TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
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Record, Decision and Comprehensive Permit

ZBA 2008-53
Wellesley Commons LLC
65 Washington Street/1 Hillside Road

Name of Record Owner of Title to Subject Property: Michael J. & Lynda M. Connolly

On June 25, 2008, the Petitioner, Wellesley Commons LLC, 42 Cerdan Avenue, Roslindale, 02131 filed a petition for a Comprehensive Permit, pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for the construction of five (5) three-bedroom dwelling units with garage and attic storage space. Units 1 and 2 will be located in one building. Units 3, 4 and 5 will be located in one building. One unit will be sold to a household meeting Chapter 40B income restrictions. The remaining four units will be sold at market rate. The proposed building coverage (footprint) will be 5,479 square feet. The total building floor area will be 10,898 square feet. Fourteen (14) on-site parking spaces are proposed.

On January 5, 2009, the Petitioner requested to reopen the public hearing that was closed on December 17, 2008, due to changes to the petition for a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for the construction of five (5) three-bedroom dwelling units with garage and attic storage space. Unit 1 will be located in one separate building, Unit 2 will be located in one separate building, and Units 3, 4 and 5 will be located in a third building. The proposed buildings will be located on a 31,416 square foot lot at 65 WASHINGTON STREET/1 HILLSIDE ROAD. One unit will be sold to a household meeting Chapter 40B income restrictions. The remaining four units will be sold at market rate. The proposed building coverage (footprint) will be 5,438 square feet. The total building floor area will be 10,876 square feet. Fifteen (15) on-site parking spaces are proposed. There will be three (3) curb cuts on Washington Street as shown on the revised site plan filed with the Zoning Board of Appeals after the close of the previous hearing on December 17, 2008. The property is located in a 15,000 square foot Single Residence District.

I. Chapter 40B Affordable Housing Thresholds

At the time of the issuance of this Comprehensive Permit the Town of Wellesley does not meet any of the minimum thresholds for affordable housing established in Chapter 40B or its regulations. According to the Department of Housing and Community Development's (DHCD) Chapter 40B Subsidized Housing Inventory (Inventory) (revised as of September 9, 2008), the Town of Wellesley has 485 units of affordable housing. According to the Inventory, 5.5 percent of its housing stock is affordable, which does not meet the 10 percent threshold established in Chapter 40B.

The percentage of total land area zoned for residential, commercial or industrial use devoted to low and moderate income housing in the Town of Wellesley is 0.47 percent, which does not meet the 1.5 percent threshold established in Chapter 40B.

The percentage of land on which the commencement of construction of low and moderate income housing in 2009 (inclusive of Applicant's project) will not meet the 3 percent of the Town's total land area or 10 acres, whichever is greater threshold established in Chapter 40B.

II. Project and Applicant Requirements

Pursuant to the Chapter 40B regulations, the Petitioner must fulfill three jurisdictional requirements: (1) the Petitioner must be a public agency, non-profit organization, or a limited dividend organization; (2) the Project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and (3) the Petitioner must control the Site (760 CMR 31.01).

The Board received evidence of the Petitioner's status as a limited dividend organization. Wellesley Commons LLC is a limited liability company formed under Massachusetts state law. Pursuant to the conditions of this Comprehensive Permit, Wellesley Commons LLC must enter into the Regulatory Agreement in Massachusetts Housing Finance Agency (MHFA) standard form, which provides limits on the dividend on owner's equity and return on investment equity to 20 percent.

The Board has received written communication from the MHFA dated January 2, 2008, indicating that the project is acceptable, and hence is fundable by a subsidizing agency.

Submittals from Petitioner:

1. Application for Comprehensive Permit, dated 6/20/08
2. Plans and Submittal Checklist
3. Memorandum and Request for Waivers, dated 6/20/08, from Peter L. Freeman, Esq.
4. Project Eligibility Letter, dated 1/2/08, from MHFA
5. Deeds to Locus
6. Certificate of Organization and Operating Agreement
7. Purchase & Sale Agreement, 65 Washington Street and 1 Hillside Road
8. Official Development Prospectus, dated 6/20/08
9. Requested Waivers from Local Bylaws and Regulations
10. MHFA Regulatory Agreement
11. MHFA Affordable Housing Restriction (Deed Rider)
12. MHFA Monitoring Services Agreement – Affordability
13. MHFA Monitoring Services Agreement – Limited Dividend
14. Development Experience for Michael J. Connolly and Heritage Modular
15. MHFA 2008 Income Limits
16. DHCD Chapter 40B Subsidized Housing Inventory
17. Institute of Transportation Engineers Trip Generation
18. Statement on State Wetlands Protection Act – K. Williams Engineering, Inc.
19. Abutters List

20. Deed, 7 Hillside Road, dated 10/20/00
21. Wellesley Budget, dated 3/20/07
22. Preliminary ZBA Site Plan Submittal, dated 6/20/08, from Keri Williams, P.E.
23. Letter to Michael J. Connolly, dated 9/17/08, from MHFA
24. Letter to Michael J. Connolly, dated 9/18/08, from MHFA
25. Letter to Michael J. Connolly, dated 9/18/08, from MHFA
26. Preliminary ZBA Site Plan Submittal, dated, June 20, 2008, from Keri Williams, P.E.
27. Memorandum to ZBA, dated 10/7/08, from Michael J. Connolly
28. Letter to Michael J. Connolly, dated 10/17/08, from Jeffrey S. Dirk, P.E., PTOE
29. Revised Request for Waivers, dated 10/20/08, revised 12/4/08
30. Construction Management Plan, dated 10/21/08, revised 12/12/08, prepared by Heritage Modular
31. Access and Circulation Assessment, dated 12/1/08, prepared by Vanasse & Associates, Inc.
32. Preliminary Construction Budget, dated 12/3/08
33. Deed Restriction for Tree Preservation Area, sent on 12/4/08, from Michael J. Connolly
34. Preliminary Construction Budget, dated 12/5/08
35. Revised Supplemental Request for Waivers, dated 12/9/08
36. Letter of Extension to 1/25/09, dated 12/12/08, from Peter L. Freeman, Esq.
37. Request to Reopen the Public Hearing, dated 1/5/09, from Peter L. Freeman, Esq.
38. Letter of Extension to 3/31/09, dated 1/9/09, from Peter L. Freemen, Esq.
39. Drainage Report, dated 5/22/08, revised 6/20/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, stamped by Keri Williams, P.E.
40. filing fee
41. Letter to Paul F. Cavanaugh, Esq., dated 1/21/09, from David J. Himmelberger
42. Restriction on Land, dated 1/22/09, signed by Michael J. & Lynda M. Connolly
43. Restriction on Land, sent on 2/2/09, from Michael J. Connolly
44. Letter to Richard Seegel, sent by fax on 2/9/09, from Michael J. Connolly
45. Revised Preliminary Construction Budget, sent by fax on 2/11/09
46. Letter to ZBA, dated 2/26/09, from Timothy J. Daly
47. Letter of Extension to 4/30/09, dated 3/3/09, from Paul F. Cavanaugh, Esq.
48. Agreement to Relocate Easement, dated 4/7/09, signed by Jeffrey Mitchell, Michael & Lynda Connolly

Sheet No.	Title	Date	Prepared by	Revision Dates
	Cover Sheet	5/22/08		2/18/09
	Existing Conditions Site Plan	11/2/06	Verne T. Porter, Jr., PLS	
	Existing Conditions Plan of Land	10/17/08	Field Resources, Inc.	12/8/08
C-1	Site Development Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-2	Plot Plan	5/22/08	Keri Williams, P.E.	

C-3	Site Grading/Drainage Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-4	Utilities Site Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-5	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 1/5/09
C-6	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/12/08, 3/11/09
C-7	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/0812/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-8	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08
C-9	Utilities Profile Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-10	Subsurface Conditions Plan	5/22/08	Keri Williams, P.E.	6/20/08, 3/11/09
A1	Floor Plans Units 1 & 2	5/22/08	Cynthia Solarz	10/23/08, 11/11/08, 12/3/08, 1/5/09, 2/17/09, 3/10/09
A2	Floor Plans Units 3, 4 & 5	5/22/08	Cynthia Solarz	10/23/08, 11/10/08, 11/11/08, 2/3/09, 2/17/09, 3/10/09
A3	Elevations Units 1 & 2	5/22/08	Cynthia Solarz	11/11/08, 12/3/08, 1/5/09, 2/17/09, 3/10/09
A4	Elevations Units 3, 4 & 5	5/22/08	Cynthia Solarz	11/10/08, 11/11/08, 12/3/08, 2/3/09 2/17/09, 3/10/09
	Site Sections	10/23/08	Cynthia Solarz	
L-1	Landscape Plan	6/23/08	C. L. Thompson Associates	
L-2	Detail Sheet	6/23/08	C.L. Thompson Associates	
1	Construction Management Plan – Phase 1	11/10/08	Heritage Design	
2	Construction Management Plan – Phase 2	11/10/08	Heritage Design	

3	Construction Management Plan – Phase 3	11/10/08	Heritage Design	
4	Utility Work – Phase 1	11/10/08	Heritage Design	
5	Utility Work – Phase 2	11/10/08	Heritage Design	
	Curb Cuts	7/8/08		
	Sketch of Land in Wellesley	6/20/00	Needham Survey Associates, Inc.	
	Plan of Land In Wellesley	7/27/96	Needham Survey Associates, Inc.	
	Topographical Plan of Land	3/5/09 & 3/6/09	Field Resources, Inc.	
	Tree Restriction			
	Existing Tree Locations		Verne Porter, Jr., PLS, Keri Williams, P.E. & Field Resources, Inc.	

III. Hearings

The Board conducting public hearings on the petition on July 17, 2008, September 18, 2008, October 23, 2008, November 20, 2005, December 9, 2008, December 17, 2008, February 12, 2009 and February 26, 2009. The Board moved to close the public hearing and begin deliberations on December 17, 2008. The public hearing was reopened on February 12, 2009 and was continued to February 26, 2009. The Board moved to close the public hearing and begin deliberations on February 26, 2009.

IV. Public Comment

During the course of the hearings on the Application, the Board took testimony and received correspondence from various individuals, including the representatives of the Planning Board, the Design Review Board, the Fire Department, the Department of Public Works Engineering Division, the Department of Public Works Water & Sewer Division, the Wetlands Protection Committee, owners of properties in the neighborhood of the Project, and citizens of the Town. The Petitioner responded orally and in writing to the issues raised by the Board and other interested parties.

On February 12, 2009, Joanne Locke, 76 Washington Street, requested that a letter to the Zoning Board of Appeals, dated January 5, 2009, and signed by ten neighbors, be entered into the record.

This Comprehensive Permit requires that the Project be constructed in compliance with the standards of the Massachusetts Building Code. Furthermore, the conditions of this Comprehensive Permit require the design of the Project to incorporate features to eliminate the concerns of the Board regarding the health and safety of the occupants of the Project and the occupants of the neighboring parcels.

V. Town's Enforcement Power

The Board recognizes that deviations from various local requirements raise a heightened concern that the conditions of this Comprehensive Permit, as well as other local and state requirements, rules, regulations, and statutes are upheld. The Project's Organization of Condominium Owners (the "Condominium Association") and the Monitoring Agent designated under the Regulatory Agreement shall have primary responsibility for enforcement of compliance with those conditions, rules, regulations, requirements, and statutes for which they are responsible. However, the Town, through its agents, employees, appointed officials, boards, and commissions shall have the right, but not the obligation, to conduct inspections and take necessary enforcement actions related to the health, safety, and welfare of the residents of the Project and the Town. With reasonable notice to the Condominium Association and, as appropriate, any individual unit owner (except in the event of an emergency), the Town shall the right to inspect and take such actions as necessary to remedy violations concerning any issue of the health, safety or welfare, including but not limited to: limitations on the number of bedrooms in units; compliance with affordability requirements; emergency vehicles access (including, but not limited to, the placement or construction of structures or other barriers to access by emergency equipment to and around the buildings and clear maintenance of emergency access to Washington Street). The Town is authorized to assess fines for such violations in accordance with the amounts and procedures provided for at the time of such violation in Town bylaws, rules, and regulations and may seek injunctive relief to address such violations. Nothing in this paragraph should in any way limit the Town's rights to take any other actions provided by law.

VI. Town's Right to Recover Costs Associated with Enforcement Actions

In order to ensure that the costs of enforcement of conditions of this Comprehensive Permit or any other local and state requirements, rules, regulations, and statutes are not borne by the Town, the Petitioner shall, simultaneously with the issuance of a building permit for the improvements authorized hereby, establish a monetary reserve of $25,000 payable to the Town in the event the Town incurs expenses, including attorney's fees, arising out of the enforcement of the conditions of this Comprehensive Permit or other local or state requirements, rules, regulations, statutes or other requirements, so long as otherwise allowable under law. At such time as the Petitioner has established a separate monetary reserve in the amount of $25,000 held in escrow for the Town recoverable under the circumstances described above (the “Monetary Reserve”), the Petitioner shall give written notice to the Board. The Monetary Reserve shall be maintained until the issue of the last Certificate of Occupancy for the Project, at which time the principal amount shall either be returned to the Petitioner, or deposited in the Capital Reserve Account of the Condominium Association, with $10,000 returned to the Petitioner. The Petitioner shall make yearly certifications to the Board that it is in compliance with these requirements. In the event this Monetary Reserve is utilized in accordance with this paragraph, the Petitioner shall take all necessary actions, including a special assessment, to return the Monetary Reserve to $25,000 within 45 days. To the extent permitted by law, the Town shall have the right to recover any such costs by municipal lien against the individual unit owners of the Development as appropriate. Nothing in this paragraph should in any way limit the amount of reimbursement to the Town.

Upon creation of the Condominium Asociation contemplated hereby, the Petitioner shall assign its rights to said deposit to the Condominium Association. In the event that the Town shall, from time to time, expend any portion of the Monetary Reserve, the Petitioner or the Condominium Association shall, upon written request from the Board, make an additional deposit to the Monetary Reserve in an amount equal to the amount expended by the Town.

The Town shall also have the right, but not the obligation, to levy a lien against an individual unit or the Project as a whole as appropriate for recovery of costs described in this section and in accordance with the procedure specified herein. If the Town has made a demand against the Performance Bond or Monetary Reserve described above and is unable to recover any portion of its outstanding recoverable costs from those sources for any reason, the Board of Selectmen may vote to establish a lien against an individual unit or the Project as a whole as appropriate to the circumstances. Upon such a vote, the Board of Selectmen shall provide written notice to the individual unit owner or, in the case of the Project as a whole, the Condominium Association stating: (1) the amount of the outstanding costs, (2) a description of the reasons for the outstanding costs, and (3) the time period of no less than 14 days within which payment must be made to the Town to avoid establishment of the lien. In the event the outstanding costs continue to remain unpaid at the expiration of the time period established in the written notice, the Town shall record on the individual unit deed or on the Project Master Deed, as appropriate, the notice of lien, which shall state the amount of the lien and the reasons for the lien.

VII. Findings

The Board is aware of strong opposition from some of the neighbors. In this Decision, the Board has tried to address and balance their concerns with that of the Petitioner. After reviewing the evidence and extensive testimony, the Board, mindful of the Town's need for affordable housing, voted to approve the Comprehensive Permit, subject to conditions. The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Project, including concerns regarding health and safety of the occupants of the Project and of occupants of neighboring properties. The Board finds that the conditions as approved strike the appropriate balance between protecting health, safety, and welfare of the residents of the Town, the Project, and the abutters and encouraging the development of affordable housing in the Town outside the parameters of what local the Wellesley Zoning Bylaw would ordinarily permit.

The Board therefore, on motion duly made and seconded, hereby grants a Comprehensive Permit to the Petitioner under the provisions of MGL c. 40B §§ 20-23 for the construction of five (5) three-bedroom dwelling units with garage and attic storage space. Units 1 and 2 will each be located in a separate building. Units 3, 4 and 5 will be located in one building, substantially in accordance with the plans listed above subject to and conditioned upon the following requirements captioned "Conditions to the Comprehensive Permit."

CONDITIONS TO THE COMPREHENSIVE PERMIT

The Board's approval of the Comprehensive Permit for the Project is premised on the Petitioner's and Project's compliance with the following conditions. All requirements imposed by these and prior conditions or this Comprehensive Permit shall be applicable to the Condominium Association or other similar entity responsible for the administration of the Project, but not to MHFA or any agent of MHFA engaged under the Regulatory Agreement, regardless of whether the condition specifically identifies the Petitioner, the Condominium Association, or no entity as having responsibility for a particular condition.

A. THRESHOLD

1. Control of the Site

The Petitioner or an entity substantially owned by the Petitioner shall demonstrate control of the site. The entity owning the site shall be a single purpose entity.

2. Condominium Master Deed

Prior to the issuance of the first Certificate of Occupancy, a Condominium Master Deed and a document establishing the Organization of Unit Owners shall be submitted to the Board and to the Wellesley Housing Development Corporation (WHDC), and then recorded in the Norfolk Registry of Deeds. Condominium documents shall specify any variations in fees for the affordable units. Maintenance schedules and responsibilities for the access roads, development infrastructure, and stormwater management system shall be specified in said documents, and not be materially amended without consent of the Board.

3. Petitioner's Profit

The Petitioner has agreed to the following and they are made conditions:

To limit his financial return to that which is allowed by the MHFA.

To monitor these obligations, prior to receiving its building permit, the developer shall file with this Board the same pro forma submitted to MHFA showing the expected total development sales, development costs (including developer's fee) and resultant profit. .Prior to receiving its first Certificate of Occupancy, the Petitioner shall file with this Board a final, but not yet audited budget showing the expected total sales, the actual development costs (including developer's fee) and the expected profit.

To file with the Board, an audited Cost Certification (as defined by the MHFA) no later than four months after substantial completion of the three buildings.

B. HOUSING

1. Percentage of Affordable Units

Petitioner and its successors or assigns shall maintain one of the owner occupied units for "low and moderate income" households, defined by DHCD as households earning less than 80% of the median household income in the Boston Standard Metropolitan Statistical Area.

2. Buyer Selection Criteria

The affordable unit shall be offered first to Wellesley residents, which meet the definition of "low and moderate income" households. The WHDC, or at the Petitioner's option another such agent, shall conduct a lottery, the reasonable cost of which shall be borne by the Petitioner, to solicit interest for the purchase of this unit. Such a lottery shall be advertised in a newspaper of local circulation in the Town of Wellesley for at least 3 weeks prior to the lottery. For purposes of this condition B(2), Wellesley residents shall mean (1) then-current residents of the Town of Wellesley; (2) immediate family of then-current residents of the Town of Wellesley; and (3) current or retired employees of the Town of Wellesley.

3. Determination of Income Eligibility

The WHDC or the Petitioner's agent shall submit the detailed procedure to the Board for determining income eligibility for the affordable units, consistent with other State affordable housing programs. Items such as income level for eligibility, maximum household income based on household size, method of reviewing income and determining asset limits for eligibility shall be included.

4. Affordable Unit To Be Maintained in Perpetuity

The unit designated as affordable housing shall remain affordable in perpetuity through a Deed Rider that shall be recorded at the Norfolk Registry of Deeds with the first sale of the affordable unit and shall run with the land. The Deed Rider shall describe the procedure for reviewing the restrictions that the unit shall be maintained as affordable units in perpetuity as this condition requires.

5. Regulatory Agreement

The Petitioner shall submit to the Board a Regulatory Agreement, which shall be executed prior to the issuance of Certificates of Occupancy for any of the units in this development. The Regulatory Agreement shall be approved by the MHFA prior to its submission to the Board.

6. Monitoring for Compliance

In the event that MHFA elects not to engage an affordability monitoring agent, prior to the issuance of Certificates of Occupancy for any unit in the Project, provision shall be made in the form of a Monitoring Services Agreement or in form acceptable to the WHDC for designating the entity to monitor the affordable units and shall set forth the responsibilities for monitoring the sale and resale of the affordable unit, including income eligibility of prospective buyers; the requirement for submittal of annual compliance reports to the Town of Wellesley; and the requirement for an accounting of the project costs

and revenues after completion to determine if profits are within the liability requirement. All costs associated with the Monitoring Services Agreement shall be paid by the Petitioner until the affordable unit has been sold, and thereafter, by the seller/owner of the affordable unit upon each resale.

8. Marketing Plan

The Petitioner shall submit to WHDC and this Board the marketing plan for all of the units in the development, which complies with all Fair Housing Laws. Said plan shall contain, to the extent legally allowable, a strategy for marketing the affordable unit in compliance with aforesaid Section 2, Buyer Selection Criteria. The marketing plan shall further demonstrate a strategy for occupying all five units within a finite time period.

9. Sale and Rental Restrictions

The petitioner shall develop and sell the 5 units as owner-occupied condominiums and not as rental units. The Master Deed of the Condominium shall provide, among other things, that any lease or rental of a unit by a Unit Owner, other than by the Petitioner, shall be subject to the following conditions:

a. Such lease or rental agreement shall be in writing.
b. The lease or rental agreement shall apply to the entire unit, and not a portion thereof.
c. The term of the lease or rental agreement shall be for a term of not less than six (6)months nor more than two (2) years, and <u>may not</u> be renewed or self-extending.
d. No more than one of the four market rate units shall be leased or rented at anyone time without the approval of the ZBA.
e. The occupancy of any rental unit shall be for not more than the number of unrelated persons as provided in the Wellesley Zoning Bylaw.
f. The lease or rental agreement shall expressly provide that the lease or rental is subject to the Master Deed, the Organization of Unit Owners, and the Rules and Regulations of the Condominium.
g. A copy of the lease or rental agreement shall be provided to the Organization of Unit Owners.
h. Leasing or renting of the affordable unit is prohibited, except as governed by the provisions of the Regulatory Agreement and the Deed Rider.
i. All units shall be occupied by the buyer of the unit for a minimum of one year after initial occupancy, and for a minimum of one year after each transfer of ownership, prior to any rental or leasing of said unit unless given prior consent by the Board of Appeals.
j. Rental solely for investment purposes is not permitted.
k. The foregoing provisions of the Master Deed shall not be amended without the prior approval of the Board of Appeals.

Sub conditions (c), (e), (i) and (j) shall apply to the affordable unit only to the extent that they do not impose additional requirements beyond those contained in the deed restrictions for the affordable unit.

10. Project Countability

Without limiting the rights of the Petitioner granted under this Comprehensive Permit, all 5 units allowed under this Comprehensive Permit shall count toward the Town's quota of affordable housing units pursuant to MGL Chapter 40B, Sections 20-22.

However, in the event that some third party State agency or other interested party take the position that only the affordable units should so qualify, and should such a position prevail in a decision rendered by a court of final jurisdiction, such decision shall not affect the validity of this Comprehensive Permit in any way.

C. SITE AND CONSTRUCTION CONDITIONS

1. Governing Site Plan

The construction of the three buildings and all site improvements, such as retaining walls and stairs on the site shall be as shown on the last revision of the Site Development Plan, C-1 dated May 22, 2008, revised March 11, 2009, stamped by Keri L. Williams, Professional Engineer. All construction work shall be limited to within the limit of work line as shown on the last revision of the Site Grading/Drainage Plan, C-3 dated June 20, 2008, revised March 11, 2009, stamped by Keri L. Williams, Professional Engineer. Along the limit of work adjacent to the Tree Preservation Area, the Petitioner shall take reasonable precautions to avoid undermining the Tree Preservation Area, and to avoid adverse impacts to root structures of healthy trees.

2. Air Conditioning

All air conditioning compressor units shall be located so that they are at the furthest point from any abutting property at a distance no closer than 35 feet from the rear and side lines of the property. Every effort shall be made to provide the lowest noise emitting unit feasible for this use and provide appropriate landscape screening where possible..

4. Lighting

All artificial lighting used to illuminate the exterior premises shall be arranged and shielded so as to prevent direct glare from the light source onto any adjacent property. If used, no freestanding light stanchion shall be of a height greater than 7 feet. All artificial lighting provided by such free standing stanchions used to illuminate exterior premises and all lighting for signs identifying the Project shall be on a central timer, and such timer will be used to turn off lighting at 11:00 p.m.

5. Use of Driveways

Because the driveways for the Project are substantially narrower than those required under the Zoning Bylaw, the Condominium Documents shall include a provision that no vehicle shall park in the driveways at any time, unless there is sufficient room for two vehicles traveling in opposite directions to pass the parked vehicle simultaneously. Vehicles temporarily on the site, including but not limited to vehicles for

the purpose of delivery or moving, construction, repair or maintenance, public or private transportation, or those vehicles of an emergency nature are exempt from this requirement.

6. Signage

Any permanent signage identifying the premises shall not exceed an area of one foot by three feet and a height of four feet, and shall be set back a minimum of ten feet from any property line. Such signage shall not be free standing without review by the appropriate town boards and committees.

7. Utilities

All utilities serving this development shall be installed underground, including any extensions from existing lines or poles external to the subject property. All existing overhead utilities and pole located on the premises shall be removed and replaced with underground service.

Any underground irrigation system shall be designed and constructed in compliance with Department of Public Works standards and shall be subject to its approval.

8. No permanent dumpsters shall be permitted on the site after completion of construction. All trash shall be kept inside of units.

9. There shall be “No Parking” sign placed along the retaining wall by the driveway on the Northeast side.

10. The Condominium Documents and Rules and Regulations shall state that there is “no left turn leaving the condominium between the hours of 7:00 AM and 8:30 AM and between 4:30 PM and 6:00 PM”.

11. Versa-Lok retaining walls as described in the materials submitted to the Board shall be used unless the Petitioner presents to the Board for approval a substantially equal alternative. A structural engineer shall design all retaining walls four feet in height or greater. There shall be no disturbance of abutting properties during construction of the retaining walls. All retaining walls shall be constructed at the time of major earth work so as to decrease the likelihood of erosion and damage to trees, especially trees in the Tree Preservation Area.

12. There shall be no removal of trees on the project site until the building permits are issued. After issue of the building permits only those trees as shown on Existing Tree Location plan as being required for removal to support the construction of the project shall be removed, unless such tree is certified by a registered arborist to be diseased and required removal.

13. All utility work in the area between the Site property line and the connection to existing Town services under Washington Street shall be performed during the months of July and August. In the event that the construction schedule does not permit such work to be performed in July or August, the Petition shall present its plan to the Board for its approval for the execution of such work in a manner and in time periods that minimizes the disruption to traffic on Washington Street.

14. The relocation of the sanitary sewer from 7 Hillside Road shall be done under the supervision of the department of Public Works Sewer Division and Town Engineer. The Petitioner is responsible for

coordinating the service interruption with the residents of 7 Hillside, and shall take all reasonable steps to minimize the duration of the interruption.

15. There shall be no parking of employees on any street in Wellesley during construction. The Petitioner and Contractor shall make arrangements for off street parking such as the MBTA lot at the Wellesley Farms Station if that is available.

16. The Petitioner will establish a website, or use an existing website, to provide Town officials and residents access to the most current scheduled activities and to notification of upcoming project events that reasonably have the potential to impact the surrounding neighborhood, or the traffic on Washington Street. Such scheduled activities shall be shown in a two-week or three-week (whichever the Petitioner normally uses in its project planning and construction management) look-ahead schedule that shall be updated not less than bi-weekly, and such notifications shall be posted not less than 14 calendar days prior to the referenced events. In addition to the website, the Petitioner shall establish a telephone number for receiving and responding to questions or concerns expressed by residents of the Town concerning the Project construction activities or compliance with the Conditions of the Comprehensive Permit. The number will be provided to Town officials and posted at the project site in a conspicuous location visible to the public from Washington Street. Questions or comments from Town officials or residents shall be responded to promptly.

17. The results of hydrant flow and pressure tests shall be submitted to the Board before a Building Permit is issued.

18. A registered Engineer shall be on site during the construction of all drainage structures. The engineer shall report regularly to the Town Engineer and Building Inspector on the compliance of the installation of the drainage system with the drawings and specifications. Upon completion of the drainage structures the Engineer shall certify that the drainage structures were completed in accordance with the approved plans and specifications, or that defects discovered during installation were satisfactorily remedied using methods acceptable to the engineer of record.

19. There shall be no blasting on the site.

20. The existing fence at 7 Hillside Road shall not be disturbed or damaged.

D. STORM WATER

1. The Petitioner shall prepare suitable Stormwater Management Plan, including the maintenance manual for the stormwater drainage system, which shall be substantially in compliance with the requirements shown on the Utilities Detail Plan (C-5), and which shall be submitted to the Wellesley Department of Public Works for approval. The Stormwater Management Plan shall follow the guidelines set forth in the Massachusetts Stormwater Guidelines for Design and Maintenance of Stormwater Systems. The Stormwater Management Plan shall be kept on site at all times, and all maintenance personnel and managers of the site shall be familiar with it. A final copy of the manual shall be filed with the Department of Public Works.

2. Copies of all submissions of and in regard to the Storm Water Management Plan shall be sent to the office of the Board of Appeals.

3. Following the initial sale of the last of the units, the responsibility for the maintenance of said drainage system shall be the responsibility of the Condominium Association, and said responsibility shall be described in the Master Deed. The Petitioner shall deposit the sum of $15,000 in the Capital Reserve Account of the Condominium Association to insure there are sufficient funds for the maintenance of all parts of the storm water system.

4. There shall be no floor drains in the garage spaces inside any of the three buildings on site.

5. No petroleum products, fuel or solvents shall be stored on site during construction.

6. All fill brought on site shall be clean fill, free of trash, organic material and debris.

E. GENERAL CONDITIONS

1. This Comprehensive Permit approves the construction of five (5) units of residential housing in 3 buildings, with associated accessory structures, facilities and landscaping. One (1) unit shall be reserved for sale and occupancy by low or moderate income Residents. Any substantial deviations, as determined by the Board, from the approved plans, including but not limited to changes in the building sizes, number of units per building, exterior facade, roadway and infrastructure location or design specifications, lighting or screening, shall require approval of the Board of Appeals. It shall be the decision of the Board whether such modification requires a Public Hearing.

2. Construction of the development shall be in conformance with the plans identified herein, with modifications as required by this decision.

3. Any changes to said plans occurring during the design and/or construction phases of this Project shall be subject to prior review by the appropriate Town board and/or department prior to the commencement of such changes. All revised plans or documents submitted to other Town departments or boards, including the Inspector of Buildings and the Department of Public Works, shall also be submitted to the Board.

4. All requirements of the Town of Wellesley Fire Department shall be met.

5. All requirements of the Department of Public Works and Municipal Light Plan shall be met, including, but not limited to the requirement that water, sewer and electric connections, together with drainage connections, be made in accordance with DPW and MLP standards and installed and maintained at no cost to the Town of Wellesley.

6. Exterior construction activities shall be confined to between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 1 p.m. on Saturday.

7. All construction shall be completed within two years from the date of issuance of the building permit, unless a new application is filed with and approved by the Board of Appeals extending such time.

8. The petitioner shall provide a written snowplowing protocol to the Town Engineer, with a copy to the Board, to ensure that snow shall not be plowed or stockpiled on abutting properties. The protocol shall be incorporated into the document creating the Condominium Association.

9. A Performance Bond, or other security such as a Tripartite Agreement between the petitioner, the Town and Petitioner's construction lender in the sum of $50,000, shall be provided to ensure installation and completed construction of all improvements in accordance with the plans approved by this decision and the proper functioning of the drainage system, screening, landscaping and walkways and the connection of all utilities including the relocation of the sewer easement for 7 Hillside Road. As-built plans shall be submitted to the Board within four weeks of the issuance of Certificates of Occupancy for each building. Said Performance Bond, or other security, shall be submitted to the Board for its approval prior to the issuance of building permits for any units in the development. The type and of such Performance Bond, or other security, shall be submitted for the review and approval of Town Counsel prior to being accepted by the Board. The Performance Bond shall be released upon the issue of the last Certificate of Occupancy. At the option of the Petitioner, the Performance Bond and the Monetary Reserve may be combined into a single security in an aggregate amount of $75,000.

REQUESTED WAIVERS

1. Except for the relief granted by the Board as listed below, the Petitioner shall comply with all provisions of the Zoning Bylaw, general bylaws, and all the rules and regulations of the Planning Board and the Board of Health generally applicable to a project approved on January 31, 2009. No fees enacted and in force on the date of this Comprehensive Permit are waived in connection with the Project. The amount of fees shall be those then in effect at the time of application for the permit or approval subject to the fee.

2. The Board hereby waives the requirements contained in the following Sections of the Zoning Bylaw for the stated purposes:

Section II.A	<u>Single Residence District</u> A waiver is requested to allow for multiple dwelling units as a use in a 15,000 square foot Single Residence District
Sections XVI.E/XVIA/XXII	<u>Project Approval, Design Review</u> A waiver is sought from compliance with the bylaw provisions as they relate to process and timelines concerning Site Plan Review and Approval, Design Review and Special Permits as may be applicable to a Major Construction Project or Project of Significant Impact, as those terms are defined within Section XVIA of the Bylaw and from Design Review under Section XXII. A waiver is not sought from the substance of the Board's review, but only the procedure and the timelines set forth in the referenced regulations.
Section XVIII	<u>Area Regulations - Part D. Ratio of Families to Lot Area</u> A waiver is sought for the ratio of families to lot area.

Section XIX	Part B – Requirements A waiver is requested from the limit of not more than one dwelling on any lot. A waiver is requested for less than 30 foot setback from the garage entrance to a property boundary line other than the street line for Unit #4.
Section XX	Height of Buildings or Structures A waiver is requested to exceed the 36 foot height restriction. Unit #3 shall not exceed 38.34', Unit #4 shall not exceed 37.49' and Unit #5 shall not exceed 36.37'.
Section XXI	Part D. Regulations and Restrictions. – Subpart 3. Development Standards A waiver is requested to exceed the number of two driveways permitting entrance to and for exit from a lot.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40B, SECTIONS 20-23, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

J. Randolph Becker

David L. Grissino

lrm

cc: Planning Board, Board of Selectmen, Town Engineer, Inspector of Buildings, Town Counsel, Wellesley Housing Development Corporation, Department of Public Works, Board of Health

Dated and filed in the Office of the Town Clerk
On , 2009

TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN
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DAVID L. GRISSINO

Modified – October 2009
Record, Decision and Comprehensive Permit

ZBA 2008-53
Wellesley Commons LLC
65 Washington Street/1 Hillside Road

Name of Record Owner of Title to Subject Property: Michael J. & Lynda M. Connolly

On June 25, 2008, the Petitioner, Wellesley Commons LLC, 42 Cerdan Avenue, Roslindale, 02131 filed a petition for a Comprehensive Permit, pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for the construction of five (5) three-bedroom dwelling units with garage and attic storage space. Units 1 and 2 will be located in one building. Units 3, 4 and 5 will be located in one building. One unit will be sold to a household meeting Chapter 40B income restrictions. The remaining four units will be sold at market rate. The proposed building coverage (footprint) will be 5,479 square feet. The total building floor area will be 10,898 square feet. Fourteen (14) on-site parking spaces are proposed.

On January 5, 2009, the Petitioner requested to reopen the public hearing that was closed on December 17, 2008, due to changes to the petition for a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for the construction of five (5) three-bedroom dwelling units with garage and attic storage space. Unit 1 will be located in one separate building, Unit 2 will be located in one separate building, and Units 3, 4 and 5 will be located in a third building. The proposed buildings will be located on a 31,416 square foot lot at 65 WASHINGTON STREET/1 HILLSIDE ROAD. One unit will be sold to a household meeting Chapter 40B income restrictions. The remaining four units will be sold at market rate. The proposed building coverage (footprint) will be 5,438 square feet. The total building floor area will be 10,876 square feet. Fifteen (15) on-site parking spaces are proposed. There will be three (3) curb cuts on Washington Street as shown on the revised site plan filed with the Zoning Board of Appeals after the close of the previous hearing on December 17, 2008. The property is located in a 15,000 square foot Single Residence District.

I. Chapter 40B Affordable Housing Thresholds

At the time of the issuance of this Comprehensive Permit the Town of Wellesley does not meet any of the minimum thresholds for affordable housing established in Chapter 40B or its regulations. According to the Department of Housing and Community Development's (DHCD) Chapter 40B Subsidized Housing Inventory (Inventory) (revised as of September 9, 2008), the Town of Wellesley has 485 units of

affordable housing. According to the Inventory, 5.5 percent of its housing stock is affordable, which does not meet the 10 percent threshold established in Chapter 40B.

The percentage of total land area zoned for residential, commercial or industrial use devoted to low and moderate income housing in the Town of Wellesley is 0.47 percent, which does not meet the 1.5 percent threshold established in Chapter 40B.

The percentage of land on which the commencement of construction of low and moderate income housing in 2009 (inclusive of Applicant's project) will not meet the 3 percent of the Town's total land area or 10 acres, whichever is greater threshold established in Chapter 40B.

II. Project and Applicant Requirements

Pursuant to the Chapter 40B regulations, the Petitioner must fulfill three jurisdictional requirements: (1) the Petitioner must be a public agency, non-profit organization, or a limited dividend organization; (2) the Project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and (3) the Petitioner must control the Site (760 CMR 31.01).

The Board received evidence of the Petitioner's status as a limited dividend organization. Wellesley Commons LLC is a limited liability company formed under Massachusetts state law. Pursuant to the conditions of this Comprehensive Permit, Wellesley Commons LLC must enter into the Regulatory Agreement in Massachusetts Housing Finance Agency (MHFA) standard form, which limits the profits payable to the Petitioner to twenty percent (20%) of total development costs.

The Board has received written communication from the MHFA dated January 2, 2008, indicating that the project is acceptable, and hence is fundable by a subsidizing agency.

Submittals from Petitioner:

1. Application for Comprehensive Permit, dated 6/20/08
2. Plans and Submittal Checklist
3. Memorandum and Request for Waivers, dated 6/20/08, from Peter L. Freeman, Esq.
4. Project Eligibility Letter, dated 1/2/08, from MHFA
5. Deeds to Locus
6. Certificate of Organization and Operating Agreement
7. Purchase & Sale Agreement, 65 Washington Street and 1 Hillside Road
8. Official Development Prospectus, dated 6/20/08
9. Requested Waivers from Local Bylaws and Regulations
10. MHFA Regulatory Agreement
11. MHFA Affordable Housing Restriction (Deed Rider)
12. MHFA Monitoring Services Agreement – Affordability
13. MHFA Monitoring Services Agreement – Limited Dividend
14. Development Experience for Michael J. Connolly and Heritage Modular
15. MHFA 2008 Income Limits
16. DHCD Chapter 40B Subsidized Housing Inventory
17. Institute of Transportation Engineers Trip Generation

18. Statement on State Wetlands Protection Act – K. Williams Engineering, Inc.
19. Abutters List
20. Deed, 7 Hillside Road, dated 10/20/00
21. Wellesley Budget, dated 3/20/07
22. Preliminary ZBA Site Plan Submittal, dated 6/20/08, from Keri Williams, P.E.
23. Letter to Michael J. Connolly, dated 9/17/08, from MHFA
24. Letter to Michael J. Connolly, dated 9/18/08, from MHFA
25. Letter to Michael J. Connolly, dated 9/18/08, from MHFA
26. Preliminary ZBA Site Plan Submittal, dated, June 20, 2008, from Keri Williams, P.E.
27. Memorandum to ZBA, dated 10/7/08, from Michael J. Connolly
28. Letter to Michael J. Connolly, dated 10/17/08, from Jeffrey S. Dirk, P.E., PTOE
29. Revised Request for Waivers, dated 10/20/08, revised 12/4/08
30. Construction Management Plan, dated 10/21/08, revised 12/12/08, prepared by Heritage Modular
31. Access and Circulation Assessment, dated 12/1/08, prepared by Vanasse & Associates, Inc.
32. Preliminary Construction Budget, dated 12/3/08
33. Deed Restriction for Tree Preservation Area, sent on 12/4/08, from Michael J. Connolly
34. Preliminary Construction Budget, dated 12/5/08
35. Revised Supplemental Request for Waivers, dated 12/9/08
36. Letter of Extension to 1/25/09, dated 12/12/08, from Peter L. Freeman, Esq.
37. Request to Reopen the Public Hearing, dated 1/5/09, from Peter L. Freeman, Esq.
38. Letter of Extension to 3/31/09, dated 1/9/09, from Peter L. Freemen, Esq.
39. Drainage Report, dated 5/22/08, revised 6/20/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, stamped by Keri Williams, P.E.
40. filing fee
41. Letter to Paul F. Cavanaugh, Esq., dated 1/21/09, from David J. Himmelberger
42. Restriction on Land, dated 1/22/09, signed by Michael J. & Lynda M. Connolly
43. Restriction on Land, sent on 2/2/09, from Michael J. Connolly
44. Letter to Richard Seegel, sent by fax on 2/9/09, from Michael J. Connolly
45. Revised Preliminary Construction Budget, sent by fax on 2/11/09
46. Letter to ZBA, dated 2/26/09, from Timothy J. Daly
47. Letter of Extension to 4/30/09, dated 3/3/09, from Paul F. Cavanaugh, Esq.
48. Agreement to Relocate Easement, dated 4/7/09, signed by Jeffrey Mitchell, Michael & Lynda Connolly

Sheet No.	Title	Date	Prepared by	Revision Dates
	Cover Sheet	5/22/08		2/18/09
	Existing Conditions Site Plan	11/2/06	Verne T. Porter, Jr., PLS	
	Existing Conditions Plan of Land	10/17/08	Field Resources, Inc.	12/8/08
C-1	Site Development Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09

C-2	Plot Plan	5/22/08	Keri Williams, P.E.	
C-3	Site Grading/Drainage Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-4	Utilities Site Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-5	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 1/5/09
C-6	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/12/08, 3/11/09
C-7	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/0812/2/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-8	Utilities Detail Plan	5/22/08	Keri Williams, P.E.	6/20/08
C-9	Utilities Profile Plan	5/22/08	Keri Williams, P.E.	6/20/08, 10/21/08, 11/10/08, 12/12/08, 1/5/09, 2/18/09, 3/11/09
C-10	Subsurface Conditions Plan	5/22/08	Keri Williams, P.E.	6/20/08, 3/11/09
A1	Floor Plans Units 1 & 2	5/22/08	Cynthia Solarz	10/23/08, 11/11/08, 12/3/08, 1/5/09, 2/17/09, 3/10/09
A2	Floor Plans Units 3, 4 & 5	5/22/08	Cynthia Solarz	10/23/08, 11/10/08, 11/11/08, 2/3/09, 2/17/09, 3/10/09
A3	Elevations Units 1 & 2	5/22/08	Cynthia Solarz	11/11/08, 12/3/08, 1/5/09, 2/17/09, 3/10/09
A4	Elevations Units 3, 4 & 5	5/22/08	Cynthia Solarz	11/10/08, 11/11/08, 12/3/08, 2/3/09 2/17/09, 3/10/09
	Site Sections	10/23/08	Cynthia Solarz	
L-1	Landscape Plan	6/23/08	C. L. Thompson Associates	
L-2	Detail Sheet	6/23/08	C.L. Thompson Associates	
1	Construction Management Plan – Phase 1	11/10/08	Heritage Design	
2	Construction Management Plan – Phase 2	11/10/08	Heritage Design	

3	Construction Management Plan – Phase 3	11/10/08	Heritage Design	
4	Utility Work – Phase 1	11/10/08	Heritage Design	
5	Utility Work – Phase 2	11/10/08	Heritage Design	
	Curb Cuts	7/8/08		
	Sketch of Land in Wellesley	6/20/00	Needham Survey Associates, Inc.	
	Plan of Land In Wellesley	7/27/96	Needham Survey Associates, Inc.	
	Topographical Plan of Land	3/5/09 & 3/6/09	Field Resources, Inc.	
	Tree Restriction			
	Existing Tree Locations		Verne Porter, Jr., PLS, Keri Williams, P.E. & Field Resources, Inc.	

III. Hearings

The Board conducting public hearings on the petition on July 17, 2008, September 18, 2008, October 23, 2008, November 20, 2005, December 9, 2008, December 17, 2008, February 12, 2009 and February 26, 2009. The Board moved to close the public hearing and begin deliberations on December 17, 2008. The public hearing was reopened on February 12, 2009 and was continued to February 26, 2009. The Board moved to close the public hearing and begin deliberations on February 26, 2009.

IV. Public Comment

During the course of the hearings on the Application, the Board took testimony and received correspondence from various individuals, including the representatives of the Planning Board, the Design Review Board, the Fire Department, the Department of Public Works Engineering Division, the Department of Public Works Water & Sewer Division, the Wetlands Protection Committee, owners of properties in the neighborhood of the Project, and citizens of the Town. The Petitioner responded orally and in writing to the issues raised by the Board and other interested parties.

On February 12, 2009, Joanne Locke, 76 Washington Street, requested that a letter to the Zoning Board of Appeals, dated January 5, 2009, and signed by ten neighbors, be entered into the record.

This Comprehensive Permit requires that the Project be constructed in compliance with the standards of the Massachusetts Building Code. Furthermore, the conditions of this Comprehensive Permit require the design of the Project to incorporate features to eliminate the concerns of the Board regarding the health and safety of the occupants of the Project and the occupants of the neighboring parcels.

V. Town's Enforcement Power

The Board recognizes that deviations from various local requirements raise a heightened concern that the conditions of this Comprehensive Permit, as well as other local and state requirements, rules, regulations, and statutes are upheld. The Project's Organization of Condominium Owners (the "Condominium Association") and the Monitoring Agent designated under the Regulatory Agreement shall have primary responsibility for enforcement of compliance with those conditions, rules, regulations, requirements, and statutes for which they are responsible. However, the Town, through its agents, employees, appointed officials, boards, and commissions shall have the right, but not the obligation, to conduct inspections and take necessary enforcement actions related to the health, safety, and welfare of the residents of the Project and the Town. With reasonable notice to the Condominium Association and, as appropriate, any individual unit owner (except in the event of an emergency), the Town shall the right to inspect and take such actions as necessary to remedy violations concerning any issue of the health, safety or welfare, including but not limited to: limitations on the number of bedrooms in units; compliance with affordability requirements; emergency vehicles access (including, but not limited to, the placement or construction of structures or other barriers to access by emergency equipment to and around the buildings and clear maintenance of emergency access to Washington Street). The Town is authorized to assess fines for such violations in accordance with the amounts and procedures provided for at the time of such violation in Town bylaws, rules, and regulations and may seek injunctive relief to address such violations. Nothing in this paragraph should in any way limit the Town's rights to take any other actions provided by law.

VI. Town's Right to Recover Costs Associated with Enforcement Actions

In order to ensure that the costs of enforcement of conditions of this Comprehensive Permit or any other local and state requirements, rules, regulations, and statutes are not borne by the Town, the Petitioner shall, simultaneously with the issuance of a building permit for the improvements authorized hereby, establish a monetary reserve of $25,000 payable to the Town in the event the Town incurs expenses, including attorney's fees, arising out of the enforcement of the conditions of this Comprehensive Permit or other local or state requirements, rules, regulations, statutes or other requirements, so long as otherwise allowable under law. At such time as the Petitioner has established a separate monetary reserve in the amount of $25,000 held in escrow for the Town recoverable under the circumstances described above (the “Monetary Reserve”), the Petitioner shall give written notice to the Board. The Monetary Reserve shall be maintained until the issue of the last Certificate of Occupancy for the Project, at which time the principal amount shall either be returned to the Petitioner, or deposited in the Capital Reserve Account of the Condominium Association, with $10,000 returned to the Petitioner. The Petitioner shall make yearly certifications to the Board that it is in compliance with these requirements. In the event this Monetary Reserve is utilized in accordance with this paragraph, the Petitioner shall take all necessary actions, including a special assessment, to return the Monetary Reserve to $25,000 within 45 days. To the extent permitted by law, the Town shall have the right to recover any such costs by municipal lien against the individual unit owners of the Development as appropriate. Nothing in this paragraph should in any way limit the amount of reimbursement to the Town.

Upon creation of the Condominium Association contemplated hereby, the Petitioner shall assign its rights to said deposit to the Condominium Association. In the event that the Town shall, from time to time, expend any portion of the Monetary Reserve, the Petitioner or the Condominium Association shall, upon written request from the Board, make an additional deposit to the Monetary Reserve in an amount equal to the amount expended by the Town.

The Town shall also have the right, but not the obligation, to levy a lien against an individual unit or the Project as a whole as appropriate for recovery of costs described in this section and in accordance with the procedure specified herein. If the Town has made a demand against the Performance Bond or Monetary Reserve described above and is unable to recover any portion of its outstanding recoverable costs from those sources for any reason, the Board of Selectmen may vote to establish a lien against an individual unit or the Project as a whole as appropriate to the circumstances. Upon such a vote, the Board of Selectmen shall provide written notice to the individual unit owner or, in the case of the Project as a whole, the Condominium Association stating: (1) the amount of the outstanding costs, (2) a description of the reasons for the outstanding costs, and (3) the time period of no less than 14 days within which payment must be made to the Town to avoid establishment of the lien. In the event the outstanding costs continue to remain unpaid at the expiration of the time period established in the written notice, the Town shall record on the individual unit deed or on the Project Master Deed, as appropriate, the notice of lien, which shall state the amount of the lien and the reasons for the lien.

VII. Findings

The Board is aware of strong opposition from some of the neighbors. In this Decision, the Board has tried to address and balance their concerns with that of the Petitioner. After reviewing the evidence and extensive testimony, the Board, mindful of the Town's need for affordable housing, voted to approve the Comprehensive Permit, subject to conditions. The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Project, including concerns regarding health and safety of the occupants of the Project and of occupants of neighboring properties. The Board finds that the conditions as approved strike the appropriate balance between protecting health, safety, and welfare of the residents of the Town, the Project, and the abutters and encouraging the development of affordable housing in the Town outside the parameters of what local the Wellesley Zoning Bylaw would ordinarily permit.

The Board therefore, on motion duly made and seconded, hereby grants a Comprehensive Permit to the Petitioner under the provisions of MGL c. 40B §§ 20-23 for the construction of five (5) three-bedroom dwelling units with garage and attic storage space. Units 1 and 2 will each be located in a separate building. Units 3, 4 and 5 will be located in one building, substantially in accordance with the plans listed above subject to and conditioned upon the following requirements captioned "Conditions to the Comprehensive Permit."

CONDITIONS TO THE COMPREHENSIVE PERMIT

The Board's approval of the Comprehensive Permit for the Project is premised on the Petitioner's and Project's compliance with the following conditions. All requirements imposed by these and prior conditions or this Comprehensive Permit shall be applicable to the Condominium Association or other similar entity responsible for the administration of the Project, but not to MHFA or any agent of MHFA engaged under the Regulatory Agreement, regardless of whether the condition specifically identifies the Petitioner, the Condominium Association, or no entity as having responsibility for a particular condition.

A. THRESHOLD

1. Control of the Site

The Petitioner or an entity substantially owned by the Petitioner shall demonstrate control of the site. The entity owning the site shall be a single purpose entity.

2. Condominium Master Deed

Prior to the issuance of the first Certificate of Occupancy, a Condominium Master Deed and a document establishing the Organization of Unit Owners shall be submitted to the Board and to the Wellesley Housing Development Corporation (WHDC), and then recorded in the Norfolk Registry of Deeds. Condominium documents shall specify any variations in fees for the affordable units. Maintenance schedules and responsibilities for the access roads, development infrastructure, and stormwater management system shall be specified in said documents, and not be materially amended without consent of the Board.

3. Petitioner's Profit

The Petitioner has agreed to the following and they are made conditions:

To limit his financial return to that which is allowed by the MHFA.

To monitor these obligations, prior to receiving its building permit, the developer shall file with this Board the same pro forma submitted to MHFA showing the expected total development sales, development costs (including developer's fee) and resultant profit. The Board understands that MHFA will require the Petitioner to submit a pro forma budget, surety as required by the Comprehensive Permit Regulations and Guidelines, and proof of construction monitoring. The Petitioner shall file with this Board copies of such documents required by MHFA contemporaneously with its submission to MHFA.

To file with the Board, a copy of the Cost Examination prepared and certified by a certified public accountant as required by the MHFA no later than one hundred-eighty (180) days after substantial completion, or, if later, within ninety (90) days of the date on which all units in the Project are sold, or as otherwise set forth in the MHFA’s standard form regulatory agreement.

B. HOUSING

1. Percentage of Affordable Units

Petitioner and its successors or assigns shall maintain one of the owner occupied units for "low and moderate income" households, defined by DHCD as households earning less than 50% of the median household income in the Boston Standard Metropolitan Statistical Area.

2. Buyer Selection Criteria

Intentionally Omitted.

3. Determination of Income Eligibility

The WHDC or the Petitioner's agent shall submit the detailed procedure to the Board for determining income eligibility for the affordable units, consistent with other State affordable housing programs. Items such as income level for eligibility, maximum household income based on household size, method of reviewing income and determining asset limits for eligibility shall be included.

4. Affordable Unit To Be Maintained in Perpetuity

The unit designated as affordable housing shall remain affordable in perpetuity through a Deed Rider that shall be recorded at the Norfolk Registry of Deeds with the first sale of the affordable unit and shall run with the land. The Deed Rider shall describe the procedure for reviewing the restrictions that the unit shall be maintained as affordable units in perpetuity as this condition requires.

5. Regulatory Agreement

The Petitioner shall submit to the Board a Regulatory Agreement, which shall be executed prior to the issuance of Certificates of Occupancy for any of the units in this development. The Regulatory Agreement shall be approved by the MHFA prior to its submission to the Board.

6. Monitoring for Compliance

In the event that MHFA elects not to engage an affordability monitoring agent, prior to the issuance of Certificates of Occupancy for any unit in the Project, provision shall be made in the form of a Monitoring Services Agreement or in form acceptable to the WHDC for designating the entity to monitor the affordable units and shall set forth the responsibilities for monitoring the sale and resale of the affordable unit, including income eligibility of prospective buyers; the requirement for submittal of annual compliance reports to the Town of Wellesley; and the requirement for an accounting of the project costs and revenues after completion to determine if profits are within the liability requirement. All costs associated with the Monitoring Services Agreement shall be paid by the Petitioner until the affordable unit has been sold, and thereafter, by the seller/owner of the affordable unit upon each resale.

8. Marketing Plan

The Petitioner shall submit to WHDC and this Board the marketing plan for all of the units in the development, which complies with all Fair Housing Laws. Said plan shall contain, to the extent legally allowable, a strategy for marketing the affordable unit in compliance with aforesaid Section 2, Buyer Selection Criteria. The marketing plan shall further demonstrate a strategy for occupying all five units within a finite time period.

9. Sale and Rental Restrictions

The petitioner shall develop and sell the 5 units as owner-occupied condominiums and not as rental units. The Master Deed of the Condominium shall provide, among other things, that any lease or rental of a unit by a Unit Owner, other than by the Petitioner, shall be subject to the following conditions:

a. Such lease or rental agreement shall be in writing.
b. The lease or rental agreement shall apply to the entire unit, and not a portion thereof.
c. The term of the lease or rental agreement shall be for a term of not less than six (6)months nor more than two (2) years, and <u>may not</u> be renewed or self-extending.
d. No more than one of the four market rate units shall be leased or rented at anyone time without the approval of the ZBA.
e. The occupancy of any rental unit shall be for not more than the number of unrelated persons as provided in the Wellesley Zoning Bylaw.
f. The lease or rental agreement shall expressly provide that the lease or rental is subject to the Master Deed, the Organization of Unit Owners, and the Rules and Regulations of the Condominium.
g. A copy of the lease or rental agreement shall be provided to the Organization of Unit Owners.
h. Leasing or renting of the affordable unit is prohibited, except as governed by the provisions of the Regulatory Agreement and the Deed Rider.
i. All units shall be occupied by the buyer of the unit for a minimum of one year after initial occupancy, and for a minimum of one year after each transfer of ownership, prior to any rental or leasing of said unit unless given prior consent by the Board of Appeals.
j. Rental solely for investment purposes is not permitted.
k. The foregoing provisions of the Master Deed shall not be amended without the prior approval of the Board of Appeals.

Sub conditions (c), (e), (i) and (j) shall apply to the affordable unit only to the extent that they do not impose additional requirements beyond those contained in the deed restrictions for the affordable unit.

10. Project Countability

Without limiting the rights of the Petitioner granted under this Comprehensive Permit, all 5 units allowed under this Comprehensive Permit shall count toward the Town's quota of affordable housing units pursuant to MGL Chapter 40B, Sections 20-22.

However, in the event that some third party State agency or other interested party take the position that only the affordable units should so qualify, and should such a position prevail in a decision rendered by a court of final jurisdiction, such decision shall not affect the validity of this Comprehensive Permit in any way.

C. SITE AND CONSTRUCTION CONDITIONS

1. Governing Site Plan

The construction of the three buildings and all site improvements, such as retaining walls and stairs on the site shall be as shown on the last revision of the Site Development Plan, C-1 dated May 22, 2008, revised March 11, 2009, stamped by Keri L. Williams, Professional Engineer. All construction work shall be limited to within the limit of work line as shown on the last revision of the Site Grading/Drainage Plan, C-3 dated June 20, 2008, revised March 11, 2009, stamped by Keri L. Williams, Professional Engineer. Along the limit of work adjacent to the Tree Preservation Area, the Petitioner shall take reasonable precautions to avoid undermining the Tree Preservation Area, and to avoid adverse impacts to root structures of healthy trees.

2. Air Conditioning

All air conditioning compressor units shall be located so that they are at the furthest point from any abutting property at a distance no closer than 35 feet from the rear and side lines of the property. Every effort shall be made to provide the lowest noise emitting unit feasible for this use and provide appropriate landscape screening where possible..

4. Lighting

All artificial lighting used to illuminate the exterior premises shall be arranged and shielded so as to prevent direct glare from the light source onto any adjacent property. If used, no freestanding light stanchion shall be of a height greater than 7 feet. All artificial lighting provided by such free standing stanchions used to illuminate exterior premises and all lighting for signs identifying the Project shall be on a central timer, and such timer will be used to turn off lighting at 11:00 p.m.

5. Use of Driveways

Because the driveways for the Project are substantially narrower than those required under the Zoning Bylaw, the Condominium Documents shall include a provision that no vehicle shall park in the driveways at any time, unless there is sufficient room for two vehicles traveling in opposite directions to pass the parked vehicle simultaneously. Vehicles temporarily on the site, including but not limited to vehicles for

the purpose of delivery or moving, construction, repair or maintenance, public or private transportation, or those vehicles of an emergency nature are exempt from this requirement.

6. Signage

Any permanent signage identifying the premises shall not exceed an area of one foot by three feet and a height of four feet, and shall be set back a minimum of ten feet from any property line. Such signage shall not be free standing without review by the appropriate town boards and committees.

7. Utilities

All utilities serving this development shall be installed underground, including any extensions from existing lines or poles external to the subject property. All existing overhead utilities and pole located on the premises shall be removed and replaced with underground service.

Any underground irrigation system shall be designed and constructed in compliance with Department of Public Works standards and shall be subject to its approval.

8. No permanent dumpsters shall be permitted on the site after completion of construction. All trash shall be kept inside of units.

9. There shall be "No Parking" sign placed along the retaining wall by the driveway on the Northeast side.

10. The Condominium Documents and Rules and Regulations shall state that there is "no left turn leaving the condominium between the hours of 7:00 AM and 8:30 AM and between 4:30 PM and 6:00 PM".

11. Versa-Lok retaining walls as described in the materials submitted to the Board shall be used unless the Petitioner presents to the Board for approval a substantially equal alternative. A structural engineer shall design all retaining walls four feet in height or greater. There shall be no disturbance of abutting properties during construction of the retaining walls. All retaining walls shall be constructed at the time of major earth work so as to decrease the likelihood of erosion and damage to trees, especially trees in the Tree Preservation Area.

12. There shall be no removal of trees on the project site until the first building permit is issued. After issue of the building permits only those trees as shown on Existing Tree Location plan as being required for removal to support the construction of the project shall be removed, unless such tree is certified by a registered arborist to be diseased and required removal.

13. All utility work in the area between the Site property line and the connection to existing Town services under Washington Street shall be performed during the period permitted by the Department of Public Works.

14. The relocation of the sanitary sewer from 7 Hillside Road shall be done under the supervision of the department of Public Works Sewer Division and Town Engineer. The Petitioner is responsible for coordinating the service interruption with the residents of 7 Hillside, and shall take all reasonable steps to minimize the duration of the interruption.

15. There shall be no parking of employees on any street in Wellesley during construction. The Petitioner and Contractor shall make arrangements for off street parking such as the MBTA lot at the Wellesley Farms Station if that is available.

16. The Petitioner will establish a website, or use an existing website, to provide Town officials and residents access to the most current scheduled activities and to notification of upcoming project events that reasonably have the potential to impact the surrounding neighborhood, or the traffic on Washington Street. Such scheduled activities shall be shown in a two-week or three-week (whichever the Petitioner normally uses in its project planning and construction management) look-ahead schedule that shall be updated not less than bi-weekly, and such notifications shall be posted not less than 14 calendar days prior to the referenced events. In addition to the website, the Petitioner shall establish a telephone number for receiving and responding to questions or concerns expressed by residents of the Town concerning the Project construction activities or compliance with the Conditions of the Comprehensive Permit. The number will be provided to Town officials and posted at the project site in a conspicuous location visible to the public from Washington Street. Questions or comments from Town officials or residents shall be responded to promptly.

17. The results of hydrant flow and pressure tests shall be submitted to the Board before a Building Permit is issued.

18. A registered Engineer shall be on site during the construction of all drainage structures. The engineer shall report regularly to the Town Engineer and Building Inspector on the compliance of the installation of the drainage system with the drawings and specifications. Upon completion of the drainage structures the Engineer shall certify that the drainage structures were completed in accordance with the approved plans and specifications, or that defects discovered during installation were satisfactorily remedied using methods acceptable to the engineer of record.

19. There shall be no blasting on the site.

20. The existing fence at 7 Hillside Road shall not be disturbed or damaged.

D. STORM WATER

1. The Petitioner shall prepare suitable Stormwater Management Plan, including the maintenance manual for the stormwater drainage system, which shall be substantially in compliance with the requirements shown on the Utilities Detail Plan (C-5), and which shall be submitted to the Wellesley Department of Public Works for approval. The Stormwater Management Plan shall follow the guidelines set forth in the Massachusetts Stormwater Guidelines for Design and Maintenance of Stormwater Systems. The Stormwater Management Plan shall be kept on site at all times, and all maintenance personnel and managers of the site shall be familiar with it. A final copy of the manual shall be filed with the Department of Public Works.

2. Copies of all submissions of and in regard to the Storm Water Management Plan shall be sent to the office of the Board of Appeals.

3. Following the initial sale of the last of the units, the responsibility for the maintenance of said drainage system shall be the responsibility of the Condominium Association, and said responsibility shall be described in the Master Deed. The Petitioner shall deposit the sum of $15,000 in the Capital Reserve Account of the Condominium Association to insure there are sufficient funds for the maintenance of all parts of the storm water system.

4. There shall be no floor drains in the garage spaces inside any of the three buildings on site.

5. No petroleum products, fuel or solvents shall be stored on site during construction.

6. All fill brought on site shall be clean fill, free of trash, organic material and debris.

E. GENERAL CONDITIONS

1. This Comprehensive Permit approves the construction of five (5) units of residential housing in 3 buildings, with associated accessory structures, facilities and landscaping. One (1) unit shall be reserved for sale and occupancy by low or moderate income Residents. Any substantial deviations, as determined by the Board, from the approved plans, including but not limited to changes in the building sizes, number of units per building, exterior facade, roadway and infrastructure location or design specifications, lighting or screening, shall require approval of the Board of Appeals. It shall be the decision of the Board whether such modification requires a Public Hearing.

2. Construction of the development shall be in conformance with the plans identified herein, with modifications as required by this decision.

3. Any changes to said plans occurring during the design and/or construction phases of this Project shall be subject to prior review by the appropriate Town board and/or department prior to the commencement of such changes. All revised plans or documents submitted to other Town departments or boards, including the Inspector of Buildings and the Department of Public Works, shall also be submitted to the Board.

4. All requirements of the Town of Wellesley Fire Department shall be met.

5. All requirements of the Department of Public Works and Municipal Light Plan shall be met, including, but not limited to the requirement that water, sewer and electric connections, together with drainage connections, be made in accordance with DPW and MLP standards and installed and maintained at no cost to the Town of Wellesley.

6. Exterior construction activities shall be confined to between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 1 p.m. on Saturday.

7. All construction shall be completed within two years from the date of issuance of the building permit, unless a new application is filed with and approved by the Board of Appeals extending such time.

8. The petitioner shall provide a written snowplowing protocol to the Town Engineer, with a copy to the Board, to ensure that snow shall not be plowed or stockpiled on abutting properties. The protocol shall be incorporated into the document creating the Condominium Association.

9. A Performance Bond, or other security such as a Tripartite Agreement between the petitioner, the Town and Petitioner's construction lender in the sum of $50,000, shall be provided to ensure installation and completed construction of all improvements in accordance with the plans approved by this decision and the proper functioning of the drainage system, screening, landscaping and walkways and the connection of all utilities including the relocation of the sewer easement for 7 Hillside Road. As-built plans shall be submitted to the Board within four weeks of the issuance of Certificates of Occupancy for each building. Said Performance Bond, or other security, shall be submitted to the Board for its approval prior to the issuance of building permits for any units in the development. The type and of such Performance Bond, or other security, shall be submitted for the review and approval of Town Counsel prior to being accepted by the Board. The Performance Bond shall be released upon the issue of the last Certificate of Occupancy. At the option of the Petitioner, the Performance Bond and the Monetary Reserve may be combined into a single security in an aggregate amount of $75,000.

10. Following construction of Unit 1 at 69 Washington Street, the building containing Units 3, 4 & 5 shall be constructed.

11. The Petitioner shall submit a letter from the Lending Institution responsible for the construction loan committing to full funding of all five units.

12. The Petitioner shall submit a perimeter plan that has been recorded in the Norfolk County Registry of Deeds.

REQUESTED WAIVERS

1. Except for the relief granted by the Board as listed below, the Petitioner shall comply with all provisions of the Zoning Bylaw, general bylaws, and all the rules and regulations of the Planning Board and the Board of Health generally applicable to a project approved on January 31, 2009. No fees enacted and in force on the date of this Comprehensive Permit are waived in connection with the Project. The amount of fees shall be those then in effect at the time of application for the permit or approval subject to the fee.

2. The Board hereby waives the requirements contained in the following Sections of the Zoning Bylaw for the stated purposes:

Section II.A	<u>Single Residence District</u> A waiver is requested to allow for multiple dwelling units as a use in a 15,000 square foot Single Residence District
Sections XVI.E/XVIA/XXII	<u>Project Approval, Design Review</u> A waiver is sought from compliance with the bylaw provisions as they relate to process and timelines concerning Site Plan Review and Approval, Design Review and Special Permits as may be applicable to a

	Major Construction Project or Project of Significant Impact, as those terms are defined within Section XVIA of the Bylaw and from Design Review under Section XXII. A waiver is not sought from the substance of the Board's review, but only the procedure and the timelines set forth in the referenced regulations.
Section XVIII	Area Regulations - Part D. Ratio of Families to Lot Area A waiver is sought for the ratio of families to lot area.
Section XIX	Part B – Requirements A waiver is requested from the limit of not more than one dwelling on any lot. A waiver is requested for less than 30 foot setback from the garage entrance to a property boundary line other than the street line for Unit #4.
Section XX	Height of Buildings or Structures A waiver is requested to exceed the 36 foot height restriction. Unit #3 shall not exceed 38.34', Unit #4 shall not exceed 37.49' and Unit #5 shall not exceed 36.37'.
Section XXI	Part D. Regulations and Restrictions. – Subpart 3. Development Standards A waiver is requested to exceed the number of two driveways permitting entrance to and for exit from a lot.
Section XVID	Large House Review A waiver is requested for construction of two single family homes on one lot.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40B, SECTIONS 20-23, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

J. Randolph Becker

David L. Grissino

lrm

cc: Planning Board, Board of Selectmen, Town Engineer, Inspector of Buildings, Town Counsel, Wellesley Housing Development Corporation, Department of Public Works, Board of Health

Dated and filed in the Office of the Town Clerk
On , 2009

TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2008-53 - Amended
Petition of Wellesley Commons LLC
65 Washington Street/ 1 Hillside Road

The Board conducted public hearings on the petition on July 17, 2008, September 18, 2008, October 23, 2008, November 20, 2005, December 9, 2008, December 17, 2008, February 12, 2009 and February 26, 2009. The Board moved to close the public hearing and begin deliberations on December 17, 2008. The public hearing was reopened on February 12, 2009 and was continued to February 26, 2009. The Board moved to close the public hearing and begin deliberations on February 26, 2009.

On February 2, 2010, the Petitioner requested to reopen the public hearing that was closed on February 26, 2009, due to changes to the petition for a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for the construction of five (5) three-bedroom dwelling units with garage and attic storage space. Unit 1 will be located in one separate building, Unit 2 will be located in one separate building, and Units 3, 4 and 5 will be located in a third building. The proposed buildings will be located on a 31,416 square foot lot at 65 WASHINGTON STREET/1 HILLSIDE ROAD. One unit will be sold to a household meeting Chapter 40B income restrictions. The remaining four units will be sold at market rate. The proposed building coverage (footprint) will be 5,438 square feet. The total building floor area will be 10,876 square feet. Fifteen (15) on-site parking spaces are proposed. There will be three (3) curb cuts on Washington Street as shown on the revised site plan filed with the Zoning Board of Appeals after the close of the previous hearing on December 17, 2008. The property is located in a 15,000 square foot Single Residence District.

March 2, 2010

The Board said it determined that the requested change was substantial and would require reopening the Public Hearing.

Presenting the case at the hearing was Michael Connolly (the "Petitioner"). He said that also present at the Public Hearing were Stephen Corbett, General Contractor, and Eric Cederholm, Structural Engineer. He said that they would provide testimony as to why it was critical to change from the approved modular construction to stick built construction.

Stephen Corbett, 14 Irving Park, Watertown, MA, said that he had previously submitted a revised Construction Management Plan (CMP).

The Board said that it had just received the revised plan earlier in the afternoon. The Board said that it is important that materials be submitted well in advance of the Public Hearing to give the Board and the public enough time to review the plans.

The Board said that the Petitioner had not submitted plans that demonstrated that stick built construction can work on this site. The Board said that phase by phase drawings of how the site would function during each construction process had been submitted for the Comprehensive Permit that was approved. The Board said that it will need to see information related to number of laborers, deliveries, storage of materials and parking.

Mr. Corbett said that there is adequate space on-site to manage the project as stick built construction. He said that they already have one building up and the process has gone smoothly. The Board said that what is required is that there be documentation of the process that is submitted in a timely manner before the Public Hearing.

Mr. Corbett said that the only significant change to the CMP is the method of construction. He said that the hours of operation in the CMP are Monday through Friday, 7 a.m to 5 p.m. and Saturday, 9 a.m. to 1 p.m., which has changed from the original CMP. He said that the contractor information has been changed to Stephen Corbett. He said that the project schedule and completion date have changed.

Mr. Corbett said that the project could be built as stick or as modular. He said that his opinion of modular construction is that it is most effective when there is a good sized level lot with good access. He said that this is a tight lot with a challenging grade and slope on a busy street.

Mr. Corbett said that, as written in the CMP, modular construction would involve having a large crane set on the sidewalk and street for a significant amount of time. He said that modular construction could involve up to 25 large wide load flat bed trailers coming to the site and backing up onto Washington Street. He said that all of that can be accommodated but would not save time or alleviate congestion on the site. He said that modular construction would still require them to have the full range of construction crews and vehicles to complete the construction. He said that there is a lot of work that cannot be pre-fabricated including the bumpouts, dormers, brick veneer, wood clapboards and trim, roofing, exterior landings and stairs, elevators, finished space in the basements, HVAC, chases or soffits associated with duct work and natural gas piping. He said that many of the interior finishes will be upgraded.

Mr. Corbett said that framing for Unit One is just about complete. He said that they have a framing crew that could move right to the townhouses where two-thirds of the foundation is in. He said that they could start that within a week or so. He said that with modular there would be a two to three month delay before the units arrive.

Mr. Corbett said that they need to construct the first floor decks prior to backfilling because of the slope and the grade on the site near the foundations. He said that once the decks are built, construction cannot be changed to modular. He said that the floor system is an integral part of the modular unit.

Mr. Corbett said that, given the experience with Unit 1, he is confident that there is adequate room on the site to continue stick built construction. He said that there is sufficient room for deliveries, storage of materials and parking for workers. He said that is shown on a marked up Site Plan that he submitted at

the hearing. He said that the plan is workable and less disruptive to the neighborhood. He said that there are fewer uncertainties with the project if it is continued with conventional construction.

The Board said that it was Mr. Connolly's proposal to do this as a modular project. Mr. Connolly said that when you get out on the site you see what can be done. He said that it would be far easier to complete this project as stick built construction.

The Board said that when the modular construction was originally proposed, one of the reasons that the Board felt good about it was because it minimized the impacts that were talked about. The Board said that Mr. Connolly's people demonstrated that by the presentations they made and the documentation that they submitted.

The Board said that the plan that Mr. Corbett submitted needs more details. The Board said that it will need to see timelines, what trades will be working, how long they will be working, and the number of people who will be on the site from week to week. The Board said that the CMP should have the same level of detail as the original CMP.

The Board said that it was indifferent as to the type of construction. The Board said it appears that the difference in stick built construction versus modular will be that there will be more people on-site. The Board said that it is up to the Petitioner to show whether that will be the case. The Board said that it needs to see what the impacts on the site will be.

The Board said that if the construction entrance is to remain where it is, there should be a wheel wash because there will be a lot more traffic going on and off of the site. The Board said that should be shown on the plan.

Eric Cederholm said that he is the Structural Engineer for the project. He said that it is important to get the site stabilized. He said that there are some aggressive slopes at the back of the site that are open. He said that the sequence is to get the foundations in and then work the retaining walls back from there. He said that the quickest way to accomplish that is through stick built construction rather than waiting a few months for modulars to be delivered. He said that the framing crews can move onto the foundations. He said that they can build the decks and then backfill.

The Board said that it was concerned that if the decks go on the construction will have to be stick built. The Board said that the decks for Units 3, 4 & 5 could be constructed but that would be the limit of the work that could be done until the Board has more information and better plans. The Board said that construction of the decks would be at the Petitioner's own risk.

The Board said that the hearing would be continued to Thursday, March 25, 2010. The Board said that the information that the Board requested should be submitted by Tuesday, March 16, 2010.

March 23, 2010

The Public Hearing was re-scheduled for Tuesday, April 6, 2010.

April 6, 2010

Presenting the case at the hearing was Michael Connolly, who said that a revised CMP was submitted on Tuesday, March 16, 2010. He said that the plan contains a breakdown of the work, the estimated number of workers on the site, and the estimated number of vehicles that will be on the site.

Mr. Connolly said that he called a few of the neighbors and asked them if they had any questions about the change from modular construction to stick built. He said that there was no objection.

Mr. Connolly said that there are two backup plans for parking. He said that Mr. Devaney on Hillside Road offered the use of his driveway if the number of cars on the site exceeded the projection. He said that there is space available at the MBTA Train Station parking lot, which is located .4 of a mile from the site.

The Board said that Mr. Devaney's driveway is located in a single family residence district. The Board said that accessory parking for a business use would not be allowed there.

The Board confirmed that the rectangles shown on the plan by Units 3, 4 & 5 are parking spaces. Mr. Corbett said that there are twelve parking spaces shown.

The Board asked about moving materials along the edge of Units 3, 4 & 5. The Board asked if there will be parking within the units themselves. Mr. Corbett said that they will need to have flexibility on the job. He said that they can load materials on top of the decks early in the morning before the vehicles arrive or they can move vehicles. He said that it is possible to get by vehicles parked in the four spaces shown on the right hand side of the lot.

Mr. Corbett said that the next four to five weeks should be peak labor demand time in terms of the major site work. He said that after completion of the site work things should open up dramatically in terms of flexibility on the site. He said that once the utilities and retaining walls are in, the first stage of the asphalt paving, the binder course, will be placed.

The Board said that it appears that the plans simplifies at the end of June in terms of the number of workers and vehicles on the site. The Board said that the Phase IV diagram does not show the parking spaces at Units 3, 4 & 5. The Board said that five spaces are shown within the units. Mr. Corbett said that there are three interior spaces for Unit 3. He said that there are two spaces in Unit 2. He said that he did not show the other parking spaces on the diagram because there will be a lot of available parking on the site. The Board confirmed that there would be nothing that would prohibit the continued use of the parking spaces along the north side.

The Board asked about delays in the schedule. Mr. Corbett said that Phase I has been delayed by approximately one week, principally by the wet weather in March.

The Board asked what the parking surface will consist of between now and when the binder is laid down. Mr. Corbett said that it is currently a good sandy gravel material. He said that there were little pockets of mud after the rain. The Board said that it was concerned about tracking mud onto Washington when there are wet conditions. Mr. Corbett said that there are wide stone mats in place at the three entrances that

seem to be working well. He said that they have been sweeping up the street. He said that they could use a hose for a wheel wash but it may not be a good idea in a muddy area. The Board said that wheel washing could take place on the crushed stone pads.

The Board said that there is a note on the Phase V diagram about Police details as required. The Board asked how that will be determined. Mr. Corbett said that they have been overly cautious. He said that all of the utilities are basically already installed under Washington Street except for the electrical trench. He said that they will continue to speak with the Police as they complete the electrical work under the sidewalk adjacent to Washington Street. He said that they were not able to get details for some of the utility work because there was no one available. He said that there were several days when they requested Police details and the Police were not able to provide them.

The Board asked what the bubbles that are shown on the Phase V diagram denote. Mr. Corbett said that those show the new curb cuts and where the apron will change. He said that the long bubble that is shown on the left hand side is for the electrical trench. He said that last fall they came out from a manhole on Hillside Road to the corner of the sidewalk. He said that the conduit was stopped at that point, with the remainder of the conduit to be installed in conjunction with the installation for the several units. He said that they have to pick it up there and bring it to the elbow and square that is shown above it, where the transformer pad is located.

The Board confirmed that excavation to support utility work under Washington Street is finished.

The Board said that the decision and the conditions do not have to be changed. On motion duly made and seconded, the Board voted unanimously to amend the decision by appending the proposed CMP, and therefore, all of the conditions that refer to the CMP will now refer to the aggregate of the two plans, as applicable. Construction Management Plan, dated 12/12/08, prepared by Heritage Modular was approved by the Board on April 30, 2009.

Submittals from the Applicant

- Site Management Plan, dated 12/14/09, stamped by Azu O.C. Etoniru, Professional Engineer.
- Construction Management Plan, dated 3/16/10, prepared by SPC Construction Co., Inc.
- Letter to Zoning Board of Appeals, dated 3/29/10, from Eric J. Cederholm, P.E.

Decision

ZBA 2008-53 is hereby amended to append the Construction Management Plan, dated 3/16/10, prepared by SPC Construction Co., Inc. and therefore, all of the conditions that refer to the CMP will now refer to the aggregate of the two plans, as applicable.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

J. Randolph Becker

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm

TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2008-53 - Modification
Petition of Wellesley Commons LLC
65 Washington Street/ 1 Hillside Road

May 2, 2011

Present at the Public Meeting were Paul Cavanagh, Esq. and Michael Connolly.

The Board conducted a Public Meeting on May 2, 2011. The Board voted unanimously to determine that the requested modification to the original site plan for the project approved in the Comprehensive Permit, ZBA 2008-53 for reconfiguring the development as two (2) single family homes and three (3) condominium units including one (1) affordable unit is a substantial change and would require reopening the Public Hearing.

The Board asked Mr. Connolly how much time it would take him to prepare the homeowners association documents and revised budgets. Mr. Connolly said that it would take a few weeks.

The Board and Mr. Connolly agreed to hold a Public Hearing on Thursday, June 9, 2011 at 7:30 p.m. in the Juliani Meeting Room, Town Hall.

June 9, 2011

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 9, 2011 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of WELLESLEY COMMONS LLC requesting modification of the original site plan for the project approved in the Comprehensive Permit Decision, ZBA 2008-53 for reconfiguring the development as two (2) single family homes and three (3) condominium units with one (1) affordable unit. Pursuant to 760 CMR 56, the Board will reopen the public hearing that was closed on April 6, 2010. The subject property is located at 65 WASHINGTON STREET/1 HILLSIDE ROAD.

The Board held a Public Hearing on June 9, 2011. The Board voted to close the Public Hearing and began deliberations on June 9, 2011.

Present at the Public Hearing were Michael Connolly, David Daly, Esq., and Robert Engler.

The Board said that the matter before it was a request from Wellesley Commons LLC for a modification to the Comprehensive Permit.

The Board said that before beginning the hearing, it wanted to address Mr. Daly. The Board said that Mr. Daly sent a letter to the Board on June 7, 2011, which was two days before the Public Hearing. The Board said that Mr. Daly raised an issue that the Board failed to call a meeting and hold a Public Hearing within 30 days of receipt of the request. The Board said that the June 9, 2011 Public Hearing date was agreed upon by the parties at the Public Meeting on May 2, 2011. The Chairman read an excerpt from the minutes of the May 2, 2011 Public Meeting concerning how much time Mr. Connolly thought that he would need to prepare the homeowners association documents and revised budgets.

Mr. Daly said that his client would not waive any rights, as stated in the letter. He said that he and his client indicated that they would attend the Public Hearing to try to answer any questions that the Board might have. He said that they thought that the best thing to do was to bring Mr. Robert Engler, who is very experienced in Chapter 40B Housing in Massachusetts. The Board asked about the purpose of Mr. Engler's evidence before the Board. Mr. Daly said that Mr. Engler could address the questions that the Board had regarding jurisdiction. The Board asked why Mr. Connolly, Mr. Daly and Mr. Engler were present if they felt that the Board had no jurisdiction. The Board said that Mr. Connolly applied to the Board for a modification of the Comprehensive Permit. Mr. Daly said that they considered it to be an insubstantial change.

The Board asked if Mr. Connolly was obligated to appeal the Board's finding within 20 days under the Regulations. Mr. Connolly said that within 20 days they could have appealed the Board's decision to hold a public hearing, having deemed it a substantial change. He said that it was his intent, as well as Mr. Daly's and Mr. Engler's, to cooperate with the Board with respect to all of the matters. He said that they believe that the case is strong, especially based on the Zoning Board of Appeals of Amesbury v. Housing Appeals Committee case.

Mr. Connolly said that he would submit Mr. Engler's resumé for the record. He asked that Mr. Engler be allowed to address the Board, given his 30 years of experience in affordable housing.

The Chairman said that when he, Mr. Connolly and Mr. Daly met at Town Counsel's office in April, 2011, when the issue of the lots was initially raised, one of the things that was talked about was Mr. Connolly preparing proposed homeowners association documents and new budgets and how that would effectively demonstrate to the Board that this proposal would not have any adverse effect on the project as a whole and the condominium association.

The Board said that it requested the same information at the May 2, 2011 meeting, at which time Mr. Connolly said that he would need a few weeks to prepare the materials. The Board said that it never received any documents or revised budgets from Mr. Connolly.

The Board said that it would appear that Mr. Connolly was present at the hearing to contest the jurisdiction of the Board. The Chairman said that two members of the Board are Real Estate Attorneys who have handled several 40B projects over a period of over 25 years. The Chairman said that unless Mr. Engler is an attorney and wants to give sworn expert testimony, he did not think that the Board had any need to hear him. The Board asked if Mr. Connolly had anything to submit to the Board in support of his request.

Mr. Daly said that they brought Mr. Engler to the hearing so that he could answer specific questions. The Chairman said that he did not have any questions for Mr. Engler. He said that he wanted to see documents that support the request. He said that the request has been made twice, once in Town Counsel's office and then again on May 2, 2011, when Mr. Connolly agreed to do that. Mr. Daly said that Mr. Connolly did not agree to that.

Mr. Daly said that Mr. Engler is the most experienced developer in affordable housing in the Commonwealth of Massachusetts. The Chairman said that he would take issue with that. He said that he knows of several substantial developers of affordable housing in Massachusetts. He said that the only expert testimony that he would take would be from an attorney testifying in his expert opinion as to the meaning of Chapter 40B and its regulations.

The Board said that the issue before it was what the Board had deemed to be a substantial modification of the Comprehensive Permit to allow two units to be spun off as single family lots. The Board said that it does not understand how all of the pieces of the proposal will work together. The Board said that it was willing to hear Mr. Engler present factual support to the proposal. Mr. Connolly said that he wanted to qualify Mr. Engler as an expert. The Board said that it was taking factual testimony. Mr. Connolly submitted Mr. Engler's resumé.

Mr. Engler said that he wanted to talk about the facts of the 40B process and why the condominium association/homeowner association issue that the Board has raised and its impact on the affordable homeowner is a matter for the Monitoring Agent and the Subsidizing Agency to review at the time that the information goes out to the public as to the price of the affordable unit. He said that is the time when the affordable price is set, based on the current interest rate, and the condominium dues and the homeowner association dues are set. He said that the Monitoring Agent and the Subsidizing Agency review those figures, which is the proper way to do it. He said that it is not done now because it is too early to say what those numbers are. He said that it depends on when the units go to market. He said that there is no reason to turn in data on those figures until they are actually put together at the appropriate time. He said that the Town has its own Monitoring Agent, the Wellesley Housing Development Corporation. He said that the Amesbury case said that the Subsidizing Agency should be looking at those figures.

The Board said that Mr. Engler was not addressing the concerns of the Board that were raised in April. The Board said that it is being asked to take out two single family homes that were part of a five unit condominium project on a single lot of land. The Board said that the proposal is to take two of those units out to create single family homes on five to six thousand square foot lots, which would be a gross violation of the Zoning Bylaw. The Board said that it would never have allowed that in the original Comprehensive Permit. The Board said that it was dealing with one lot and one project. The Board said that the project started as two buildings, one with three units and the other with two units. The Board said that after the Board was well through the process, Mr. Connolly asked to change the plans to put two single buildings up instead of the two unit building. The Board said that, after discussion, the Board allowed that change. The Board said that Mr. Connolly is now trying to take those two units and turn them into valid single family building lots in the Town of Wellesley, and that cannot be done.

The Chairman said that he would take issue with what the Board can consider and what the Monitoring Agent would be doing. He said that the Board has to know in advance what those two single family

homes are going to contribute to the overall maintenance of that entire project. He said that previously budgets had been submitted. He said that the Board asked for information as to how the homeowners association was going to contribute. He said that the Board has received nothing. He said that there has been no evidence given to the Board and no information furnished to them.

Mr. Engler said that there are no facts because they will be developed at the appropriate time. He said that the Board is claiming that it has the right to review those facts and Mr. Connolly, Mr. Daly and Mr. Engler are saying that the facts will be reviewed at the appropriate time.

The Board said that Mr. Connolly said that he is unable to sell the units as condominiums but he can sell them as single family homes. The Board said that the whole real estate market is depressed, even in Wellesley, particularly in the range that these units are. The Board said that the units are designed in such a way that people have to walk up a lot of stairs. The Board said that Mr. Connolly may have to adjust his sales price until he finds people who are willing to walk the stairs and pay what they think is a fair price for the units. The Board said that if Mr. Connolly made a mistake in designing the project, it is not the Board's job to bail him out of that.

Mr. Engler said that, in his 40 years of real estate experience, he has found that it is easier to sell a home. He said that people tend to be more receptive of a homeowners association versus a condominium association, even though the dues may be the same. He said that he has sold houses in condominiums that are free-standing and he knows the experience that buyers have when they look at a homeowners association versus a condominium association. He said that it is not a large point but it is a significant one that will help sell those units. He said that they will be contributing the same amount whether they will be in the condominium association or not. The Board said that the Board does not have any evidence of that.

Mr. Daly asked the Board to talk to Town Counsel about the fact that there was nothing that was agreed to at the meeting in April at Town Counsel's office. The Chairman said that Mr. Connolly represented that the single family units would be contributing funds to the condominium association. He said that the Board has not seen any evidence of that. Mr. Engler said that he made the point that the numbers will be turned in. He said that the numbers will change when the units go to market. He said that the five units will be paying for the same common expenses. He said that the homeowners will have fee simple lots and will pay for the upkeep of their own property. He said that the homeowners will contribute to costs for all of the common areas.

The Board said that it is extremely concerned about the request for the Board to grant Variances on two undersized lots after the fact. The Chairman said that the Board is not prepared to do that. He said that under the case law and the statute, the Board is not obligated to do that.

The Board said that, regardless of the homeowner documents, the Board should see, if not the exact numbers, the methodology and what the common expenses are going to be, how it is going to be managed, and what the organization of unit owners is going to be. The Board said that the issue is that Mr. Connolly is trying to create two undersized lots. The Board said that Chapter 40B does give the Board authority to waive local requirements. The Board said that the Regulations provide that the applicant is to provide the Board with a list of waivers that it is seeking. The Board said that the only waiver that was implicitly heard was for an undersized lot. The Board said that there may be setback issues and land use Zoning issues with regard to those lots.

The Board said that the basis of the Comprehensive Permit decision is that it be consistent with local needs. The Board said that under that standard, the Board can waive the local requirements. The Board said that the burden of proof is on the applicant to show why this project would be uneconomic unless the Board waives the requirement of lot size. The Board said that it heard no factual evidence other than Mr. Engler's years of experience saying that selling a single family house is easier than selling a condominium.

The Board said that it was concerned that to create two undersized lots under the guise of a Chapter 40B is beyond the scope of the statute. The Board said that the statute is meant to create affordable housing. The Board said that the affordable housing that has been contemplated by this project has been designated. The Board said that spinning off two separate lots does not further that goal.

Mr. Daly said that they had submitted the April 8, 2011 letter from MassHousing. The Board said that letter concerned project eligibility with respect to the site.

The Board said that it has yet to receive any of the draft condominium documents that were a condition of the Comprehensive Permit. The Board said that there is also a condition that the building containing the affordable unit be finished and put on the market before the second house is finished and before an occupancy permit is issued for that house. The Board said that it seems to be that Mr. Connolly is pushing the single family house completion and not the completion of the three unit building with the affordable unit.

The Board said that there was nothing before it that would warrant granting the application. The Board said that the basic proposal is for substantial changes to the Comprehensive Permit. The Board said that it would not know what to change the Comprehensive Permit to because there is nothing on the table that would allow it to do that.

Mr. Daly said that they submitted the application and offered up Mr. Engler as an expert. He said that they thought that it was clear. He said that they felt that the requested modification is not substantial. The Board said that Mr. Connolly did not appeal the Board's finding that it considered the modification to be substantial.

Michael Paquin, 3 Cedar Street, said that he has driven by the site many times. He said that the units strike him as the kind of housing that Wellesley could use more of. He urged the Board to work cooperatively with the developer to get the units sold and occupied.

The Board said that it received numerous communications from people who are opposed to the application. The Board said that those letters will become part of the record. The Chairman said that it is the sense of the Board that it had not received enough information.

Mary Kane Sullivan, 35 Hundreds Road, asked if the Board closed the Public Hearing, would that remove the plans from consideration. The Board said that after it takes a vote, Mr. Connolly then has a right to appeal the Board's decision. Ms. Sullivan asked if the Public Hearing was closed, does it then become as if they never asked. The Board said that closing the Public Hearing just prevents the Board from taking further evidence on this matter.

The Chairman said that he thought that the Board did not have any basis for granting this request. He said that he is very much opposed to the concept of trying to create two undersized single family lots that never would have been allowed under any circumstances. He said that this is a Comprehensive Permit for a project on one lot of land. He said that it was a condition of the Comprehensive Permit that the two lots that Mr. Connolly bought be combined and a new perimeter plan be submitted. He said that there are several parts of this project that encompass all of the land and all of the driveways that affect drainage. He said that there was nothing before the Board that would ensure that there will be sufficient funds being paid by a homeowners association to a condominium association to ensure that those facilities would be properly maintained. He said that there is a condition in the Comprehensive Permit requiring Mr. Connolly to make an initial deposit to the condominium association.

The Chairman said that the request is couched for the reason that Mr. Connolly is finding it difficult to sell the units. He said that it was not clear if that was an issue of price point or design. He said that condominium units are selling all over Wellesley.

A Board member said that he seconded the concept that the Board does not have sufficient information before it to change the Comprehensive Permit. He said that in looking at the drainage plan that the Board has, all of the drainage facilities that dispose of the water in environmentally acceptable ways are in the shared use of A, B and C. He said that it is not shown on plans how that will work with the proposed modification. He said that he did not have sufficient information to make an informed choice.

The Board said that a homeowners association does not have the gravitas that a condominium association has. The Board said that a condominium association is statutory and a homeowners association is not.

A Board member said that the Board has not seen a request for waivers, which is a prerequisite for the initial filing and would be for this filing. He said that he had not heard any evidence of why enforcing the local requirements would make this project uneconomical. He said that the goal of affordable housing has been met. He said that there is an affordable unit that has not been tested for market. He said that if that unit could not be sold as a result of the configuration, there may be something there to discuss.

Submittals from the Applicant

- Master Deed Site Plan, dated 3/31/11, stamped by Fergal Brennock, Professional Engineer.
- Letter to Richard Seegel, dated 4/14/11, from David J. Daly, regarding Wellesley Commons, LLC with attachment of letter to Michael Connolly, dated 4/8/11, from Gregory P. Watson, AICP, MassHousing, regarding Wellesley Commons, LLC Minor Modification
- Letter to Richard L. Seegel, dated 6/7/11, from David J. Daly, regarding Wellesley Commons, LLC Comprehensive Permit ZBA No. 2008-53, Our File No. 456.40 with attachment of Zoning Board of Appeals of Amesbury v. Housing Appeals Committee, 456 Mass 748 (2010)
- Resumé of Robert E. Engler

Decision

After motion duly moved and seconded, the Board voted unanimously to deny the request for modification.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

J. Randolph Becker

Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm