Final Plans providing access to the subject building has been installed, excepting the final course of pavement; and (2) all other Infrastructure necessary to serve said building, as approved by the Board's peer review engineer or the Building Inspector has been constructed and installed so as to adequately serve said building. The final infrastructure for the Project, including, but not limited to, final course of pavement shall be installed prior to the issuance of a certificate of occupancy for the final dwelling unit. The final infrastructure shall include, but not be limited to: intermediate and final course of pavement, remaining landscaping, and any "punch list" items identified by the Board's engineer or the Building Inspector. Alternatively, if the Applicant desires to obtain such final certificate of occupancy for the final dwelling unit before the completion of said Final Infrastructure, it shall deposit such security as permitted by M.G.L. ch. 41, section 81U with the Town securing the installation and construction of such Final Infrastructure. The amount of such security and any necessary contingency shall be determined by the Board, acting reasonably and upon the advice of its consulting engineer. The form of the security agreement binding such security shall be subject to reasonable review by Town Counsel.
- b. The Board's peer review engineer shall review the Project upon completion of all such Infrastructure as described above, and shall notify the Building Inspector that all Infrastructure is complete whereupon security shall be released to Applicant.

**J. Other General Conditions**

- J.1 In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law.
- J.2 This Decision prohibits the parking or storage of any unregistered vehicle on the Property, and likewise prohibits the service of any vehicles on the Property, except during construction.
- J.3 Trash and recycling services are not the responsibility of the Town. However, a trash and recycling management plan shall be submitted to the Board of Health for review and approval.
- J.4 Prior to the issuance of any certificates of occupancy, and prior to the execution of any purchase and sales agreement or rental agreement for a market rate unit, the Applicant shall submit, to the satisfaction of the Building Inspector, a copy of the Homeowner's Association which shall include an adequate plan for the operation and maintenance of the internal roadways. The internal roadways shall be maintained in perpetuity by the Homeowner's Association, which obligation shall be incorporated into the Homeowner's Association documents.
- J.5 The Applicant shall be responsible for sweeping, removal of snow, and sanding of the internal roadways permitting safe access to residents and emergency vehicles during construction and until the Homeowner's Association has been legally established and have assumed said responsibilities.
- J.6 The landscaping shall be maintained in perpetuity by the Homeowner's Association, which obligation shall be incorporated in the Association documents, as applicable, and the declaration of restrictive covenants, if any, to be executed by the Applicant. Dead or diseased plantings shall be replaced within six (6) months in accordance with growing and weather conditions.



- J.7 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (b) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

**K. Off-Site Traffic Mitigation**

- K.1 Prior to the issuance of the first occupancy permit, the Applicant shall deposit \$500,000.00 in an account pursuant to G.L. c. 44, § 53G1/2 for Off-Site Roadway Mitigation to be expended by the Town of Walpole Road Commissioners.

Revised Decision on Chapter 40B Comprehensive Permit Application  
55 SS, LLC  
51, 53, & 55 Summer Street, Walpole, MA  
July 14, 2021  
Page 36 of 59

**DECISION**

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit for the construction of 268 housing units pursuant to Chapter 40B, §§ 20-23, for the development described above.

Revised Decision on Chapter 40B Comprehensive Permit Application  
55 SS, LLC  
51, 53, & 55 Summer Street, Walpole, MA  
July 14, 2021  
Page 37 of 59

### RECORD OF VOTE

On April 14, 2021, the Board, on a motion made by Suzanne Murphy, seconded by Jane Coffey, voted 5-0-0 (John Lee, Suzanne Murphy, Robert Fitzgerald, Mary Jane Coffey, and Drew Delaney) to approve the **Comprehensive Permit** application of 55 SS LLC or its nominee to allow for the proposed Development at 51, 53 & 55 Summer Street, consisting of a total of 236 housing units pursuant to Chapter 40B, §§ 20-23.

The Board has complied with all statutory requirements for the issuance of this Comprehensive Permit. A copy of this decision will be filed with the Town Clerk. Copies of this decision have been, or will be mailed, to all parties, persons or boards as required by M.G.L. c. 40B.

On April 14, 2021, the Board voted to authorize Robert Fitzgerald to sign this decision on behalf of the Board.

On July 14, 2021, the Board, voted 4-0 to approve the **Revised Comprehensive Permit** of 55 SS LLC or its nominee to allow for the proposed Development at 51, 53 & 55 Summer Street, consisting of a total of 268 housing units pursuant to Chapter 40B, §§ 20-23.

**The grant of this comprehensive permit hereunder is dependent upon compliance with all of the conditions set forth above and upon the following additional terms and conditions.**

Revised Decision on Chapter 40B Comprehensive Permit Application  
55 SS, LLC  
51, 53, & 55 Summer Street, Walpole, MA  
July 14, 2021  
Page 38 of 59

### **Exhibit "A" – Waivers**

Pursuant to the Waiver List revised and submitted to the Board, the Applicant has requested, and the Board has granted, certain waivers from the Walpole Zoning Bylaws and other local by-laws and regulations as specified in the attached Exhibit A. No waivers are granted from requirements that are beyond the purview of G. L. c. 40B, §§20-23, and no waivers have been granted other than those set forth in Exhibit A. No waiver of permits or inspections fees are granted.

On April 14, 2021, the Board, on a motion made by Suzanne Murphy, seconded by Jane Coffey, voted 5-0-0 (John Lee, Suzanne Murphy, Robert Fitzgerald, Mary Jane Coffey, and Drew Delaney) to approve certain attached **Waivers** for the proposed Development at 51, 53 & 55 Summer Street, consisting of a total of 236 housing units pursuant to Chapter 40B, §§ 20-23.

On July 14, 2021, the Board, on a motion made by Suzanne Murphy, seconded by Jane Coffey, voted 5-0-0 (John Lee, Suzanne Murphy, Robert Fitzgerald, Mary Jane Coffey, and Drew Delaney) to approve certain attached **Waivers** (revised) for the proposed Development at 51, 53 & 55 Summer Street, consisting of a total of 268 housing units pursuant to Chapter 40B, §§ 20-23.

# RENTAL

SECTION	DESCRIPTION	WAIVER	DISPOSITION
<p>Comprehensive Permit Rules and Regulations</p> <p>Section 3.2.15</p>	<p>Statement of Impact on Municipal Facilities and Services</p>	<p>The applicant has made projections of both estimated future tax revenue and the estimated number of schoolchildren in previous informational presentations to town officials and residents. This information will be presented to the ZBA during the hearing process. However, a requirement to make a statement regarding the Project's impact on Municipal Facilities is not required under the 40B statute or regulations. Therefore, the applicant is requesting a waiver from any additional requirement of section 3.2.15 of the Town's ZBA rules and Regulations.</p>	<p>Approved.</p>
<p>Section 3.2.16</p>	<p>Compliance with Master and Open Space plans</p>	<p>The increase in number of affordable housing units and the increase in housing choice for a variety of demographics answers needs identified in both the Master Plan and the Housing Production Plan. Additionally, the Applicant believes the Project design along with the existing trail that will remain along Cedar Brook answers desires identified in the Draft Open Space Plan. Determining whether the Project</p>	<p>Approved.</p>

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 40 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
Section 3.2.17	Roster of Development team and list of prior developments for past 10 years	complies with all or any of the Town's written plans is not required under the 40B Statute or Regulations. Therefore, the applicant is requesting a waiver from any further requirements of section 3.2.16 of the Town's ZBA rules and Regulations.	Approved.
Section 3.2.18	Twenty (20) paper copies of said application with attachments and exhibits	The information provided adequately demonstrates the relevant experience of the applicant and development team. Therefore, a waiver of 3.2.17 is requested with respect to providing a list of all prior residential and commercial development projects for all members of the development team over the last ten (10) years is requested.  Waiver requested as per conversation with Director of Community Planning 12/13/19, the following will be provided either with application or when appropriate. 15 full size plan sets 5 11x17 plan sets	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 41 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
Section 3.2.19	<p>Payment of Filing Fee. 1. for limited dividend organizations: \$5000 base fee plus, if the total project contains more than 6 market rate units, \$200.00 per market rate proposed.</p>	<p>1 each traffic, stormwater. 10 executive summary sections from the traffic, stormwater. Everything electronically either by thumb drive or drop box.</p>	Denied.
Section 3.2.5.4	<p>Said plan shall include the following information: Existing significant environmental features such as ledge outcrops, scenic views and large trees (i.e. greater than 24" dbh).</p>	<p>Request waiver to calculate fee based on Planning Board Site Plan Approval fee which requires similar information and review and would result in a fee of \$23,508 rather than the \$50,000 fee defined in 11/20 ZBA Rules and Regulations. Specifically this is a request to waive \$26,492 of the application fee. The fee and waiver request apply to lots 1 and 2 combined.</p> <p>Due to the significant number of trees on this 55 acre site, an inventory of all ledge, large trees and scenic views would require significant resources to gather with no significant benefit. Waiver requested to exclude these on the preliminary site development plan.</p>	Approved.
Section 5.5	Any professional expert or other	Waiver sought for requirement to have all	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 42 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
Section 5.6	witness that participated in the drafting or the proposed Project plans or other elements shall be present at each public hearing session.  Board may in its discretion collect appropriate fees for notary public or stenographer.	participants in drafting application at all meetings. Applicant will manage attendance of professionals as needed in consultation with ZBA during the hearing process.  Waiver requested to the fee for notary or stenographer which are not allowed under the GL c 44, s.53G. ZBA meetings are currently video recorded as well.	Approved.
<b>Town of Walpole Zoning Bylaw</b>			
Table 5-B.1; 3. Residential: d	Residential Use prohibited in Limited Manufacturing zone.	A waiver is requested to permit development of dwellings for occupancy by more than three families within a Limited Manufacturing Zone.	Approved.
Table 5-B.1 3. Residential: d iiiii	If there is more than one principle building on a lot, there shall be a minimum of 10,000 SF of lot area per dwelling unit.	Waiver to allow for less than 10,000 SF of land per dwelling unit.	Approved.
Section 6-B-1	In all districts no building shall be constructed on any part of a lot which does not have an area in	Request Waiver to construct the Project as shown on the plans with reference to Section 6-B-1.	Approved.



Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 43 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
Section 6-B-1.A	<p>which a circle, the diameter of which is not less than 80% of the minimum required lot frontage, tangent to the exterior street line from which the required frontage and minimum setback are derived and within all other lot lines, may be located.</p> <p>In all districts no building shall be constructed on a lot having less than the required lot frontage.</p>	Request Waiver to allow frontage of no less than 86 feet.	Approved.
Section 6-B-1.C	<p>In all districts no building shall be constructed so as to be nearer to the side lines of its lot than the required side yard width.</p>	Side yard setback requirement is 40. Request waiver to allow side yard setback as shown on the attached setback plan dated 3/1/21.	Approved.
Table 6-B.1 and 6-C.3.A	Required Lot Frontage for a lot in the Limited Manufacturing zoning.	Lot frontage required in LM zoning is 200 feet. Request waiver to allow creation of a lot with no less than 86 feet.	Approved.
Table 6-B.1.	Required Minimum Side Yard Setback for a lot in the Limited Manufacturing zoning	Side yard setback requirement is 40. Request waiver to allow side yard setback as shown on the attached setback plan	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 44 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
6-C.4.B.	<p>Number of Buildings per lot. Commercial/Mixed-Use - Provided they are in compliance with all dimensional regulations listed in Section 6-C, more than one (1) building may be constructed and located on each lot in all commercial zones.</p>	<p>3/1/21. A waiver is requested as there will be more than one building per lot and there are dimensional waivers required.</p>	<p>Approved.</p>
Table 6-B.1	<p>Required Maximum Building Height for a lot in the Limited Manufacturing zoning.</p>	<p>The applicant's position is that the applicants' plan meets the zoning requirement and no waiver is required as the Building Commissioner has provided a written opinion for the record stating that footnote 10 applies to this project. As shown by Applicant's Engineer the applicable setbacks for height computation are 104' and 96' allowing for building heights of 104' and 96' respectively by right in the LM zone. However, to the extent that a waiver is required, a waiver is requested to allow for a maximum height of 70+/-feet.</p>	<p>Approved to allow for a maximum of five (5) stories.</p>

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 45 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
Section 6-C-11	Projections (roof, eave, chimney or cornice) - no more than 18 inches into setbacks. Uncovered/Unenclosed (porches, decks, platforms, landings or stoops) which are part of egress shall not encroach more than 48 inches into setbacks. Uncovered steps that are part of any required egress shall not come within five (5) feet of any lot line.	Request Waiver to construct the Project as shown on the plans however with no portion of any building being closer to the adjacent lot line than the setbacks shown on the attached setback plan dated 3/1/21. Units 40-52 and unit 6, the mail pickup and drop-off building as well as the maintenance building fall under this waiver.	Approved.
Section 8.3.1	Townhomes & Apartments are classified as Parking Code 1 per table 6-B.1. Required parking spaces: 2 per unit.	Request waiver to allow a parking ratio of 1.88 parking spaces per rental unit.	Approved.
Section 8.8.A.1	Table of Parking space and Aisle Dimensions.	Request a waiver to allow 9'x19' parking spaces with a 24' Aisle vs. 10'x18.5'	Approved.
Section 8.8.B-3	Parking Aisles: the ends of parking aisles that are more than 15 spaces in length shall incorporate landscape islands at either end of the row. Where the	Request Waiver to construct the Project as shown on the plans. Compliance with the requirement would eliminate parking spaces that are required to serve future residents. Based on requirements, 13	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 46 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
	<p>length of a parking aisle exceeds 25 spaces, additional landscaped islands shall be installed at regular intervals. This interval shall not be more than every 13 spaces. The width of landscaped islands perpendicular to adjacent spaces shall be no less than 8 feet at their widest point.</p>	<p>additional landscaped islands would be required if not waived.</p>	
Table 8.3.1	2 spaces for each unit	To permit the rental project to have a minimum of 1.88 parking spaces per dwelling unit.	Approved.
Section 12.3.A.2.d	Residential development of single family dwellings are permitted by right if no more than 15% or 2,500 S.F., whichever is greater, of the building lot is rendered impervious.	Proposed Impervious: 25% Request a Waiver as impervious coverage is addressed under Section 12.3.C.5	Approved.
Section 12.3.C.3	In areas 3 & 4, any uses in WRPOD other than a single-family dwelling with a sewage flow exceeding 110 GPD per 10,000 S.F. of lot area or	The Building Commissioner in his capacity as the zoning authority has ruled a "not applicable". However, to the extent a waiver from the special permit requirements is required, a waiver is	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 47 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
	exceeding 15,000 GPD total requires a special permit.	requested.	
Section 12.3.C.5	Any residential use in WRPOD that will render impervious more than 15% or 2,500 S.F. of any lot requires a special permit.	Waiver from special permit requirement. to allow for 25%.	Approved.
Section 13	Site Plan Review.	Request waiver.	Approved.
<b>Wetlands By-Law and Regulations</b>			
Section 561, Division 2 of the General Bylaw	Section 561, Division 2 of the General Bylaw would require a local permit be issued by the conservation commission.	A waiver is requested from Section 561 Division 2 of the General Bylaw as the project is to be permitted under the Wetlands Protection Act and not the local Wetlands Bylaw.	Approved.
Section 449 of the Walpole General Bylaws -Article XXIX STORMWATER MANAGEMENT AND EROSION CONTROL BYLAW	Article XXIX STORMWATER MANAGEMENT AND EROSION CONTROL BYLAW would require local permits	A waiver is requested from Article XXIX STORMWATER MANAGEMENT AND EROSION CONTROL BYLAW as the project is to be permitted under the Mass stormwater regulations.	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 48 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
1.4.1	No Alteration Zone: The Commission shall require the Applicant to maintain a 25 foot wide contiguous, undisturbed, vegetative buffer measured from, and parallel to, the wetland resource boundary, as a minimum.	Waiver requested work in the 25 foot buffer only in the area of the crossing and the replication areas as shown on the plans as well as in the area of the one way section of driveway D.	Approved.
1.5.2	Replication requirements	Request Waiver to allow applicant to provide reporting over two, post-construction growing seasons based on two inspections/reports per growing season in a format based upon DEP Replication Guidelines, Appendix 4, or mutually agreed upon equivalent format.	Approved.
2.3	Plans and Supporting documents	Waiver is requested from section 2.3 in its entirety.	Approved.
<b>Water and Sewer Department</b>			
Water Entrance Fee	System development charge of \$2,440 per residential housing unit.	Waiver requested to eliminate Water Entrance fee for 61 affordable units.	Denied.
Non-Assessed Sewer Entrance Fee –	System development charge of \$1,670 per residential housing unit.	Waiver requested to eliminate Non-Assessed Sewer Entrance Fee for 61	Denied.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 49 of 59

SECTION	DESCRIPTION	WAIVER	DISPOSITION
Residential		affordable units.	
<b>Building Department</b>			
Building permit fees (Including Building, Electrical, Plumbing and Gas fees)	\$18.00 per \$1,000.00 of estimated cost of construction or fraction thereof.	A waiver is requested to eliminate building permit fees for 61 affordable units.	Denied.
<b>Global Waiver</b>			
The Applicant also requests any and all other waivers necessary to construct the plans as approved and to the extent any bylaw is waived, all of the regulations springing from the waived bylaw are also waived.			Denied.

## OWNERSHIP

SECTION	DESCRIPTION	WAIVER	NOTES
<b>Comprehensive Permit Rules and Regulations</b>			
Section 3.2.15	Statement of Impact on Municipal Facilities and Services	The applicant has made projections of both estimated future tax revenue and the estimated number of school children in previous informational presentations to town officials and residents. This information will be presented to the ZBA during the hearing process. However, a	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 50 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
Section 3.2.16	Compliance with Master and Open space plans	<p>requirement to make a statement regarding the Project's impact on Municipal Facilities is not required under the 40B statute or regulations. Therefore, the applicant is requesting a waiver from any additional requirement of section 3.2.15 of the Town's ZBA rules and Regulations.</p> <p>The increase in number of affordable housing units and the increase in housing choice for a variety of demographics answers needs identified in both the Master Plan and the Housing Production Plan. Additionally, the Applicant believes the Project design along with the existing trail that will remain along Cedar Brook answers desires identified in the Draft Open Space Plan. Determining whether the Project complies with all or any of the Town's written plans is not required under the 40B Statute or Regulations. Therefore, the applicant is requesting a waiver from any further requirements of section</p>	Approved.



Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 51 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
Section 3.2.17	Roster of Development team and list of prior developments for past 10 years.	<p>3.2.16 of the Town's ZBA rules and Regulations.</p> <p>The information provided adequately demonstrates the relevant experience of the applicant and development team. Therefore, a waiver of 3.2.17 is requested with respect to providing a list of all prior residential and commercial development projects for all the members of the development team over the last ten (10) years is requested.</p>	Approved.
Section 3.2.18	Twenty (20) paper copies of said application with attachments and exhibits.	<p>Waiver requested as per conversation with Director of Community Planning 12/13/19, the following will be provided either with application or when appropriate</p> <ul style="list-style-type: none"> <li>15 full size plan sets</li> <li>5 11x17 plan sets</li> <li>1 each traffic, stormwater.</li> <li>10 executive summary sections from the traffic, stormwater.</li> </ul> <p>Everything electronically either by thumb drive or drop box</p>	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 52 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
Section 3.2.19	Payment of Filing Fee. 1. for limited dividend organizations: \$5000 base fee plus, if the total project contains more than 6 market rate units, \$200.00 per market rate is proposed.	Request waiver to calculate fee based on Planning Board Site Plan Approval fee which requires similar information and review and would result in a fee of \$23,508 rather than the \$50,000 fee defined in 11/20 ZBA Rules and Regulations. Specifically this is a request to waive \$26,492 of the application fee. The fee and waiver request apply to lots 1 and 2 combined.	Denied.
Section 3.2.5.4	Said plan shall include the following information: Existing significant environmental features such as ledge outcrops, scenic views and large trees (i.e. greater than 24" dbh).	Due to the significant number of trees on this 55 acre site, an inventory of all ledge, large trees and scenic views would require significant resources to gather with no significant benefit. Waiver requested to exclude these on the preliminary site development plan.	Approved.
Section 5.5	Any professional expert or other witness that participated in the drafting or the proposed Project plans or other elements shall be present at each public hearing	Waiver sought for requirement to have all participants in drafting application at all meetings. Applicant will manage attendance of professionals as needed in consultation with ZBA during the	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 53 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
Section 5.6	<p>session.</p> <p>Board may in its discretion collect appropriate fees for notary public or stenographer.</p>	<p>hearing process.</p> <p>Waiver requested to the fee for notary or stenographer which are not allowed under the GLc44,s.53G. ZBA meetings are currently video recorded as well.</p>	<p>Approved.</p>
Town of Walpole Zoning Bylaw			
Table 5-B.1; 3. Residential: a.	Residential Use prohibited in Limited Manufacturing zone.	A waiver is requested to permit development of single family and duplex homes within a Limited Manufacturing Zone.	Approved.
Section 6-B-1	In all districts no building shall be constructed on any part of a lot which does not have an area in which a circle, the diameter of which is not less than 80% of the minimum required lot frontage, tangent to the exterior street line from which the required frontage and minimum setback are derived and within all other lot lines, may be located.	Request Waiver to construct the Project as shown on the plans with reference to Section 6-B-1.	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 54 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
Section 6-B-1.A	In all districts no building shall be constructed on a lot having less than the required lot frontage.	Request Waiver to allow frontage of no less than 133 feet.	Approved.
Section 6-B-1.C	In all districts no building shall be constructed so as to be nearer to the side lines of its lot than the required side yard width.	Side yard setback requirement is 40. Request waiver to allow side yard setback as shown on the attached setback plan dated 3/1/21.	Approved.
Table 6-B.1:	Required Lot Frontage for a lot in the Limited Manufacturing zoning.	Lot frontage required in LM zoning is 200 feet. Request waiver to allow creation of a lot with no less than 133 feet.	Approved.
Table 6-B.1	Required Minimum Side Yard Setback for a lot in the Limited Manufacturing zoning.	Minimum side yard set back in LM zoning is 40 feet. Request waiver to allow setback as shown on the attached setback plan dated 3/1/21.	Approved.
Table 6-B.1	Required Minimum Front Yard Setback for a lot in the Limited Manufacturing zoning.	Minimum front yard set back in LM zoning is 50 feet. Request waiver to allow setback of no less than 36 feet.	Approved.
6-C.4.B.	Number of Buildings per lot. Commercial/Mixed-Use -	A waiver is requested as there will be more than one building per lot and there	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 55 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
	<p>Provided they are in compliance with all dimensional regulations listed in Section 6-C, more than one (1) building may be constructed and located on each lot in all commercial zones.</p>	<p>are dimensional waivers required.</p>	
<p>Section 6-C-11</p>	<p>Projections (roof, eave, chimney or cornice) - no more than 18 inches into setbacks. Uncovered/Unenclosed (porches, decks, platforms, landings or stoops) which are part of egress shall not encroach more than 48 inches into setbacks. Uncovered steps that are part of any required egress shall not come within five (5) feet of any lot line.</p>	<p>Request Waiver to construct the Project as shown on the plans, however with no portion of any building being closer to the adjacent lot line than the setbacks shown on the attached setback plan 3/1/21. Units 1,2,5, 41-54, and 7-15 would fall under this waiver.</p>	<p>Approved.</p>
<p>6.C.8.D</p>	<p>Fence will not have height of more than 6 feet.</p>	<p>Request waiver to allow for 8-foot fence as show on the plans to accommodate abutters.</p>	<p>Approved.</p>
<p>Section 8.8.A.1</p>	<p>Table of Parking space and Aisle Dimensions.</p>	<p>Request a waiver to allow 9'x19' parking spaces with a 24' Aisle vs. 10'x18.5'</p>	<p>Approved.</p>

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 56 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
Section 12.3.A.2.d	Residential development of single family dwellings are permitted by right if no more than 15% or 2,500 S.F., whichever is greater, of the building lot is rendered impervious.	Proposed Impervious: 20% Request a Waiver as impervious coverage is addressed under Section 12.3.C.5.	Approved.
Section 12.3.C.3	In areas 3 & 4, any uses in WRPOD other than a single-family dwelling with a sewage flow exceeding 110 GPD per 10,000 S.F. of lot area or exceeding 15,000 GPD total requires a special permit.	The Building Commissioner in his capacity as the Zoning has ruled as not applicable. However, to the extent a waiver from the special permit requirements is required, a waiver is requested.	Approved.
Section 12.3.C.5	Any residential use in WRPOD that will render impervious more than 15% or 2,500 S.F. of any lot requires a special permit.	Waiver from special permit requirement for 20% impervious.	Approved.
Section 13	Site Plan Review.	Request waiver	Approved.
Signs Section 7.6.C.4	Sign shall be a minimum of eight (8) feet from ground level.	Request waiver to allow for sign to be less than 8 feet from the ground as the	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 57 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
<b>Wetlands By-Law and Regulations</b>			
Section 561, Division 2 of the General Bylaw	Section 561, Division 2 of the General Bylaw would require a local permit be issued by the conservation commission.	A waiver is requested from Section 561 Division 2 of the General Bylaw as the project is to be permitted under the Wetlands Protection Act and not the local Wetlands Bylaw.	Approved.
Section 449 of the Walpole General Bylaws -Article XXIX STORMWATER MANAGEMENT AND EROSION CONTROL BYLAW	Article XXIX STORMWATER MANAGEMENT AND EROSION CONTROL BYLAW would require local permits	A waiver is requested from Article XXIX STORMWATER MANAGEMENT AND EROSION CONTROL BYLAW as the project is to be permitted under the Mass stormwater regulations.	Approved.
1.4.1	No Alteration Zone: The Commission shall require the Applicant to maintain a 25 foot wide contiguous, undisturbed, vegetative buffer measured from,	Waiver requested work in the 25 foot buffer only in the area of the crossing and the replication areas as shown on the plans as well as in the area of the one way section of driveway D.	Approved.

Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 58 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
1.5.2	and parallel to, the wetland resource boundary, as a minimum.  Replication requirements	Request Waiver to allow applicant to provide reporting over two, post-construction growing seasons based on two inspections/reports per growing season in a format based upon DEP Replication Guidelines, Appendix 4, or mutually agreed upon equivalent format.	Approved.
2.30	Plans and Supporting documents	Waiver is requested from section 2.3 in its entirety.	Approved.
<b>Water and Sewer Department</b>			
Water Entrance Fee	System development charge of \$2,440 per residential housing unit.	requested to eliminate Water Entrance fee for 14 affordable units.	Denied.
Non-Assessed Sewer Entrance Fee - Residential	System development charge of \$1,670 per residential housing unit.	Waiver requested to eliminate Non-Assessed Sewer Entrance Fee for 14 affordable units.	Denied.
<b>Building Department</b>			
Building permit fees	\$18.00 per \$1,000.00 of estimated	A waiver is requested to eliminate	Denied.



Revised Decision on Chapter 40B Comprehensive Permit Application

55 SS, LLC

51, 53, & 55 Summer Street, Walpole, MA

July 14, 2021

Page 59 of 59

SECTION	DESCRIPTION	WAIVER	NOTES
(Including Building, Electrical, Plumbing and Gas fees)	cost of construction or fraction thereof.	building permit fees for 61 affordable units.	
<b>Global Waiver</b>			
The Applicant also requests any and all other waivers necessary to construct the plans as approved and to the extent any bylaw is waived, all of the regulations springing from the waived bylaw are also waived. Denied.			



# **Exhibit 3**



**Town of Walpole**  
**Commonwealth of Massachusetts**  
**Zoning Board of Appeals**

**Zoning Board of Appeals**  
John Lee, Chair  
Drew Delaney, Vice Chair  
Bob Fitzgerald, Clerk  
Jane Coffey, Member  
David Anderson, Member  
Judith Conroy, Assoc. Member  
Timothy Hoegler, Assoc. Member

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June 2, 2022

Wall Street Development Corp.  
Attn: Louis Petrozzi, President (By Certified & Regular Mail)  
P.O. Box 272  
Westwood, MA 02090

Re: Written Notice of Safe Harbor Pursuant to 760 CMR 56.03(1)(b) and (8)  
Residence at Darwin Commons, Darwin Lane, Walpole MA  
(July 8, 2021 - MassHousing Project Eligibility Determination)

Dear Mr. Petrozzi,

Please be advised that this correspondence shall serve as written notice to you, Louis Petrozzi (the "Applicant") from the Walpole Zoning Board of Appeals (the "Board"), that, on May 25, 2022, the Board opened the public hearing regarding your application for a comprehensive permit for the project known as The Residence at Darwin Commons, Walpole, Massachusetts (the "Application"), and the Board voted 3 to 0 to invoke and declare that denial of the Darwin Commons 40B application is consistent with local needs as defined in 760 CMR 56.03(1)(b) and 56.03(4) due to receipt of a Certification of Approval, dated September 10, 2021, issued by the Massachusetts Department of Housing and Community Development, certifying the Town of Walpole's compliance with its Housing Production Plan, approved for a two-year period running from April 27, 2021 to April 26, 2023.

The basis for the Board's determination is that the Town of Walpole ("Town") has achieved one of the statutory minima standards set forth under G.L. c.40B, §§20-23 and 760 CMR 56.03(1)(b) and (4) because the Department of Housing and Community Development ("DHCD") has certified compliance with the Town's Housing Production Plan. A copy of DHCD's certification of compliance with an approved HPP for Walpole is enclosed herewith.

This written notice was forwarded to both the Applicant and to DHCD on June 2, 2022, within 15 days of the May 25, 2021 opening of the public hearing on the Application.

Regards,

John Lee, Chair  
Walpole Zoning Board of Appeals

cc: Mr. Philip DeMartino, Department of Housing and Community Development (By Certified & Regular Mail and Electronic Mail)  
Ms. Catherine Racer, Department of Housing and Community Development (By Certified & Regular Mail)  
Ms. Alana Murphy, Department of Housing and Community Development (By Certified & Regular Mail)  
Mr. James Johnson, Town Administrator  
Attorney George Pucci, Town Counsel





Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

September 10, 2021

Mark Gallivan, Chair  
Walpole Select Board  
Walpole Town Hall  
135 School Start  
Walpole, MA 02081

**RE: Housing Production Plan - Certification Approval**

Dear Mr. Gallivan:

The Department of Housing and Community Development (DHCD) has reviewed the Town of Walpole's August 26, 2021 request for certification of compliance with its Housing Production Plan (HPP). In order for a municipality to be certified the following needs to occur:

- Housing units affordable to low and moderate income households and eligible for inclusion on the Subsidized Housing Inventory (SHI) have been produced during one calendar year, the same year for which certification is requested during the initial year of SHI eligibility.
- Units must total at least 0.5% (45) units for Walpole of year-round housing units for one-year of certification. A total of 1% of year-round housing units (90) units for Walpole are needed for a two-year certification,
- The units were produced and are eligible in accordance with the approved HPP and DHCD's c. 40B Guidelines.<sup>1</sup>

DHCD makes the following findings:

1. Walpole has a valid HPP. The effective date for the HPP is April 23, 2019 the date that DHCD received a complete plan submission. The HPP has a five-year term and will expire on April 22, 2024.
2. The project for which certification was requested for is known as Cedar Crossing/ Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.
3. DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).
4. The certification period will run from April 27, 2021 to April 26, 2023.

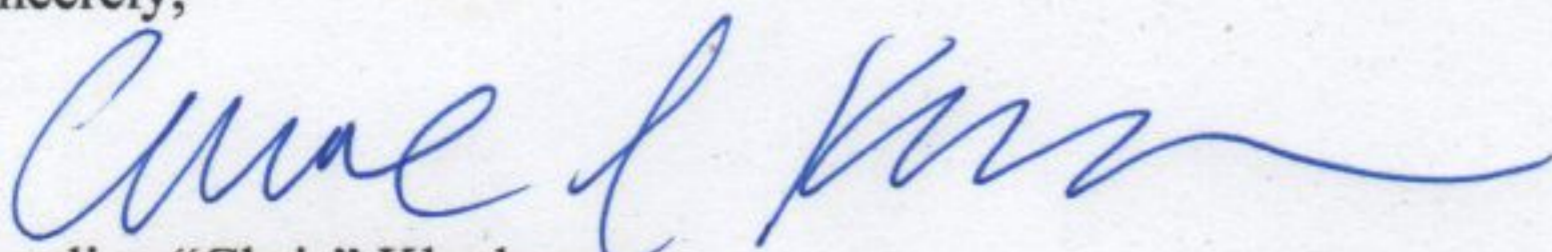
Please note that all units must retain eligibility for the SHI for the entire certification period. If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification. I have included an updated list of SHI eligible units. The Town of Walpole's SHI currently stands at 9.74%. I applaud your efforts to plan for the housing needs of Walpole.

<sup>1</sup> <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>.



Please contact Phillip DeMartino, Technical Assistance Coordinator, at (617) 573-1357 or [Phillip.DeMartino@mass.gov](mailto:Phillip.DeMartino@mass.gov) if you need assistance as you implement your HPP.

Sincerely,



Caroline "Chris" Kluchman  
Deputy Director, Division of Community Services

cc Senator Paul R. Feeney  
Representative Edward R. Philips  
Patrick Deschenes, Director, Community & Economic Development, Walpole  
James Johnson, Town Administrator, Walpole



# **Exhibit 4**



18.0

Commonwealth of Massachusetts  
County of Norfolk  
The Superior Court

1/27/22  
RECEIVED & FILED  
CLERK OF THE COURTS  
NORFOLK COUNTY

CIVIL ACTION NO. 21-862

**WILLIAM M. HAMILTON,**  
Plaintiff

vs.

**HOUSING APPEALS COMMITTEE, 55 SS, LLC  
and WALPOLE ZONING BOARD OF APPEALS**  
Defendants

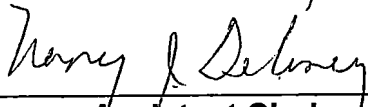
**JUDGMENT OF DISMISSAL**

This action came on for hearing on Defendants Walpole Zoning Board Of Appeals and 55 SS, LLC's Joint Motion To Dismiss Amended Complaint before the court, Maynard Kirpalani, Associate Justice presiding, and Motion having been heard and the Motion having been allowed,

**IT IS ORDERED and ADJUDGED:**

**that the complaint of plaintiff William M. Hamilton against defendants Housing Appeals Committee, 55 SS, LLC and Walpole Zoning Board Of Appeals be dismissed.**

Dated at Dedham, Massachusetts this 27<sup>th</sup> day of January 2022.

  
Assistant Clerk