

**DECISION**  
**16 Stearns Road, Wellesley, Massachusetts**  
**Comprehensive Permit**

**Decision Number:** 2018-65  
**Date Application Filed:** August 7, 2018  
**Applicant:** 16 Stearns Road, LLC  
**Premises Affected:** 16 Stearns Road, Assessor's Map 122, Lot 19 (the "Site")  
**Relief Requested:** Comprehensive Permit, G.L. c. 40B, §§ 20-23  
**Public Notice:** August 23 and 30, 2018  
**Public Hearing(s) held:** September 6, 2018, September 25, 2018, November 1, 2018,  
November 20, 2018, December 4, 2018, January 15, 2019  
February 13, 2019, March 12, 2019, March 26, 2019 and April  
30, 2019.  
**Decision of the Board:** Approved with Conditions  
**Members participating:** Robert W. Levy, J. Randolph Becker, Derek B. Redgate  
**Date of Decision:** June 18, 2019

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## The Project

16 Stearns Road, LLC (the "Applicant") has requested from the Zoning Board of Appeals (the "ZBA" or the "Board") of the Town of Wellesley (the "Town") the issuance of a comprehensive permit subject to General Laws Chapter 40B, §§20-23, authorizing the Applicant to construct 24 condominium units in a single building on a single lot located at 16 Stearns Road and containing 44,578 sf (1.02337 acres) of land (the "Site") lying in a Single Residence 10 zoning district (the "Project").

The Project consists of the redevelopment of the lot with a proposed four story, 24 unit multi-family residential housing project. The proposed building includes a base story for parking cut into the sloping Site, and three residential floors above. Each residential floor will contain eight condominium units, seven two-bedroom units and one three bedroom unit ranging in size from 1,420-1,850 sf. Of the 24 units, six will be restricted to households earning less than 80 percent of the area median income, with five of those affordable units containing two bedrooms and two baths and one containing three bedrooms and two baths.

A covered portico leads to the main lobby and internal circulation leads to a third floor library/ sitting room and provides lower level access to a patio adjacent to the Sprague Fields, which are located immediately to the south.

The building form is faceted creating an entry courtyard and presenting a series of distinct gable forms in order to blend a multi-unit building into a single-family neighborhood. The building takes advantage of the shape of the lot to set the building back further than other residences on the street, and using the topography to mask the garage level from certain views. When viewed from Stearns Road, the building presents as a three story façade with three gables. The building features modest recessed terraces, both hip and gable roofs that, together with complementary color shading, contributes to minimizing the visual impact.

While the topography helps to mask the view of the height of the building when viewed from Stearns Road, at the southern side of the Site the full height is visible through the trees when viewed from Sprague Fields.

The building is sited and configured so as to minimize the building massing adjacent to neighboring homes putting open space and landscaping immediately adjacent to the neighbors. The main entrance is accessed by a turn-around that includes guest and handicapped accessible parking.

The Site is a currently empty lot found at the southern-most side and at the end of Stearns Road, the pre-existing single family residence having been demolished prior to the application for the comprehensive permit. Half of the existing frontage is currently improved and used as a roadway, and the remainder is unimproved and is only used for utilities and a mixed paved and unpaved path to the Sprague Fields and the Sprague Elementary School beyond to the south.

The Site is bounded on three sides by land owned by the Town. On two sides of the property, the south and the west, the Site is abutted by the parking and driveway portions of the Sprague Fields, sports fields owned and operated by the Town. Across Stearns Road toward the north, lies the rear of the parking area of the Newton-Wellesley Center for

Alzheimer's Care ("NWCAC"), a medical facility operated by National Health Care Associates, and beyond this land is a vacant lot where there is proposed a second, separate multi-family 20-unit housing project. To the east is a small, unused triangular piece of land, and beyond that are the residences of the Francis/Stearns Road neighborhood. The Sprague Elementary School and its parking lot lie to the west.

Stearns Road is partially a public road and partially a private way. The Applicant is proposing no work within the private way portion of Stearns Road.

Land use to the east is principally single-family residences that were built between 1912 and 1941, and that are sited on lots that average approximately 15,000 sf in area, comfortably meeting the SR-10 lot size requirements. The Site is the largest lot in the neighborhood, at approximately three times the average lot size, and almost twice the area of the next largest lot.

Topographically, the Site exhibits considerable relief. The high point at about an elevation of 171 feet is in the southeastern section of the Site, an elevation approximately 20 feet higher than Stearns Road. From the high point, the land slopes downward both toward Stearns Road, and downward relatively steeply to the southwest and west, to meet the Sprague Fields and the Sprague parking lot at about elevation 145 feet.

The geology on the Site includes moderate to steep grades with evidence of outwash boulders. Four test pits were performed at the Site and indicate sandy loam and gravel soils with weathered rock varying in depths from 42 inches to 77 inches below ground surface. Since the bottom of the proposed facilities is below this depth, controlled rock blasting and excavation is proposed. Seasonal high groundwater levels varied across the Site from 3.5-5.0 feet below ground surface.

### **Governing Law**

1. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD"), CMR 56.00 et seq. (the "Regulations").

2. The Act promotes regional distribution of low- or moderate-income housing by preventing individual cities and towns from using exclusionary zoning to block construction of such housing. Toward these ends, the purposes of the Act are satisfied if: (a) a town has low or moderate income housing in excess of 10 percent of the total number of year-round housing units reported in the latest decennial census or (b) on sites comprising 1 ½ percent or more of the town's total land area zoned for residential, commercial, or industrial use, or (c) the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3 percent of such total area or 10 acres, whichever is larger, in one year.

3. DHCD's Regulations expand the definition of what constitutes satisfaction of the statute to include such methods as "recent progress" toward the statutory minima or compliance with a DHCD-approved housing production plan, all as described in 760 CMR 56.03(1).

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4. At the time of the filing of this comprehensive permit application, the Town did not meet the statutory minima set forth in G.L. c. 40B § 20 or the “safe harbor” provisions of 760 CMR 56.03(3). Specifically:

- a. At the time of the filing of the application, the number of low- or moderate-income housing units in Wellesley constituted 6.3 percent of the total year-round units in the Town, based on the most recent decennial census. Thus, the Town does not meet the 10 percent statutory minimum.
- b. Existing affordable housing units are on sites which comprise less than one and one half percent of the total land area of the Town which is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof).
- c. Granting the Applicant’s request for a comprehensive permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
- d. At the time of the filing of the application, the Town did not have a Chapter 40B Housing Production Plan approved by DHCD under 760 CMR 56.03(4).
- e. The Town has not made “recent progress” as that term is defined in 760 CMR 56.03(5).
- f. The proposed development does not constitute a “large project” as defined in 760 CMR 56.03(6).
- g. The Site is not subject to any “related applications” as that term is defined in 760 CMR 56.03(7).

5. Given the foregoing, the ZBA’s decision on this comprehensive permit application must balance the regional need for low- or moderate-income housing against the Town’s long-range planning goals, local requirements and regulations to the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the Town as a whole.

6. The Applicant submitted to the ZBA a Project Eligibility Letter from Mass Housing dated May 22, 2018. Pursuant to 760 CMR 56.04, the issuance of this letter establishes as a matter of law that the Applicant is a limited dividend organization, that the Project is fundable by a Subsidizing Agency under a low or moderate income housing program, and that the Applicant has control of the Site<sup>1</sup>. The issuance of this letter by Mass Housing allows the Applicant to file its comprehensive permit application with the ZBA

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<sup>1</sup> Notwithstanding the foregoing, the deed provided by the Applicant as part of its comprehensive permit application shows that the Site is owned not by the Applicant but by J. Derenzo & Associates, LLC.

## Procedural History

The Applicant submitted its application to the ZBA on August 7, 2018. The ZBA published notice on August 23 and 30, 2018, and sent notice to all parties in interest. The ZBA opened the public hearing on this application on September 6, 2018 and held continued sessions of the hearing on September 25, 2018, November 1, 2018, November 20, 2018, December 4, 2018, January 15, 2019, February 13, 2019, March 12, 2019, March 26, 2019 and April 30, 2019. The Applicant agreed in writing to extend the time for the ZBA to conduct the public hearing on this application through April 30, 2019. The ZBA voted to close the public hearing on April 30, 2019.

Over the course of the public hearing, the ZBA heard and considered extensive testimony from the Applicant and its consultants. The ZBA also received guidance from its M.G.L. c.40B consultant Judi Barrett of Barrett Planning Group LLC, and retained expert peer review of the Applicant's submittals from the following:

Civil Engineering: David J. Hickey, Wellesley Town Engineer

Architecture and Design: Clifford J. Boehmer of Davis Square Architects

Traffic and Transportation: Robert Nagi of VHB

The ZBA also heard a considerable amount of testimony from abutters and residents from the surrounding neighborhood. During each session of the public hearing, these neighbors presented a compelling case in opposition to the Project. They raised numerous objections including, without limitation, the changes to the character of the neighborhood that will be caused by adding twenty new dwelling units at the end of a small dead end street, and also the impact that this will have on the current use of Stearns Road as a popular pedestrian route to the Sprague School and athletic fields. The ZBA acknowledges the concerns expressed with respect to the Project, and notes that the impacts the neighbors cited may well have supported a denial of the Project in some other permitting context. After applying the standard of review under M.G.L. c.40B, §§20-23 and 760 CMR 56.00, however, the ZBA determined that the evidence in the record did not support a denial of the application, and instead supported issuance of an approval with conditions intended to mitigate the Project's impacts. With the understanding that this decision does not represent the desired result of the neighbors, the ZBA acknowledges their participation, concerns and input in the public hearing.

At a meeting held on June 7, 2019, the ZBA voted 3-0 to approve the Project subject to findings, the action on the requested waivers, and the conditions set forth herein.

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## Findings of Fact

### 1. Zoning

#### a. Use Requirements

The Project is located in an SR-10 zoning district. Among the uses allowed in the SR-10 district are: (1) one-family dwellings; (2) educational uses; (3) child care facility; (4) clubs; (5) agriculture; (6) certain home occupations; (7) accessory uses customary to the allowed uses; and (8) certain other specialized uses upon the granting of a special permit.

As a multi-unit, multi-family residential building, the use of the Project is not allowed in an SR-10 district, and this gives rise to the first principal waiver request under the comprehensive permit requested under G.L. c.40B §§ 20-23.

#### b. Dimensional Requirements

The Zoning ByLaw provides for each zoning district dimensional requirements for the lot, for the placement of buildings and structures on the land, and for the structures themselves. The dimensional requirements for the SR-10 district, and the corresponding dimensional information from the Project are summarized in Table 1.

Table 1 – SR-10 Dimensional Comparison

Category	Required	Project
Lot Area	10,000 sf	44,578 sf
Frontage	60 ft	200 ft
Minimum Width	Front Yard	60 ft
Minimum Depth	Front Yard	30 ft
Minimum Width	Side Yard	20 ft
Minimum Depth	Rear Yard	10 ft
Maximum Coverage	Building	0.25
Maximum Height	Building	45 ft
		0.32
		48.8 ft

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With respect to the dimensional requirements for the lot, the Project meets the SR-10 requirements for both lot area and lot frontage. With respect to those requirements for the placement of the structure on the lot, the Project meets all yard width and depth requirements for the SR-10 district. For the dimensional requirements for the structures themselves, the Project fails to meet the SR-10 requirements for maximum building coverage and maximum building height, giving rise to waiver requests by the Applicant.

## **2. Land Use and Planning**

As noted above, under the Zoning Bylaw, multi-family residential use is not allowed in the single residential districts that comprise the bulk of the residential land in Town.

All the commercial zoning districts allow multi-family residential uses and there are four residential zones that allow more than single-family houses. Three of those zones cover relatively small areas and were tailored for specific projects that are not expected to change. The General Residence zone, however, covers 73 acres but allows only two-family buildings and town houses in addition to single-family houses. Participants in the Unified Plan public meetings saw the commercial, office and industrial districts as the most acceptable locations to construct new housing that is not single-family housing. A mixed-use approach, combining housing with retail stores, was often mentioned. The Zoning Bylaw requirements for the administrative and professional districts that the Unified Plan envisions would be the location of the multi-family housing, currently do not allow such uses. The Unified Plan does not anticipate developments like the Project in SR-10 districts.

## **3. Site**

In order to accommodate the Project, the Site is to be re-graded, and earth and rock material will be excavated and removed from the Site to make way for the foundations and garage level of the building. These operations give rise to two issues that were reviewed during the hearing: (1) controlled blasting; and (2) retaining walls.

### **a. Controlled Blasting**

The Applicant's subsurface investigation revealed that rock excavation will be required in order to install the building foundations. During the public hearing, the ZBA heard testimony on the proposed controlled blasting program, as well as significant concerns expressed by the neighbors. The ZBA devoted an entire session of the public hearing to testimony regarding controlled blasting, which included a presentation regarding the proposed controlled blasting program from the Applicant's contractor Maine Drilling & Blasting.

The ZBA is aware of other construction sites in Town that have recently required controlled blasting, both in the vicinity of the Site (22-26 Pleasant Street) and in other residential areas of the Town. The ZBA heard testimony from Deputy DiGiandomenico of the Wellesley Fire Department, who noted that the proposed controlled blasting will require permitting from the Fire Department under 527 CMR 1.00, and that Fire Department personnel will be on site to monitor actual controlled blasting operations. The Deputy had no concerns with the proposed blasting proposed by the Applicant.

The abutters, neighbors and representatives of the NWCAC testified that they were concerned about the controlled blasting. The ZBA acknowledges these concerns but notes that there was ultimately no expert or other persuasive evidence in the record to support the conclusion that the proposed controlled blasting would cause any public health or safety impacts or damage to nearby properties.

If the controlled blast program is implemented as proposed and in accordance with State

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law, the ZBA believes that the controlled blasting does not present a danger to other property or to the community. In addition, however, the ZBA recognizes that controlled blasting is regulated by the Commonwealth and is outside of the authority of the ZBA under the comprehensive permit process.

### **b. Retaining Walls**

To accomplish the grading of the Site, retaining walls are proposed along portions of the east and west property lines, and a ledge cut is proposed along the south property line. The retaining wall along the eastern lot line varies in height along its length from two feet to just over six feet, and the end of the retaining wall transitions into a ledge cut at the rear of the Site. The face of the eastern wall is visible to residents of the Project, but not to the abutters. The retaining wall along the western lot line varies in height from less than one foot to approximately 5.5 feet. The face of the western wall is not visible to the residents of the Project, but will be visible from the Sprague School parking lot.

A third retaining wall is proposed internal to the Site to accommodate the grade difference between the traffic circle at the main entrance and the garage entrance. This retaining wall will vary in height from 0.5 feet to 8.5 feet, and the wall will be visible to those entering the garage.

The retaining walls are proposed to be Stone Strong Walls® a precast concrete system manufactured to imitate natural stone. Due to the height and location of the wall along the property lines, the retaining walls will require waivers of the applicable zoning provisions under the comprehensive permit.

## **4. Architecture**

To assess the architecture and design, during the public hearing the Project density, height and bulk, and architectural details were reviewed.

### **a. Density**

Based on the Assessor's "FY18 Residential" list, the median lot size in the single residence districts is 19,439 sf. Since the Zoning Bylaw allows only a single dwelling on a lot, this implies that the median residential density in the residential districts is only 2.2 units/acre.

Based on information from the Planning Board staff, Wellesley has listed in its SHI 14 completed rental developments and eight completed ownership developments, for an overall total of 22 developments. The density of these developments ranges from a low of 0.4 units/acre at Wellesley Place (978 Worcester Rd) to a high of 39.9 units/acre at List House (315 Weston Rd). The median affordable housing development in Wellesley has a density of 23.8 units/acre. Since the Project has 24 units on 1.02337 acres, the density of the Project is 23.4 units/acre, which in comparison to other existing affordable housing projects in Wellesley, the Project density is almost exactly at the median value.

The Project is located at the end of a dead-end road occupied exclusively by single-family houses, and therefore represents a glaring increase in density relative to its immediate surroundings.

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### **b. Height and Bulk**

Under the terms of the Zoning ByLaw, the height of a building is measured from the average grade to the peak of the roof. For the Project, that height is 48.8 feet, approximately 4 feet higher than the height allowed in the SR-10 district. As noted above, the building is sited such that the garage level is not visible from Stearns Road. The apparent height above actual grade when viewed from Stearns Road is 44.0 feet, just under the allowed height, and softened by the appearance that the building is only three stories. When viewed from the Sprague Fields, the full apparent height of the building is visible at just under 56 feet, though from that perspective, the Sprague School and the NWCAC which share the viewshed, are also larger than the neighboring residences.

The truncated L-shape of the building and its location in the right rear corner of the lot mean that the length of the building is not seen in full view from the street. When viewed from Stearns Road the apparent width of the building is approximately 140 feet. While this dimension is proportional to the frontage of the Site (the longest in the neighborhood), this distance is perhaps three to four times wider than the neighboring homes. Overall the height and bulk of the building is significant when compared to the other single-family residential structures in the neighborhood.

### **c. Architectural Details**

The front façade of the proposed building employs a townhouse vernacular, and includes four gable roofs that are meant to give the appearance of separate buildings, and to tie the building into the neighborhood. Further, the building employs typical New England materials such as board and batten siding, clapboards and shingles, and running and standing trim. The third residential floor uses dormers, again reflecting typical residential construction, and the ground floor entrances use columns and roofs to mimic porches.

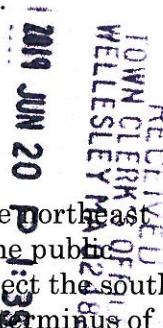
Less is done on the side facing the Sprague Fields, but the ZBA will condition the approval of the Project on additional revisions to this side of the building.

The ZBA recognizes that the proposed architectural elements will not eliminate the mass of the building but recognizes that these should help to mitigate its visual impact.

## **5. Transportation and Access**

### **a. Site Access**

Access to the Project will be provided by way of two new driveways one near the northeast corner of the Site, and the second a bit further to the west at the point where the public portion of Stearns Road ends. The first is a full access driveway that will intersect the south side of Stearns Road approximately 320 feet west of Francis Road (the current terminus of Stearns Road) and will provide access to the front of the proposed residential building by way of a one-way (counterclockwise) circular drive. The second is a full access driveway that will intersect the south side of an extension of Sterns Road (to be constructed as a part of the Project) and will provide access to the parking garage beneath the proposed residential building.



The Site access has been reviewed by both the Applicant's traffic engineer and the ZBA's traffic peer reviewer, who concur safe and efficient vehicular, pedestrian and bicycle access will be provided to the Project site and the Project can be accommodated within the confines of the existing and improved transportation system.

### **b. Public Transportation**

Public transportation services are not provided within the immediate vicinity of the Site. However, public transportation services are provided to the Town by the Massachusetts Bay Transportation Authority via the Wellesley Square Station on the Framingham/Worcester Line of the commuter rail system and the Metro-West Regional Transit Authority (MWRTA) bus Route 8 which provides three service stops through downtown Wellesley along Washington Street. In addition, the MWRTA also operates Paratransit Services for passengers who meet ADA requirements and provides transportation services for seniors and the disabled through the Wellesley Council on Aging. In an effort to encourage the use of alternative modes of transportation to single-occupant vehicles, the Project includes the collection and distribution of educational materials to make new residents aware of the public transportation opportunities available to them as new residents.

## **6. Traffic and Parking**

To assess the traffic impacts of the Project, the Applicant commissioned the "Transportation Impact Assessment" prepared by Vanasse & Associates, Inc. dated July 2018 (the "TIA"). The TIA was prepared in consultation with the Massachusetts Department of Transportation (MassDOT) and the Town; was performed in accordance with MassDOT's Transportation Impact Assessment Guidelines and the traffic review standards for a Project of Significant Impact as defined in the Zoning Bylaw; and was conducted pursuant to the standards of the traffic engineering and transportation planning professions for the preparation of such reports.

The TIA evaluated i) access requirements; ii) potential off-site improvements; and iii) safety considerations; under existing and future conditions, both with and without the Project.

The ZBA engaged VHB/Vanasse Hangen Bruslin, Inc. to perform a peer review of the TIA, and VHB concluded that the information contained in the TIA is both technically accurate and portrays the likely impacts of the Project on the surrounding roadway system.

The findings of the TIA for vehicular traffic, including both roadways and intersections, and pedestrian traffic, are as follows:

### **a. Vehicular Traffic**

The roadways assessed in the TIA included Stearns Road, Francis Road, and Worcester Street (Route 9), and the intersections assessed include (1) Francis Road/Stearns Road; (2) Francis Road/Worcester Street; (3) Worcester Street Westbound U-turns; (4) Worcester Street Eastbound U-turns; and (5) Worcester Street/Oak Street/Westgate Road.

Using trip-generation statistics published by the Institute of Traffic Engineers (the "ITE"),

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the Project is forecast to generate approximately 130 vehicle trips on an average weekday (two-way, 24-hour volumes), with eight vehicle trips expected during the weekday morning peak-hour and 11 vehicle trips expected during the weekday evening peak-hour. While these volumes of traffic are not unusual for most residential streets, the increase for the isolated Francis/Stearns Roads neighborhood is material.

The Project will not have a significant impact (increase) on motorist delays or vehicle queuing over existing or anticipated future conditions without the Project (no-build conditions), with the majority of the movements at the study intersections shown to operate at LOS D or better under all analysis conditions where an LOS of "D" or better is defined as "acceptable" operating conditions.

The addition of Project-related traffic to the Worcester Street/Francis Road intersection was shown to result in an increase in average motorist delay of less than 2.0 seconds for vehicles exiting Francis Road during the peak hours with no increase in vehicle queuing.

Independent of the Project, left-turn movements from the Worcester Street westbound approach to the Worcester Street/Oak Street/Westgate Road intersection were identified as operating over capacity (defined as LOS "F") during both the weekday morning and evening peak hours, with Project-related impacts at the intersection defined as an increase in vehicle queuing of up to one (1) vehicle.

All movements at the Francis Road/Stearns Road intersection, the primary access for the Project, are expected to operate at LOS A during the peak hours with negligible vehicle queuing predicted.

No apparent safety deficiencies were noted with respect to the motor vehicle crash history at the study intersections, with all of the study intersections found to have a motor vehicle crash rate that was below the MassDOT average crash rate.

Finally, lines of sight to and from the Francis Road/Stearns Road intersection were found to exceed or could be made to exceed the required minimum distance for the intersection to function in a safe manner; clear line of sight is provided to and from the Project Site driveways along Stearns Road.

In consideration of the above, the TIA concluded that the Project can be accommodated within the confines of the existing transportation infrastructure in a safe manner with implementation of the recommendations provided in the TIA.

#### **b. Pedestrian Traffic**

Neighbors to the Project and members of the public submitted substantial evidence regarding the use of Stearns Road by pedestrians. Due to the isolated nature of the Francis Road/Stearns Road neighborhood, the bulk of the pedestrian traffic is local residents walking to/from the Sprague Fields, and school-age children walking to/from the Sprague Elementary School, the Wellesley Middle School, or the Sprague Fields. Since there are no sidewalks on Francis or Stearns Roads, the pedestrian traffic uses the roadway itself to walk. The impact of the traffic associated with the Project on the existing pedestrian traffic was one of the significant issues during the public hearing. The ZBA's architectural peer

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reviewer Clifford J. Boehmer stated the opinion that by adding 24 new dwelling units at the end of a dead end road currently used by only eight (8) single family houses, the Project was appropriating the use of this roadway. The Applicant did not propose any solution to this problem nor did it address this issue to the ZBA's satisfaction before the close of the public hearing. There was consensus among the neighbors that they did not want major improvements to Stearns Road, but rather preferred to have the road stay the way it is.

#### **c. On-site Parking**

On-site parking will be provided for 48 vehicles consisting of 36 parking spaces in a garage to be located beneath the proposed residential building and 12 surface parking spaces located at the main entrance circle or adjacent to the garage entrance. The proposed parking results in a parking ratio of 2.0 spaces per dwelling unit. This parking ratio is at the upper end of the range of values documented by the ITE for an apartment community in a suburban setting.

### **7. Stormwater Management**

The proposed drainage system consists of a closed stormwater collection system in the parking lot which flows through a treatment unit before being infiltrated to groundwater using subsurface chambers. The roof runoff from the building also discharges to a second set of subsurface chambers for infiltration with a four inch overflow.

Consistent with accepted engineering practice, the Applicant prepared and submitted the "Stormwater Management Report" dated July 6, 2018 (the "Stormwater Report") that compared the runoff from the existing vacant lot to the runoff from the lot with the Project constructed. In addition, the Stormwater Report analyzed the stormwater management system to determine compliance with MassDEP Stormwater Management Policy.

The DPW, as the ZBA's stormwater peer reviewer, did not raise any major concerns in its memorandum regarding the proposed drainage plan. The memorandum indicates that in general the Project will improve water quality and reduce peak runoff rates, and is in compliance with the Massachusetts DEP Stormwater Management Policy.

### **8. Utilities**

Within Stearns Road, the Site is served by a variety of public utilities including water, sewer, natural gas, storm water, electric, telephone and cable.

#### **a. Water and Sewer**

The Applicant has indicated that the Project will consume about 6,171 gallons of water and produce 5,610 gallons of sewerage per day. The initial assessment of the DPW is that the existing infrastructure in Stearns Road is sufficient to meet those estimated needs.

#### **b. Solid Waste**

All residents of the Project will be responsible to collect their waste and dispose of in the designated trash/recycling area located in the garage level of the building. Waste will be

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collected from the garage-level storage area by a private rubbish removal company engaged by the condominium association (as defined below). The collection will be scheduled at off peak hours so as not to impede any entering or exiting traffic from tenants/guests. Therefore, the Project will not adversely affect the Town's Recycling and Disposal Facility

### **c. Private Utilities**

Natural gas, electric service, telephone service, and cable service can be provided on the same basis as to other residences in the Town.

## **8. Environmental Considerations**

There are no wetlands located on the Site, and a Negative Determination of Applicability was issued by the Wellesley Wetlands Protection Committee for the Site on December 15, 2015. The Applicant has shown the approximate 500-year flood plain on the Site plan, the Site is not known for flooding based on a review of DPW records.

Other than customary snow and ice control chemicals and fuel stored in the automobiles parked in the garage, storage of chemicals that would threaten groundwater or surface water is not part of the Project. The Site is not in a water supply protection district. Exterior lighting is planned to be dark-sky compliant, and the submitted photometric plan demonstrates that light spill-over to adjacent properties is prevented.

During the public hearing, members of the public noted that the adjacent Sprague Fields was subject to an activity and use limitation (an "AUL") due to contamination found during construction of the natural grass and artificial turf playing fields between 2005 and 2009. Since the Sprague Fields abut the Site, there was an expressed concern about activity on the Site adversely impacting the contamination, especially if such contamination spread to the neighborhood.

During the construction of the Sprague Fields, the Town had prepared the requisite studies and remedial measures to safely construct and use the Sprague Fields, including the preparation of a final report on the environmental activities, entitled "Phase IV Completion Statement, Response Action Outcome and Activity and Use Limitation" dated July 30, 2009 (the "Completion Statement"). Among other things, the Completion Statement found that the groundwater beneath the Sprague Fields is not a drinking water source. According to the MassDEP Priority Resources Map, there are no public water supply wells, zones of contribution to public water supply wells, or potentially productive aquifers mapped on or within one-half mile of the Sprague Fields. According to information from the Wellesley Board of Health, no private wells are located within 500 feet of the Sprague Fields. None of the identified concentrations of the relevant chemicals tested for exceeded the applicable groundwater clean up standards. Based on this data, the Completion Statement concluded that a condition of no significant risk exists with respect to the groundwater beneath the Sprague Fields.

Further, the Completion Statement explained that an AUL was required because a condition of no significant risk to safety, public welfare, and the environment has not been achieved at the Sprague Fields in regards to glass and sharp objects present in the subsurface. Visual and subsurface testing did indicate the surface soil and grass layers

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contained appreciable sharp objects to present a hazard to public health or safety. Based on the test pit excavations, visual inspection of the surface areas, discussions with maintenance personnel and the historic information on the property, the Completion Statement concluded that the top 12 inches of fill material in the southwest (Oak Street) portion of the field appear to contain sufficient metal or glass to be considered a hazard to users of the field. These areas have been capped with a geotextile fabric, clean fill and/or natural or synthetic field turf with the construction of the new fields, and the AUL was implemented.

Based on the Completion Statement and on the test pits dug on the Site, there is no significant risk that groundwater contamination at the Sprague Fields will impact the Site. Further, there is no evidence in the Completion Statement that activities on the Site, including controlled blasting, will cause the glass, metal and wood objects that are the cause of the AUL to migrate to the Site.

Finally, the Completion Report mapped the boundaries of the municipal waste disposal that was the source of all of the testing at the Sprague Fields, and determined that the municipal waste disposal area did not extend to the Site.

## **9. Public Safety/Life Safety**

During testimony at the public hearing, the Applicant stated that the building will be fully sprinklered, and the Deputy Fire Chief concurred with the statement. The Applicant also testified that a hydrant test was performed, and that sufficient flow and volume is available to meet the fire protection needs of the Project.

The Applicant submitted a fire vehicle access plan showing computer simulations of pumper truck and ladder truck turning movements demonstrating that the vehicles could safely access and egress the Site. Hence, fire vehicles and fire fighters will be able to access the building from the central circular drive, from the garage drive, or from the Sprague Fields. Similar vehicle access drawings show that police and fire emergency vehicles (ambulance) can also access the building whether at the main entrance or via the garage.

The Fire Department has not raised any concerns with the Project, but will review subsequent design development and construction drawings prior to the issuance of any building permit for compliance with State Code.

## **10. Signage**

The submitted drawings indicate a sign located to the right of the main entrance drive, about one foot back from the property line. No further details have been provided, so it is not yet known whether the sign complies with the other Zoning By-Law requirements with respect to the area, height, illumination, and lettering of the sign.

The submitted drawings indicate that signage related to traffic and parking control on the Site will comply with the applicable standards of the Manual of Uniform Traffic Controls.

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## Disposition of Major Local Concerns

### 1. Health

The concerns expressed about health issues related principally to the assertion that vibration and sound from the construction of the Project will adversely affect the patients at the NWCAC.

The expressed concerns did not quantify the levels of sound or vibration, but the NWCAC is subject to man-made sound and vibration from the school bus and vehicular traffic at the Sprague School and Sprague Fields, and vehicular traffic on Worcester Street which carries an average weekday traffic of 43,850 vehicles (two-way, 24 hour volume) with approximately 22,000 east bound. Further, the NWCAC has experienced construction of the adjacent Sprague Fields in 2006-2008, and the adjacent Sprague School in 2001-2002 without any documented distress to patients. Neither were any documents introduced into evidence that indicated what levels of sound or vibrations would adversely impact patients.

In addition, the controlled blasting plan indicates the vibrations from the planned controlled blasting will be limited to levels that are designed to cause no damage to building materials such as plaster, though such vibrations may be perceived by people.

In considering this local concern, the ZBA finds that the patients at the NWCAC have been exposed to sound and vibrations from past construction projects without submitted evidence of adverse effects, and hence the regional need for low- and moderate-income housing outweighs this local concern.

### 2. Safety

#### a. Vehicular Traffic Safety

The concern expressed for vehicular traffic was that Stearns Road is narrow, and that large vehicles such as trash removal truck cannot make a u-turn, but must backup the length of Stearns Road to exit, creating a safety hazard for pedestrians.

Both VAI and VHB studied the issue and concluded that the existing width of the traveled-way (paved area) along Stearns Road varies from 21 to 23-feet along its alignment, a width that is sufficient to accommodate two-way travel, and on-street parking is prohibited along both sides Stearns Road. These existing accommodations are sufficient to support access to the Site and the existing residences along Stearns Road given the low-volume, low speed environment of the roadway. The driveway that will provide access to the parking garage that will serve the Project has been designed to allow a school bus, fire truck or other similar vehicle to enter the driveway in order to reverse direction and exit Stearns Road in a forward travel, and represents an improvement over current conditions.

In considering this local concern, the ZBA agrees with the conclusions of its transportation peer reviewer, and to mitigate any safety hazard due to large vehicular backing, will accept the offer of the Applicant to allow large vehicles to turn around in

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the Project driveway, thus allowing vehicles to exit Stearns Road in a forward direction.

### **b. Pedestrian Traffic Safety**

Anecdotal evidence provided during the public hearing showed that due to the isolated nature of the Francis Road/Stearns Road neighborhood, the bulk of the pedestrian traffic is local residents walking to/from the Sprague Fields, and school-age children walking to/from the Sprague Elementary School, the Wellesley Middle School, or the Sprague Fields. Since there are no sidewalks on Francis or Stearns Roads, the pedestrian traffic uses the roadway to walk.

In reviewing this local concern, the ZBA considered the comments of its architect peer reviewer who suggested a requiring the Applicant to redesign Stearns Road as an architectural feature for shared space between vehicles and pedestrians akin to Downtown Crossing, and its transportation peer reviewer who suggested that liability issues may with such a plan may indicate that engineering solutions such as speed humps, walking paths or guardrails should also be considered.

In balancing the local concern for pedestrian safety with the regional need for low- and moderate-income housing, the ZBA concluded that the best solution was to study the impacts of the vehicular traffic on the pedestrian traffic after the Project has been completed. The Board proposed that the Applicant fund a study to be performed after completion of the Project to assess the impacts, and to propose measures to insure that pedestrian can safely continue to use Stearns Road.

### **c. Controlled Blasting Damage**

During the public hearing the concern expressed was that controlled blasting at the Site would adversely impact stormwater infrastructure and natural gas pipelines that underlie the Sprague Fields and the NWCAC and Sprague School parking lots and would place responsibility for repairs on the Town rather than the Applicant.

The controlled blasting plan submitted by the Applicant indicates that the level of vibrations from the controlled blasting is limited to levels low enough to avoid damage to plaster materials. Since the stormwater infrastructure and the natural gas pipelines are constructed of concrete and steel materials substantially stronger than plaster, the ZBA concludes that adverse impacts to the underground infrastructure are unlikely and that the regional need for low- or moderate-income housing outweighs this local concern.

## **3. Environment**

The concerns expressed about environmental issues related principally to the assertion that excavation and controlled blasting of ledge at the Site will disturb untested on-site soils which may contain and release the same substances found at the adjacent Sprague Fields, which overlie a former site for municipal waste disposal.

The Completion Report mapped the boundaries of the municipal waste disposal and shows

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WELLESLEY MASS.  
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482

that the dump area did not extend to the Site of the Project. Further, the test pits dug at the Site, including one at the corner of the Site closest to the adjacent Sprague Fields, did not show evidence of the materials found in the former municipal waste disposal area on the Sprague Fields. The former municipal waste disposal area filled in what were low spots in the topography, not the hills that the Stearns neighborhood occupies, and not the higher elevations present on the Site. As noted above, the test pits dug at the Site did not exhibit signs of municipal solid waste, and in fact exhibited the presence of rock, not solid waste over much of the Site.

The ZBA finds that the documentary evidences does not support the presence of municipal solid waste on the Site. Further, in the event that such material (or other hazardous material) is found on the Site, the Massachusetts Contingency Plan already contains procedure for treating such a discovery. Hence, the ZBA concludes that the regional need for low- or moderate-income housing outweighs this local concern.

### Waivers

The Applicant submitted a final list of requested waivers from the Town's bylaws, rules and regulations dated February 6, 2019. The ZBA acted on this specific list of requested waivers as follows:

#### A. Zoning Bylaws:

1. Section IIA. Single Residence Districts. The Applicant seeks a waiver of the use requirements of the Single Residence District to allow for the construction of a multi-family use that is not allowed in the district. The ZBA balanced the regional need for low- or moderate-income housing against the local concern for single family residences, and finds that the regional need for low- or moderate income housing outweighs the use of land for single family residences. Therefore, the ZBA grants the requested waiver to allow for a multi-family condominium development consisting of 24 units (18 market rate and 6 affordable) with parking and appurtenances as shown on the Approved Plans.
2. Section XVI. Restrictions Affecting All Districts. The Applicant seeks a waiver of this section to allow for the construction of a multi-family use that is not allowed in the district. The ZBA grants the requested waiver to allow for a multi-family condominium development consisting of 24 units (18 market rate and 6 affordable) with parking and appurtenances as shown on the Approved Plans. With respect to the specific requirements of this section, the ZBA finds that the Project complies with Sections XVI §§(A) through (C), and §§(G) through (I); the ZBA grants the procedural request to waive §(D)(4) to allow for the parking of an office trailer and a storage trailer on the Site during the period of construction of the Project only; the ZBA grants the procedural request to waive §(E) to the extent that the Comprehensive Permit procedure replaces the project approval process specified in Section XVIA and the special permit process specified in Section XXV; and the ZBA denies the waiver request in part by finding that, consistent with §(F), construction shall not start unless and until the Comprehensive Permit has been perfected, the Subsidizing Agency has granted final approval, and the Regulatory Agreement has been recorded at the Registry of Deeds. The ZBA waives any bonding requirements of §(F).

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3. Section XVIA. Project Approval. The ZBA grants a waiver of the requirement that the Project obtain design review, site plan review, and a Project of Significant Impact Special Permit. The ZBA notes that the subjects normally addressed in these reviews were reviewed as part of the ZBA's public hearing on the comprehensive permit application.

4. Section XVIC. Drainage Review. The ZBA grants a waiver of the requirement that the Project undergo separate drainage review pursuant to this section of the Zoning Bylaw. Notwithstanding the foregoing, the ZBA notes that the drainage was reviewed as part of the ZBA's public hearing on the comprehensive permit application.

5. Section XVIE. Tree Protection & Preservation. The ZBA waives the requirements of this section of the Zoning Bylaw; provided, however, that a waiver of the conditions contained in this section requiring maintenance of replanted or new trees in §(F)(4) is denied.

6. Section XVIIIB. Ratio of Building to Lot Area. The ZBA reviewed the actual ratio of building to lot area and finds that the regional need for low- or moderate income housing outweighs the local concern for the ratio of building to lot area. Therefore, the ZBA grants a waiver of the required ratio of 0.15 to allow for an actual ratio of 0.33 as shown on the Approved Plans.

7. Section XX. Heights of Buildings or Structures. The ZBA reviewed the actual building height and compared it to the allowed height of 45 feet, finding that the local concern for building height does not outweigh the regional need for low- or moderate income housing. Therefore, the ZBA grants a waiver of the maximum building height to allow for an actual building height of 48.9' (based on the average finished grade of 155.2') and 4 stories as shown on the Approved Plans.

8. Section XXI. Off Street Parking. The ZBA grants a waiver of the requirements of Section XXI so as to allow for the construction of resident parking spaces, guest parking spaces, and maneuvering aisles as shown on the Approved Plans, which the ZBA finds is consistent with accept industry practice for residential buildings in suburban areas and which outweighs the local concern for off-street parking.

9. Section XXII. Design Review. The ZBA grants a waiver of the requirement for separate review by the Design Review Board for this Project. The ZBA notes that subjects normally addressed during Design Review were reviewed as part of the ZBA's public hearing on the comprehensive permit application.

10. Section XXIIA. Signs. The ZBA grants a waiver of Section XXIIA with respect to the location of the signs shown the Approved Plans (as defined below). The Applicant did not present any dimensions, depictions, or renderings of any signs associated with the Project as part of its application, therefore no further waiver is granted with respect to the Town's regulations regarding signs.

11. Section XXIID. Retaining Walls. The ZBA finds that to the extent the proposed rock wall on the western lot line and a portion of the southern lot line retain less than four feet of unbalanced fill, no waver is required. The ZBA grants the waiver to the extent that

its action on this comprehensive permit shall obviate the need to apply for any special permit under Section XXIID, and to authorize, as a matter of zoning, the retaining wall as shown on the Approved Plans. The ZBA notes that nothing contained in this decision affects any applicable requirement of the State Building Code.

B. Other Rules and Regulations.

11. Rules and Regulations for Tree Preservation and Protection. The ZBA grants a procedural waiver of the need for separate review under these rules and regulations. Landscaping has been reviewed and approved by the ZBA through M.G.L. c.40B comprehensive permit process in accordance with State law and regulations. The ZBA notes that nothing contained herein obviates the need for the Applicant to comply with the *Public Shade Tree Act*.

12. DPW Municipal Stormwater Drainage System Rules and Regulations. The ZBA grants a waiver of the need for separate review by the DPW. Stormwater management has been reviewed by the ZBA during the M.G.L. c.40B Comprehensive Permit process and is approved as shown on the Approved Plans.

13. DPW Utility and Work in Public Way—Rules and Regulations. The Applicant requested a waiver of “DPW Utility and Work in Public Way—Rules and Regulations.” The ZBA denies this requested waiver because the Applicant has not made clear what specific DPW requirements it is seeking a waiver of. The DPW has reviewed the plans submitted during the public hearing on the comprehensive permit application, but there is nothing in the record of the hearing to support a waiver of any regulation with respect to specific work to be performed in the public way, or with respect to utility connections associated with this Project.

\* \* \* \* \*

The ZBA grants only the specific waivers itemized above. If it appears after issuance of this Comprehensive Permit that any additional waiver is needed, the Applicant shall be required to seek the approval of the ZBA.

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## Conditions to the Comprehensive Permit

The ZBA's approval of the Comprehensive Permit for the Project is subject to the Applicant's and the Project's compliance with the following conditions. All requirements imposed by these conditions or this Comprehensive Permit shall be applicable to the Applicant, the organization of unit owners of the condominium to be established pursuant to M.G.L. c.183A (the "Condominium Association"), and the unit owners, regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

### General

1. The Project shall be constructed in accordance with the following plans and written materials, subject to all revisions specifically provided for in the conditions of approval set forth herein:

Plan Number	Drawing Title	Date of Issue	Prepared By	Date of Revision
C	Cover Sheet	7/6/18	Grazado Velleco Architects, Inc.	1/28/19
A1	Garage Level	7/6/18	James A. Velleco, R.A.	1/28/19
A2	First Residential Level	7/6/18	James A. Velleco, R.A.	1/28/19
A3	Second Residential Level	7/6/18	James A. Velleco, R.A.	1/28/19
A4	Third Residential Level	7/6/18	James A. Velleco, R.A.	
A4	North and West Elevations	1/28/19	Grazado Velleco Architects, Inc.	
A5	Elevations	7/6/18	Grazado Velleco Architects, Inc.	
A5	South and East Elevations	1/26/19	Grazado Velleco Architects, Inc.	
A6	Eye Level Sketch	1/12/18	Grazado Velleco Architects, Inc.	
A7	Eye Level Sketch from Playfields	1/12/18	Grazado Velleco Architects, Inc.	
C1	Layout Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 4/5/18, 7/6/18, 10/19/18, 12/3/18, 12/7/18, 12/11/18, 12/21/18, 2/20/19, 3/7/19

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C2	Grading Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C2A	Soil Test Pit	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/11/18, 12/21/18, 3/7/19
C3	Utility Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C4	Erosion Control Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C5	Photometrics Plan	1/12/18	William R. Bergeron, P.E.	2/15/18 7/6/18 10/19/18 12/3/18 12/11/18 12/21/18 3/7/19 RECEIVED CLERK'S OFFICE TOWN CLERK 3/7/19
C6	Fire Vehicle Access Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18
C6A	Fire Vehicle Access Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C6B	Bus Vehicle Access Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18,

				12/3/18, 12/11/18, 12/21/18, 3/7/19
C6C	Fire Vehicle Access Plan	1/12/18		2/15/18, 7/6/18, 10/19/18, 12/11/18, 12/21/18, 3/7/19
C7	Utility Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C8	Utility Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C9	Site Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C10	Erosion Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
	Existing Conditions	7/19/17	Field Resources, Inc.	1/12/18
	Plan of Land	7/19/17	Field Resources, Inc.	1/12/18
L1	Landscape Plan	1/12/18	James K. Emmanuel, R.L.A.	2/15/18, 7/6/18, 10/19/18, 12/11/18, 12/21/18, 1/14/19, 3/7/19

WSE	Existing Watershed Map	7/6/18	William R. Bergeron, P.E.	
WSP	Proposed Watershed Map	7/6/18	William R. Bergeron, P.E.	
A5a	Elevations without landscaping	7/6/18	Grazado Velleco Architects, Inc.	
H1	Design Phase Height Comparison Neighboring Houses are Approximate	11/12/18	Grazado Velleco Architects, Inc.	
H2	Design Phase Height Comparison Neighboring Houses are Approximate	11/12/18	Grazado Velleco Architects, Inc.	
H4	Stearns Road Height Comparisons	3/3/19	James A. Velleco, R.A.	
H5	Stearns Height Comparison 2	3/3/19	Grazado Velleco Architects, Inc.	
C1	Context Map Stearns Road and Worcester Road	10/10/18	Hayes Engineering, Inc.	
C1	Context Map Stearns Road and Worcester Road	10/10/18	Hayes Engineering, Inc.	
	16 Stearns Road and 680 Worcester Street Shadow Study Diagram Summer Solstice June 21 – 6:40 am, Noon, 5 pm			
	16 Stearns Road and 680 Worcester Street Shadow Study Diagram Autumnal Equinox (Spring Similar) September 22 – 8 am, Noon, 3:30 pm			RECEIVED TOWN CLERK'S OFFICE WELLESLEY MA 02482 1 2019 JUN 20 P 1:36
	16 Stearns Road and 680 Worcester Street Shadow Study Diagram Winter Solstice December 22 – 9:10 am, Noon, 2:10 pm			

Stormwater Management Report dated December 5, 2018 and revised December 26, 2018. Operation and Maintenance Plan and Long-Term Pollution Prevention Plan dated June 20, 2018 and revised December 14, 2018.

Construction Management Plan Project: 16 Stearns Road, Wellesley, Ma.  
Transportation Impact Assessment dated June 2018.

(collectively, the "Approved Plans").

2. This Permit authorizes the construction, use and occupancy of twenty four (24) dwelling units, with twenty-one (21) two bedroom units and three (3) three bedroom units. Building size and unit mix, including the number and location of bedrooms, shall be as shown on the Approved Plans.

3. Six (6) dwelling units shall be reserved in perpetuity for purchase and occupancy by low or moderate-income households earning no more than eighty (80) percent of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA (HUD Metro Fair Market Rent Area), as determined by the U.S. Department of Housing and Urban Development (HUD) and as adjusted for household size (the "Affordable Units"). None of the Affordable Units shall be one (1) bedroom units, five of the Affordable Units shall be two (2) bedroom units, and one of the Affordable Units shall be three (3) bedroom units, or as otherwise may be required by the subsidizing agency. The initial sales prices of the Affordable Units shall be established in accordance with the requirements established by the Department of Housing and Community Development in its Comprehensive Permit Guidelines.

4. All dwelling units approved under this Comprehensive Permit shall be ownership units.

5. The Project shall contain a total of 48 parking spaces as shown on the Approved Plans.

6. There shall be no parking on the internal Site driveways, outside of designated parking areas shown on the Approved Plans, and no parking outside of the Site of Stearns Road or Francis Road.

7. Locations of signs identifying the development shall be limited to those shown on the Approved Plans.

8. There shall be no pavement added to the Project beyond that which is depicted on the Approved Plans and there shall be no additional accessory structures added to the Project or to the Site other than what is shown on the Approved Plans.

9. All utilities shall be installed underground (with the exception of junction boxes, transformers and similar appurtenances) by the Applicant using methods standard to those installations. Utilities shall include electric service lines, gas service, telephone lines, water service lines, CATV lines, municipal conduit, stormwater management systems, and the like.

10. The water, wastewater, drainage, and stormwater management systems servicing the buildings shall be installed and tested in accordance with applicable Town of Wellesley standard requirements and protocols.

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11. The stormwater design shall function consistent with the Approved Plans, as revised, and with the Stormwater Report, prepared by Hayes Engineering dated July 6, 2018.

**Submission Requirements—Prior to Commencement of Any Construction Activity**

12. No construction activities for the Project shall commence on the Site until the Applicant has submitted evidence to the Building Inspector that the Applicant is the record owner of the Site.

13. No construction activities for the Project shall commence on the Site until the Applicant has submitted evidence that it is in good standing with the Corporations Division of the Secretary of the Commonwealth's Office.

14. No construction activities for the Project shall commence on the Site until the Applicant has obtained Final Approval of its Subsidizing Agency and presented evidence of same to the Building Inspector.

15. No construction activities for the Project shall commence on the Site until the Applicant has recorded at the Norfolk Registry of Deeds copies of this Comprehensive Permit and the Regulatory Agreement for the Project and delivered certified recorded copies of the Regulatory Agreement to the Building Inspector.

16. No construction activities for the Project shall commence on the Site until the Applicant has properly marked the limits of disturbance around the Site. The Building Inspector shall inspect the Site after such marking prior to any disturbance.

17. No construction activities for the Project shall commence on the Site until the Applicant has submitted to the Building Inspector a revised Construction Management Plan and Construction Management Schedule (CMP) as necessary to conform to accepted industry practice and addresses all construction-related conditions specifically set forth below in this Comprehensive Permit. Without limiting the foregoing, the CMP shall include:

- a. Construction schedule in order to provide guidance and facilitate inspections.
- b. Trucking plan, which shall specify planned truck routes, estimated volumes of any imported and exported materials, estimated truck trips and construction period mitigations measures consistent with the conditions set forth herein, including without limitation details and locations of crushed stone entrance pads, street sweeping protocols and dust control measures.
- c. Construction administration (hours of construction, deliveries, and debris removal).
- d. Communication (designated contacts on site).

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- e. Noise and dust control.
- f. Controlled blasting schedule.
- g. Erosion control.
- h. Dewatering.
- i. Identification of existing underground utilities.
- j. Construction staging (staging areas, trailer locations, open storage areas, deliveries, truck holding locations), which shall be sufficient to ensure that there is no vehicle queuing, idling, parking or staging on Stearns Road, Francis Road and Route 9 under any circumstances.
- k. Traffic and parking during construction, including arrangements for off-site parking by all workers and shuttling to and from the off-site location (subject to the requirements otherwise contained herein).
- l. Location of trailers, dumpsters, and restrooms.

18. The CMP shall be included or incorporated by reference in the general construction contract and all sub-contracts, and compliance with its terms shall be a contract condition for all contractors working at the Site.

19. No construction activities for the Project shall commence until the Applicant has provided to the Building Inspector and the Town Engineer video documentation of the condition of Francis Road from Worcester Street to Stearns Road, and of Stearns Road from Francis Road to the Sprague School property for the purpose of establishing the baseline condition of these roads before the beginning of Project construction.

20. No construction activities shall commence for the Project until the Applicant has created a website or adapted an existing website, to provide Town officials and residents access to the most current scheduled activities and to provide notification of upcoming Project events that reasonably have the potential to impact the surrounding neighborhood, the traffic on Stearns Road, Francis Road or Worcester Street. Such scheduled activities shall be shown in a two-week or three-week (whichever the Applicant 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 Applicant 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 Comprehensive Permit. The number will be provided to Town officials, posted at the Site in a conspicuous location visible to the public from Stearns Road, and published once in the Wellesley Townsman prior to or concurrent with the start of construction. The Applicant shall provide written notice to the Building Inspector that this website is up and running. The Applicant shall maintain this website throughout the term of construction for the Project, and update it regularly as schedules change.

## **Submission Requirements—Prior to Issuance of a Building Permit**

21. During design development and the preparation of construction documents, the Applicant shall assure that the southern elevations of the building (all those that face Sprague Field) provide for the increased articulation of the massing of those faces of the building in accordance with the testimony of the ZBA's architectural consultant Clifford J. Boehmer during the March 26, 2019 public hearing, through the use of differing color schemes for the different facets, as well as contrasting color schemes for the porches.

22. The Applicant shall provide to the Building Inspector evidence that it has secured an off-site location that is sufficient to provide parking for all construction workers associated with the Project, and that the use of said off-site location for this type of parking is an allowed use of the selected property under the applicable zoning bylaw.

23. The Applicant will provide an easement in a form suitable for recording, and which shall be subject to review by Town Counsel, over the 24' x 24' "Proposed Access Easement" shown on the approved plans. This access easement shall provide for vehicles, including public, municipal and private service vehicles, to use the easement area to turn around within the site in order to avoid the scenario where vehicles would otherwise be required to reverse down the length of Stearns Road.

24. The Approved Plans show a sidewalk from the Site to Sprague Field that passes partially over Town-owned land. Accordingly, prior to issuance of a building permit the Applicant shall work in good faith with the Town to obtain the right to install and maintain the sidewalk on Town-owned land as shown on the Approved Plans, and shall provide written documentation of its efforts to the Building Inspector.

25. No building permit shall issue until the Applicant has prepared subsequent detailed design development and construction drawings (including without limitation civil, structural, mechanical, electrical, landscaping and architectural plans) that have been revised in accordance with the terms of the Conditions of Approval, and said construction drawings have been reviewed and approved by the Building Inspector and others as specifically provided for below, solely for consistency with this Comprehensive Permit:

- i. Revised stormwater plans shall be submitted to the Town Engineer for review to confirm consistency of such plans with the Approved Plans;
- ii. Detailed plans of the following utilities and services shall be prepared in accordance with all applicable regulations and requirements and shall be submitted for review and approval by the listed authorities prior to endorsement of the final plans:
  1. Water mains - Town of Wellesley DPW;
  2. Fire hydrant locations - Town of Wellesley Fire Chief;
  3. Primary and secondary electrical cables including distributions boxes and transformers – Wellesley Municipal Light Plant & Wiring Inspector;

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4. Telephone cables and street lighting - Wiring Inspector.

The Applicant shall submit with the subsequent detailed design development and construction drawings provided for herein an itemization of all revisions to the Approved Plans and a certification from the Engineers of Record that these plans fully incorporate all requirements of these conditions as set forth herein.

**Conditions on Construction**

26. Site work and construction shall be restricted to the hours between 7:00 am and 5:00 pm, Monday through Friday and between the hours of 8:00 am and 4:00 pm on Saturday. There shall be no construction on Sundays, or on state or federal holidays. Additionally, construction vehicles and/or equipment shall not be started or operated prior to, or after the times stated herein. For this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and the erection of new structures.

27. There shall be no queuing, idling, parking or staging of construction vehicles, construction worker vehicles, or delivery vehicles on Stearns Road and Francis Road under any circumstance.

28. Erosion control shall be employed on the Site to stop erosion during construction and prevent sedimentation from entering the abutting public ways and adjacent wetland areas.

29. During construction, the Site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner.

30. The Applicant shall regularly remove construction trash and debris from the Site in accordance with good construction practice.

31. All potential safety hazards that may exist on the Site from time to time during the period of construction shall be adequately secured prior to the end of each workday.

32. The Applicant shall implement measures to ensure that noise from Project construction activities does not exceed permissible regulatory levels, including, without limitation, DEP's noise regulations at 310 CMR 7.10 and noise pollution policy interpretation.

33. Controlled blasting shall be conducted in accordance with the requirements of M.G.L. c.148, 527 CMR 1.00 and the Wellesley Fire Department; provided, however, that given the number of sensitive receptors in the immediate area, including residential abutters to the east and north, the NWCAC to the north, and the Sprague Elementary School and Town athletic fields immediately to the west, the Applicant shall at a minimum employ seismographs during controlled blasting operations to

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provide readings relative to 10 Stearns Road, the Stearns Road frontage, the NWCAC, and the Sprague School property, under the supervision of the Fire Department.

34. The Applicant shall notify the Wellesley School Department, the administration of the Sprague School, the Wellesley Recreation Department, and the Newton-Wellesley Center for Alzheimer's Care in writing, by certified mail, of its intent to commence controlled blasting at the site at least sixty (60) days before the first scheduled day of controlled blasting operation, and shall include with this notice its anticipated controlled blasting schedule for the duration of the controlled blasting operation. This information shall also be published on the website required above.

35. If the applicant encounters any contaminated or unnatural fill, or buried debris, during site preparation, controlled blasting, or construction, it shall investigate, report and remediate the contamination and/or fill as required by the Massachusetts Contingency Plan, 310 CMR 40.0000.

36. During construction the Applicant shall ensure that dewatering activity does not create (a) offsite issues or (b) problems for the proposed stormwater recharge system.

37. The Applicant shall be permitted to remove and/or replace earth from the Site incidental to the construction of the residential building, the construction of the drainage and underground infiltration system and the construction of the roadway and utility infrastructure as shown on the Approved Plans. Hours of operation for earth removal shall be 7:00 am - 5:00 pm, Monday through Friday; there shall be no hauling on Saturday or Sunday.

38. The Applicant may locate trailers on the Site during construction activity only. During construction all trailers, dumpsters, and portable restrooms shall be placed within the Site so as to not impact the residential abutters or users of Sprague Field.

39. The Applicant shall maintain all portions of any road used for construction access free of soil, mud or debris due to use by construction vehicles associated with the Project. Any material tracked onto a public way shall be swept up and removed by the Applicant on a daily basis.

40. The Applicant shall repair in a timely manner any damage to roads adjacent to the Project that results from the construction and/or maintenance of the Project to the standard that existed prior to commencement of construction, as established by video documentation provided for above.

41. A temporary construction sign no greater than twenty (20) square feet in size may be erected on the Site at the time of issuance of a building permit. This sign shall list the website required above and include contact information.

42. No construction workers or contractors may park on Stearns Road, Francis Road or any other way, or on the Site, during construction. The Applicant shall arrange for adequate off-site parking for all of the construction workers/contractors that will work on this Site, and shall be responsible for ensuring that all construction workers/contractors

park at this off-site parking location. The Applicant shall arrange for workers to be shuttled between the off-site parking location and the Site.

43. Any idling of vehicles on the Site shall be limited to five minutes or less in accordance with M.G.L. c.90, §16A, and the Applicant shall post clearly visible signage on the Site, to be maintained for the duration of the construction period, noting this requirement. As stated in Condition 27, there shall be no idling whatsoever on Stearns Road or Francis Road.

44. The construction process shall conform to all applicable local, state and federal laws and regulations regarding noise, vibration, dust and sedimentation, use and interference with Town roads.

45. The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation DEP's dust regulations at 310 CMR 7.09, as amended, as directed by the Building Inspector. Methods of controlling dust shall meet all applicable air pollutant standards as set forth by Federal and State regulatory agencies.

46. The Applicant shall, upon advance notice, permit Town and Board members, agents, and representatives to observe and inspect the Site and construction progress until such time as the Project has been completed.

47. The Applicant shall notify the relevant town departments of installation of utilities and infrastructure for inspections prior to backfilling.

48. Upon completion of the Project, soil material used as backfill for pipes, access drives, infiltration beds, and other underground drainage structures shall be certified by the Engineer of Record to the Building Inspector as meeting design specifications.

49. The Project shall conform to all pertinent requirements of the Americans with Disabilities Act and the Architectural Access Board Regulations (521 CMR 1.0 et. seq), except as may be waived, in accordance with applicable law and regulation.

50. The ZBA notes that Jay J. Derenzo, a principal in the Applicant 16 Stearns LLC has, through another entity, proposed to construct a separate project at 680 Worcester Street pursuant to M.G.L. c.40B, §§22-24. There shall be no use of the Site whatsoever to support any site work, construction activity or administration, parking, or vehicle, equipment or materials storage associated with property located at 680 Worcester Street.

### Legal Requirements

51. The Applicant has proposed, and the ZBA hereby requires, that the following common facilities and services of the Project, to the extent located on the Site, shall be and shall remain forever private, and that the Town of Wellesley shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- a. All internal roadways, walkways and parking areas;

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- b. Stormwater management system, including the maintenance of catch basins, infiltrator units, bio-swales, underground infiltration structures and the like;
- c. Snow removal;
- d. Landscaping and landscape maintenance;
- e. Trash removal;
- f. Water system within the Site for both domestic use and fire protection, including hydrants; and
- h. Wastewater infrastructure within the Site.

The common facilities referred to above shall be maintained in perpetuity by the Condominium Association to be established as provided for herein.

52. The Applicant shall provide for the Condominium Association and each owner to maintain and repair all common areas and facilities, including the stormwater management system, wastewater disposal systems, landscaping, and other improvements within the Site. The condominium documents shall set forth the obligations of the Condominium Association for the operation and maintenance of all such common areas and improvements and shall reference the affordability requirements upon which the Comprehensive Permit is conditioned. Prior to the issuance of any certificate of occupancy, the Applicant shall provide documents establishing such Condominium Association to the ZBA for approval by Town Counsel as to form and for verification that such documents are in conformance with this Comprehensive Permit and shall certify to Town Counsel that same comply with M.G.L. c.183A. The Condominium Association shall adopt rules and regulations and a copy shall be provided to the ZBA.

53. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities and services until the recording of the Master Deed of the condominium, to the extent that such installation, operation and maintenance is a condition required in this Comprehensive Permit. Upon the recording of the Master Deed, the installation, operation and maintenance obligations shall be joint and several with the Applicant and the Condominium Association until the perfection of the sale of the last dwelling unit. Thereafter, such operation and maintenance shall be the responsibility of the Condominium Association. The provisions of this paragraph shall not modify the obligation of the original Applicant and the Condominium Association.

54. The Affordable Units shall constitute a percentage (beneficial) interest in the Condominium Association that shall be in proportion to the initial price of the Affordable Units to the sum of the projected initial prices of the affordable and market-rate units.

55. The Condominium Association and purchasers of all units shall be bound in perpetuity by all conditions and restrictions contained in this Comprehensive Permit.

56. The condominium documents for the Project shall provide that:

- a. There shall be no amendments to provisions regarding or relating to the Affordable Units or conditions set forth in this Comprehensive Permit without ZBA approval.
- b. Conditions set forth in the Comprehensive Permit concerning condominium governance must be set forth in the documents; in the event of any conflict

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between the condominium documents and the Permit, the terms of the Comprehensive Permit shall control.

c. The Master Deed shall reference the Deed Rider and the Regulatory Agreement.

57. The Applicant shall assure that the proper covenants are included in the Condominium Association's documents to address the following:

- a. To the extent permitted by law, there shall be no conversion of interior space into additional bedrooms.
- b. Disposal of yard and landscaping waste inconsistent with sound land management and composting practices shall not be permitted in the surrounding wooded areas on the Site.
- c. The removal of trees outside the limitation of disturbance shown on the Approved Plans shall be limited to the removal of invasive species, fallen or dead trees, and trees that in the opinion of a licensed arborist pose a threat to nearby structures.
- d. Trash and recycling receptacles shall be stored inside the designated area shown on the Approved Plans except during collection.
- e. All Town bylaws and regulations concerning home-based businesses shall be applicable to the units.
- f. Operation and maintenance of the stormwater management system and the sewage disposal system shall be the responsibility of the Condominium Association.
- g. Unit owners shall submit to the Condominium Association copies of all applications for building permits.
- h. Pet waste shall be picked up on the Site and disposed of in the toilet or trash receptacle.
- i. The storage, use and disposal of any household hazardous wastes shall be properly and safely conducted.
- j. Only calcium-based deicer substances shall be used.
- k. All catch basins shall be fitted with oil and grease traps.
- l. No new plantings shall include any invasive species.
- m. There shall be no rentals of the market rate dwelling units for terms shorter than twelve (12) months; any rentals of affordable units shall comply with the terms of the Regulatory Agreement and Deed Rider.

58. All necessary easements shall be granted by the Applicant where required by public utility companies or the Town of Wellesley. The aforementioned easements shall be recorded in a timely manner and shall be submitted to the Building Inspector prior to occupancy.

59. All landscaping required by this Permit shall be guaranteed for a period of twelve (12) months by the Applicant. The Applicant shall be responsible for replacing dead, dying and/or diseased plantings within this time period. Verification of the dates of planting must be submitted to the Building Inspector.

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60. This Comprehensive Permit shall be recorded at the Norfolk Registry of Deeds senior to all other liens or encumbrances other than pre-existing easements of record and existing mortgages.

61. If at any time during construction, the Building Inspector, Town Engineer or the ZBA determines that a violation of the Approved Plans or this Comprehensive Permit has occurred, the Town, through the Building Inspector or the ZBA, shall notify the Applicant by certified mail and the Applicant shall be given thirty (30) days (or lesser time period if in the sole opinion of the Town that said violation creates an emergency condition) to rectify said violation or construction activities shall be ordered to cease until the violation is corrected.

### Affordability Requirements

62. Twenty five percent (25%) of the total units in this development (or six (6) units) shall be available in perpetuity for purchase and occupancy by households whose income is no more than 80% of the Median Family Income for the Boston-Cambridge-Quincy, MA NH HMFA, adjusted for household size and as determined by the United States Department of Housing and Urban Development (the "Affordable Units"). Applicants must satisfy all other applicable eligibility requirements including, but not limited to First Time Home Buyer status and maximum asset level requirements. Before any Affordable Unit is sold, the Applicant shall submit to the Building Inspector the proposed form of Deed Rider to be attached to and recorded with the Deed for each and every affordable unit in the Project at the time of each sale and resale, which Deed Rider shall restrict each such unit in accordance with this requirement in perpetuity in accordance with the requirements of M.G.L. Chapter 184, sections 31-33. Each Deed Rider for the Affordable Units in the Project shall set forth the period of affordability to be in perpetuity.

63. A Massachusetts Housing Finance Agency Regulatory Agreement for either Comprehensive Permits Projects in Which Funding is Provided Through a Non-Governmental Entity, or for the Housing Starts Program or a regulatory agreement with another qualifying subsidizing agency, shall be executed prior to the issuance of the Building Permit for the Project. This Regulatory Agreement shall set forth the terms and agreements relative to the sale and resale of the Affordable Units in the development. The Regulatory Agreement shall be submitted to the Building Inspector prior to its recording.

64. To the maximum extent permitted by law, and applicable regulation local preference for the occupancy of seventy percent (70%) of the Affordable Units shall be given to residents of the Town of Wellesley satisfying all applicable eligibility requirements. For the purpose of this condition, and subject to any legal requirements, "residents of the Town of Wellesley" shall, to the extent not otherwise prohibited or limited by the provisions of relevant governing regulations or requirements, include, but not be limited to, the following: current Wellesley residents; employees of the Town of Wellesley, Wellesley Public Schools; and members of the household of children attending the Wellesley Public Schools. This Condition shall be enforceable only to the extent the local preference requirement set forth herein is approved by the Subsidizing Agency based on information that the Town shall be responsible to provide in accordance with the requirements of DHCD set forth in its Chapter 40B Guidelines.

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65. The affordability requirement of this Comprehensive Permit shall be senior to any mortgage liens on the Affordable Units. The Applicant shall be required to use a Deed Rider consistent with this requirement.

66. The six (6) Affordable Units shall have similar amenities as the market-rate units and the subsidizing agency shall approve the distribution of the Affordable Units throughout the Project.

67. The Affordable Units shall be owner-occupied, except for bona fide temporary absences not to exceed twelve (12) months, during which rental may be permitted to qualified households upon approval of the Monitoring Agent and subject to the affordability restrictions set forth in the Regulatory Agreement.

68. To the extent required by law, if a household or households requiring handicap access modifications is selected in the lottery for the initial sales of the Affordable Units, the Applicant shall make reasonable modifications to the interior of the Affordable Unit(s) provided such modifications do not include structural changes to the building and do not exceed five (5) percent of the initial sales price of the Affordable Unit, at the Applicant's expense to accommodate such household. The Applicant shall not be held responsible for such modifications if the construction of the Affordable Unit has progressed beyond the construction stage that undertaking such changes will cause delays to the construction schedule.

#### **Miscellaneous**

69. Enforcement of the conditions of this decision shall be by the Building Inspector or the ZBA to the extent permitted pursuant to the terms of M.G.L. c.40B, §§20-23 and 760 CMR 56.

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70. Prior to issuance of the final certificate of occupancy, the Applicant shall:

- a. Submit to the Department of Public Works (DPW), in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all utilities, roadway, sidewalk and associated construction, and stormwater management systems. The file format shall be in accordance with the DPW's requirements. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet [or Meters, as required by the Town].
- b. Submit to the Building Inspector as-built plans for all buildings in the Project.
- c. Complete all items on the Department of Public Works' site construction punch list.

71. The Applicant shall make a payment of \$10,000 to the Town of Wellesley for the purpose of funding a study, to be conducted by the Town or its selected consultants, of the post-construction impacts of the Project on the use of Stearns Road, and in particular on the use of Stearns Road as an active and safe pedestrian corridor, and the recommendation of improvements to the road and/or right of way to address those impacts. The Applicant shall deposit an additional \$25,000 for the purpose of implementing the recommendations of the study. Any portion of the \$10,000 payment not used for the study may also be applied for the purpose of implementing the recommendations of the study. The Applicant shall make these payments to the Town prior to the issuance of the Certificate of Occupancy for the Project. This study will begin no sooner than one (1) year after issuance of a certificate of occupancy to ensure that the impacts of a fully occupied project on Stearns Road are assessed, and any unexpended funds shall be returned to the Applicant three (3) years after issuance of the Certificate of Occupancy for the Project.

72. Two (2) public shade trees (one 8 inch red maple and one 18 inch red maple) on the Site are identified in the Town's tree census. The Applicant shall comply with the requirements Massachusetts *Public Shade Tree Act* to the extent it seeks to remove said trees.

73. The Applicant shall pay all permit application fees normally charged by the Town.

74. This Permit is granted to the Applicant and, prior to substantial completion of the Project, while individual condominium units within the Project may be sold, this Comprehensive Permit may not be transferred or assigned to any party without approval of the Subsidizing Agency and notice to the ZBA, as required by 760 CMR 56.05(12)(b). The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the Applicant and the successors and assigns of the Applicant, and the obligations contained herein shall run with the land. In the event that the Applicant sells, transfers, or assigns a portion or all of its interest in the development, this Comprehensive

Permit shall be binding upon the purchaser(s), transferee(s), or assignee(s) and any successor purchasers, transferees or assignees.

75. Any and all references to the "Applicant" herein shall include any authorized successors or assigns of the Applicant, including, but not limited to, the Condominium Association created relative to the Project and all individual unit owners. The terms, provisions and conditions of this Permit shall burden and benefit the successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance where the Town or the Applicant is named or referred to.

76. Any changes to the Project must be reviewed by the ZBA in accordance with the procedure set forth in 760 CMR 56.05(11).

77. The Applicant shall comply with all local regulations and bylaws as of the date of this Permit, except for those which are waived in accordance with the Exceptions granted in "Waivers" section above or as otherwise expressly set forth in this Decision.

78. This Permit shall become void if the Applicant does not commence with development of the Project as approved herein within three (3) years of the date this Permit becomes final, in accordance with 760 CMR 56.05(12). Commencement of development shall mean that the Applicant obtains a building permit for the construction of the Project and commences substantive construction work under that permit. The ZBA may grant extensions for good cause.

79. All construction of the Project shall be completed within four (4) years from the date of issuance of the building permit unless a request is filed with, and approved by, the ZBA extending such time.

80. If any provision of this Comprehensive Permit or portion of such provision or the application thereof to any person or circumstances is for any reason held invalid or unenforceable, the remainder of this Comprehensive Permit (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

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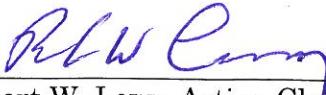
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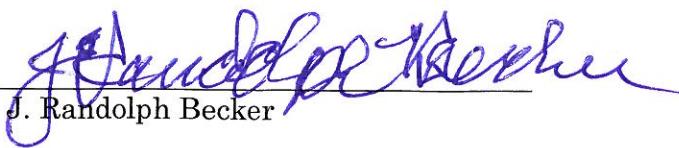
ZBA 2018-65

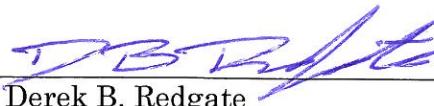
Petition of 16 Stearns Road, LLC  
16 Stearns Road

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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.

  
Robert W. Levy, Acting Chairman

  
J. Randolph Becker

  
Derek B. Redgate

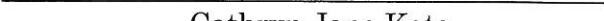
ZBA 2018-65  
Applicant 16 Stearns Road, LLC  
Address 16 Stearns Road

**NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK**

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

  
Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings

**DECISION**  
**16 Stearns Road, Wellesley, Massachusetts**  
**Comprehensive Permit**

**Decision Number:** 2018-65  
**Date Application Filed:** August 7, 2018  
**Applicant:** 16 Stearns Road, LLC  
**Premises Affected:** 16 Stearns Road, Assessor's Map 122, Lot 19 (the "Site")  
**Relief Requested:** Comprehensive Permit, G.L. c. 40B, §§ 20-23  
**Public Notice:** August 23 and 30, 2018  
**Public Hearing(s) held:** September 6, 2018, September 25, 2018, November 1, 2018, November 20, 2018, December 4, 2018, January 15, 2019 February 13, 2019, March 12, 2019, March 26, 2019 and April 30, 2019.  
**Decision of the Board:** Approved with Conditions  
**Members participating:** Robert W. Levy, J. Randolph Becker, Derek B. Redgate  
**Date of Decision:** June 18, 2019; and  
April 14, 2021—amended in accordance with Decision of the Housing Appeals Committee

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## The Project

16 Stearns Road, LLC (the "Applicant") has requested from the Zoning Board of Appeals (the "ZBA" or the "Board") of the Town of Wellesley (the "Town") the issuance of a comprehensive permit subject to General Laws Chapter 40B, §§20-23, authorizing the Applicant to construct 24 condominium units in a single building on a single lot located at 16 Stearns Road and containing 44,578 sf (1.02337 acres) of land (the "Site") lying in a Single Residence 10 zoning district (the "Project").

The Project consists of the redevelopment of the lot with a proposed four story, 24 unit multi-family residential housing project. The proposed building includes a base story for parking cut into the sloping Site, and three residential floors above. Each residential floor will contain eight condominium units, seven two-bedroom units and one three bedroom unit ranging in size from 1,420-1,850 sf. Of the 24 units, six will be restricted to households earning less than 80 percent of the area median income, with five of those affordable units containing two bedrooms and two baths and one containing three bedrooms and two baths.

A covered portico leads to the main lobby and internal circulation leads to a third floor library/ sitting room and provides lower level access to a patio adjacent to the Sprague Fields, which are located immediately to the south.

The building form is faceted creating an entry courtyard and presenting a series of distinct gable forms in order to blend a multi-unit building into a single-family neighborhood. The building takes advantage of the shape of the lot to set the building back further than other residences on the street, and using the topography to mask the garage level from certain views. When viewed from Stearns Road, the building presents as a three story façade with three gables. The building features modest recessed terraces, both hip and gable roofs that, together with complementary color shading, contributes to minimizing the visual impact.

While the topography helps to mask the view of the height of the building when viewed from Stearns Road, at the southern side of the Site the full height is visible through the trees when viewed from Sprague Fields.

The building is sited and configured so as to minimize the building massing adjacent to neighboring homes putting open space and landscaping immediately adjacent to the neighbors. The main entrance is accessed by a turn-around that includes guest and handicapped accessible parking.

The Site is a currently empty lot found at the southern-most side and at the end of Stearns Road, the pre-existing single family residence having been demolished prior to the application for the comprehensive permit. Half of the existing frontage is currently improved and used as a roadway, and the remainder is unimproved and is only used for utilities and a mixed paved and unpaved path to the Sprague Fields and the Sprague Elementary School beyond to the south.

The Site is bounded on three sides by land owned by the Town. On two sides of the property, the south and the west, the Site is abutted by the parking and driveway portions of the Sprague Fields, sports fields owned and operated by the Town. Across Stearns Road toward the north, lies the rear of the parking area of the Newton-Wellesley Center for

Alzheimer's Care ("NWCAC"), a medical facility operated by National Health Care Associates, and beyond this land is a vacant lot where there is proposed a second, separate multi-family 20-unit housing project. To the east is a small, unused triangular piece of land, and beyond that are the residences of the Francis/Stearns Road neighborhood. The Sprague Elementary School and its parking lot lie to the west.

Stearns Road is partially a public road and partially a private way. The Applicant is proposing no work within the private way portion of Stearns Road.

Land use to the east is principally single-family residences that were built between 1912 and 1941, and that are sited on lots that average approximately 15,000 sf in area, comfortably meeting the SR-10 lot size requirements. The Site is the largest lot in the neighborhood, at approximately three times the average lot size, and almost twice the area of the next largest lot.

Topographically, the Site exhibits considerable relief. The high point at about an elevation of 171 feet is in the southeastern section of the Site, an elevation approximately 20 feet higher than Stearns Road. From the high point, the land slopes downward both toward Stearns Road, and downward relatively steeply to the southwest and west, to meet the Sprague Fields and the Sprague parking lot at about elevation 145 feet.

The geology on the Site includes moderate to steep grades with evidence of outwash boulders. Four test pits were performed at the Site and indicate sandy loam and gravel soils with weathered rock varying in depths from 42 inches to 77 inches below ground surface. Since the bottom of the proposed facilities is below this depth, controlled rock blasting and excavation is proposed. Seasonal high groundwater levels varied across the Site from 3.5-5.0 feet below ground surface.

### **Governing Law**

1. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD"), 760 CMR 56.00 et seq. (the "Regulations").

2. The Act promotes regional distribution of low- or moderate-income housing by preventing individual cities and towns from using exclusionary zoning to block construction of such housing. Toward these ends, the purposes of the Act are satisfied if: (a) a town has low or moderate income housing in excess of 10 percent of the total number of year-round housing units reported in the latest decennial census or (b) on sites comprising 1 ½ percent or more of the town's total land area zoned for residential, commercial, or industrial use, or (c) the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3 percent of such total area or 10 acres, whichever is larger, in one year.

3. DHCD's Regulations expand the definition of what constitutes satisfaction of the statute to include such methods as "recent progress" toward the statutory minima or compliance with a DHCD-approved housing production plan, all as described in 760 CMR 56.03(1).

4. At the time of the filing of this comprehensive permit application, the Town did not meet the statutory minima set forth in G.L. c. 40B § 20 or the “safe harbor” provisions of 760 CMR 56.03(3). Specifically:

- a. At the time of the filing of the application, the number of low- or moderate-income housing units in Wellesley constituted 6.3 percent of the total year-round units in the Town, based on the most recent decennial census. Thus, the Town does not meet the 10 percent statutory minimum.
- b. Existing affordable housing units are on sites which comprise less than one and one half percent of the total land area of the Town which is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof).
- c. Granting the Applicant’s request for a comprehensive permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
- d. At the time of the filing of the application, the Town did not have a Chapter 40B Housing Production Plan approved by DHCD under 760 CMR 56.03(4).
- e. The Town has not made “recent progress” as that term is defined in 760 CMR 56.03(5).
- f. The proposed development does not constitute a “large project” as defined in 760 CMR 56.03(6).
- g. The Site is not subject to any “related applications” as that term is defined in 760 CMR 56.03(7).

5. Given the foregoing, the ZBA’s decision on this comprehensive permit application must balance the regional need for low- or moderate-income housing against the Town’s long-range planning goals, local requirements and regulations to the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the Town as a whole.

6. The Applicant submitted to the ZBA a Project Eligibility Letter from Mass Housing dated May 22, 2018. Pursuant to 760 CMR 56.04, the issuance of this letter establishes as a matter of law that the Applicant is a limited dividend organization, that the Project is fundable by a Subsidizing Agency under a low or moderate income housing program, and that the Applicant has control of the Site<sup>1</sup>. The issuance of this letter by Mass Housing allows the Applicant to file its comprehensive permit application with the ZBA

<sup>1</sup> Notwithstanding the foregoing, the deed provided by the Applicant as part of its comprehensive permit application shows that the Site is owned not by the Applicant but by J. Derenzo & Associates, LLC.

## Procedural History

The Applicant submitted its application to the ZBA on August 7, 2018. The ZBA published notice on August 23 and 30, 2018, and sent notice to all parties in interest. The ZBA opened the public hearing on this application on September 6, 2018 and held continued sessions of the hearing on September 25, 2018, November 1, 2018, November 20, 2018, December 4, 2018, January 15, 2019, February 13, 2019, March 12, 2019, March 26, 2019 and April 30, 2019. The Applicant agreed in writing to extend the time for the ZBA to conduct the public hearing on this application through April 30, 2019. The ZBA voted to close the public hearing on April 30, 2019.

Over the course of the public hearing, the ZBA heard and considered extensive testimony from the Applicant and its consultants. The ZBA also received guidance from its M.G.L. c.40B consultant Judi Barrett of Barrett Planning Group LLC, and retained expert peer review of the Applicant's submittals from the following:

Civil Engineering: David J. Hickey, Wellesley Town Engineer

Architecture and Design: Clifford J. Boehmer of Davis Square Architects

## Traffic and Transportation: Robert Nagi of VHB

The ZBA also heard a considerable amount of testimony from abutters and residents from the surrounding neighborhood. During each session of the public hearing, these neighbors presented a compelling case in opposition to the Project. They raised numerous objections including, without limitation, the changes to the character of the neighborhood that will be caused by adding twenty new dwelling units at the end of a small dead end street, and also the impact that this will have on the current use of Stearns Road as a popular pedestrian route to the Sprague School and athletic fields. The ZBA acknowledges the concerns expressed with respect to the Project, and notes that the impacts the neighbors cited may well have supported a denial of the Project in some other permitting context. After applying the standard of review under M.G.L. c.40B, §§20-23 and 760 CMR 56.00, however, the ZBA determined that the evidence in the record did not support a denial of the application, and instead supported issuance of an approval with conditions intended to mitigate the Project's impacts. With the understanding that this decision does not represent the desired result of the neighbors, the ZBA acknowledges their participation, concerns and input in the public hearing.

At a meeting held on June 7, 2019, the ZBA voted 3-0 to approve the Project subject to findings, the action on the requested waivers, and the conditions set forth herein.

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## Findings of Fact

### 1. Zoning

#### a. Use Requirements

The Project is located in an SR-10 zoning district. Among the uses allowed in the SR-10 district are: (1) one-family dwellings; (2) educational uses; (3) child care facility; (4) clubs; (5) agriculture; (6) certain home occupations; (7) accessory uses customary to the allowed uses; and (8) certain other specialized uses upon the granting of a special permit. As a multi-unit, multi-family residential building, the use of the Project is not allowed in an SR-10 district, and this gives rise to the first principal waiver request under the comprehensive permit requested under G.L. c.40B §§ 20-23.

#### b. Dimensional Requirements

The Zoning ByLaw provides for each zoning district dimensional requirements for the lot, for the placement of buildings and structures on the land, and for the structures themselves. The dimensional requirements for the SR-10 district, and the corresponding dimensional information from the Project are summarized in Table 1.

*Table 1 – SR-10 Dimensional Comparison*

Category	Required	Project
Lot Area	10,000 sf	44,578 sf
Frontage	60 ft	200 ft
Minimum Width	Front Yard	60 ft 200 ft
Minimum Depth	Front Yard	30 ft 48.6 ft
Minimum Width	Side Yard	20 ft 20.1 ft
Minimum Depth	Rear Yard	10 ft 23.1 ft
Maximum Coverage	Building	0.25 0.32
Maximum Height	Building	45 ft 48.8 ft

2021 APR 14 A 10:55

With respect to the dimensional requirements for the lot, the Project meets the SR-10 requirements for both lot area and lot frontage. With respect to those requirements for the placement of the structure on the lot, the Project meets all yard width and depth requirements for the SR-10 district. For the dimensional requirements for the structures themselves, the Project fails to meet the SR-10 requirements for maximum building coverage and maximum building height, giving rise to waiver requests by the Applicant.

## **2. Land Use and Planning**

As noted above, under the Zoning Bylaw, multi-family residential use is not allowed in the single residential districts that comprise the bulk of the residential land in Town.

All the commercial zoning districts allow multi-family residential uses and there are four residential zones that allow more than single-family houses. Three of those zones cover relatively small areas and were tailored for specific projects that are not expected to change. The General Residence zone, however, covers 73 acres but allows only two-family buildings and town houses in addition to single-family houses. Participants in the Unified Plan public meetings saw the commercial, office and industrial districts as the most acceptable locations to construct new housing that is not single-family housing. A mixed-use approach, combining housing with retail stores, was often mentioned. The Zoning Bylaw requirements for the administrative and professional districts that the Unified Plan envisions would be the location of the multi-family housing, currently do not allow such uses. The Unified Plan does not anticipate developments like the Project in SR-10 districts.

## **3. Site**

In order to accommodate the Project, the Site is to be re-graded, and earth and rock material will be excavated and removed from the Site to make way for the foundations and garage level of the building. These operations give rise to two issues that were reviewed during the hearing: (1) controlled blasting; and (2) retaining walls.

### **a. Controlled Blasting**

The Applicant's subsurface investigation revealed that rock excavation will be required in order to install the building foundations. During the public hearing, the ZBA heard testimony on the proposed controlled blasting program, as well as significant concerns expressed by the neighbors. The ZBA devoted an entire session of the public hearing to testimony regarding controlled blasting, which included a presentation regarding the proposed controlled blasting program from the Applicant's contractor Maine Drilling & Blasting.

The ZBA is aware of other construction sites in Town that have recently required controlled blasting, both in the vicinity of the Site (22-26 Pleasant Street) and in other residential areas of the Town. The ZBA heard testimony from Deputy DiGiandomenico of the Wellesley Fire Department, who noted that the proposed controlled blasting will require permitting from the Fire Department under 527 CMR 1.00, and that Fire Department personnel will be on site to monitor actual controlled blasting operations. The Deputy had no concerns with the proposed blasting proposed by the Applicant.

The abutters, neighbors and representatives of the NWCAC testified that they were concerned about the controlled blasting. The ZBA acknowledges these concerns but notes that there was ultimately no expert or other persuasive evidence in the record to support the conclusion that the proposed controlled blasting would cause any public health or safety impacts or damage to nearby properties.

If the controlled blast program is implemented as proposed and in accordance with State

law, the ZBA believes that the controlled blasting does not present a danger to other property or to the community. In addition, however, the ZBA recognizes that controlled blasting is regulated by the Commonwealth and is outside of the authority of the ZBA under the comprehensive permit process.

#### **b. Retaining Walls**

To accomplish the grading of the Site, retaining walls are proposed along portions of the east and west property lines, and a ledge cut is proposed along the south property line. The retaining wall along the eastern lot line varies in height along its length from two feet to just over six feet, and the end of the retaining wall transitions into a ledge cut at the rear of the Site. The face of the eastern wall is visible to residents of the Project, but not to the abutters. The retaining wall along the western lot line varies in height from less than one foot to approximately 5.5 feet. The face of the western wall is not visible to the residents of the Project, but will be visible from the Sprague School parking lot.

A third retaining wall is proposed internal to the Site to accommodate the grade difference between the traffic circle at the main entrance and the garage entrance. This retaining wall will vary in height from 0.5 feet to 8.5 feet, and the wall will be visible to those entering the garage.

The retaining walls are proposed to be Stone Strong Walls® a precast concrete system manufactured to imitate natural stone. Due to the height and location of the wall along the property lines, the retaining walls will require waivers of the applicable zoning provisions under the comprehensive permit.

#### **4. Architecture**

To assess the architecture and design, during the public hearing the Project density, height and bulk, and architectural details were reviewed.

##### **a. Density**

Based on the Assessor's "FY18 Residential" list, the median lot size in the single residence districts is 19,439 sf. Since the Zoning Bylaw allows only a single dwelling on a lot, this implies that the median residential density in the residential districts is only 2.2 units/acre.

Based on information from the Planning Board staff, Wellesley has listed in its SHI 14 completed rental developments and eight completed ownership developments, for an overall total of 22 developments. The density of these developments ranges from a low of 0.4 units/acre at Wellesley Place (978 Worcester Rd) to a high of 39.9 units/acre at List House (315 Weston Rd). The median affordable housing development in Wellesley has a density of 23.8 units/acre. Since the Project has 24 units on 1.02337 acres, the density of the Project is 23.4 units/acre, which in comparison to other existing affordable housing projects in Wellesley, the Project density is almost exactly at the median value.

The Project is located at the end of a dead-end road occupied exclusively by single-family houses, and therefore represents a glaring increase in density relative to its immediate surroundings.

### **b. Height and Bulk**

Under the terms of the Zoning ByLaw, the height of a building is measured from the average grade to the peak of the roof. For the Project, that height is 48.8 feet, approximately 4 feet higher than the height allowed in the SR-10 district. As noted above, the building is sited such that the garage level is not visible from Stearns Road. The apparent height above actual grade when viewed from Stearns Road is 44.0 feet, just under the allowed height, and softened by the appearance that the building is only three stories. When viewed from the Sprague Fields, the full apparent height of the building is visible at just under 56 feet, though from that perspective, the Sprague School and the NWCAC which share the viewshed, are also larger than the neighboring residences.

The truncated L-shape of the building and its location in the right rear corner of the lot mean that the length of the building is not seen in full view from the street. When viewed from Stearns Road the apparent width of the building is approximately 140 feet. While this dimension is proportional to the frontage of the Site (the longest in the neighborhood), this distance is perhaps three to four times wider than the neighboring homes. Overall the height and bulk of the building is significant when compared to the other single-family residential structures in the neighborhood.

### **c. Architectural Details**

The front façade of the proposed building employs a townhouse vernacular, and includes four gable roofs that are meant to give the appearance of separate buildings, and to tie the building into the neighborhood. Further, the building employs typical New England materials such as board and batten siding, clapboards and shingles, and running and standing trim. The third residential floor uses dormers, again reflecting typical residential construction, and the ground floor entrances use columns and roofs to mimic porches.

Less is done on the side facing the Sprague Fields, but the ZBA will condition the approval of the Project on additional revisions to this side of the building.

The ZBA recognizes that the proposed architectural elements will not eliminate the mass of the building but recognizes that these should help to mitigate its visual impact.

## **5. Transportation and Access**

### **a. Site Access**

Access to the Project will be provided by way of two new driveways one near the northeast corner of the Site, and the second a bit further to the west at the point where the public portion of Stearns Road ends. The first is a full access driveway that will intersect the south side of Stearns Road approximately 320 feet west of Francis Road (the current terminus of Stearns Road) and will provide access to the front of the proposed residential building by way of a one-way (counterclockwise) circular drive. The second is a full access driveway that will intersect the south side of an extension of Sterns Road (to be constructed as a part of the Project) and will provide access to the parking garage beneath the proposed residential building.

The Site access has been reviewed by both the Applicant's traffic engineer and the ZBA's traffic peer reviewer, who concur safe and efficient vehicular, pedestrian and bicycle access will be provided to the Project site and the Project can be accommodated within the confines of the existing and improved transportation system.

### **b. Public Transportation**

Public transportation services are not provided within the immediate vicinity of the Site. However, public transportation services are provided to the Town by the Massachusetts Bay Transportation Authority via the Wellesley Square Station on the Framingham/Worcester Line of the commuter rail system and the Metro-West Regional Transit Authority (MWRTA) bus Route 8 which provides three service stops through downtown Wellesley along Washington Street. In addition, the MWRTA also operates Paratransit Services for passengers who meet ADA requirements and provides transportation services for seniors and the disabled through the Wellesley Council on Aging. In an effort to encourage the use of alternative modes of transportation to single-occupant vehicles, the Project includes the collection and distribution of educational materials to make new residents aware of the public transportation opportunities available to them as new residents.

## **6. Traffic and Parking**

To assess the traffic impacts of the Project, the Applicant commissioned the "Transportation Impact Assessment" prepared by Vanasse & Associates, Inc. dated July 2018 (the "TIA"). The TIA was prepared in consultation with the Massachusetts Department of Transportation (MassDOT) and the Town; was performed in accordance with MassDOT's Transportation Impact Assessment Guidelines and the traffic review standards for a Project of Significant Impact as defined in the Zoning Bylaw; and was conducted pursuant to the standards of the traffic engineering and transportation planning professions for the preparation of such reports.

The TIA evaluated i) access requirements; ii) potential off-site improvements; and iii) safety considerations; under existing and future conditions, both with and without the Project.

The ZBA engaged VHB/Vanasse Hangen Bruslin, Inc. to perform a peer review of the TIA, and VHB concluded that the information contained in the TIA is both technically accurate and portrays the likely impacts of the Project on the surrounding roadway system.

The findings of the TIA for vehicular traffic, including both roadways and intersections, and pedestrian traffic, are as follows:

### **a. Vehicular Traffic**

The roadways assessed in the TIA included Stearns Road, Francis Road, and Worcester Street (Route 9), and the intersections assessed include (1) Francis Road/Stearns Road; (2) Francis Road/Worcester Street; (3) Worcester Street Westbound U-turns; (4) Worcester Street Eastbound U-turns; and (5) Worcester Street/Oak Street/Westgate Road.

Using trip-generation statistics published by the Institute of Traffic Engineers (the "ITE"),

the Project is forecast to generate approximately 130 vehicle trips on an average weekday (two-way, 24-hour volumes), with eight vehicle trips expected during the weekday morning peak-hour and 11 vehicle trips expected during the weekday evening peak-hour. While these volumes of traffic are not unusual for most residential streets, the increase for the isolated Francis/Stearns Roads neighborhood is material.

The Project will not have a significant impact (increase) on motorist delays or vehicle queuing over existing or anticipated future conditions without the Project (no-build conditions), with the majority of the movements at the study intersections shown to operate at LOS D or better under all analysis conditions where an LOS of "D" or better is defined as "acceptable" operating conditions.

The addition of Project-related traffic to the Worcester Street/Francis Road intersection was shown to result in an increase in average motorist delay of less than 2.0 seconds for vehicles exiting Francis Road during the peak hours with no increase in vehicle queuing.

Independent of the Project, left-turn movements from the Worcester Street westbound approach to the Worcester Street/Oak Street/Westgate Road intersection were identified as operating over capacity (defined as LOS "F") during both the weekday morning and evening peak hours, with Project-related impacts at the intersection defined as an increase in vehicle queuing of up to one (1) vehicle.

All movements at the Francis Road/Stearns Road intersection, the primary access for the Project, are expected to operate at LOS A during the peak hours with negligible vehicle queuing predicted.

No apparent safety deficiencies were noted with respect to the motor vehicle crash history at the study intersections, with all of the study intersections found to have a motor vehicle crash rate that was below the MassDOT average crash rate.

Finally, lines of sight to and from the Francis Road/Stearns Road intersection were found to exceed or could be made to exceed the required minimum distance for the intersection to function in a safe manner; clear line of sight is provided to and from the Project Site driveways along Stearns Road.

In consideration of the above, the TIA concluded that the Project can be accommodated within the confines of the existing transportation infrastructure in a safe manner with implementation of the recommendations provided in the TIA.

#### **b. Pedestrian Traffic**

Neighbors to the Project and members of the public submitted substantial evidence regarding the use of Stearns Road by pedestrians. Due to the isolated nature of the Francis Road/Stearns Road neighborhood, the bulk of the pedestrian traffic is local residents walking to/from the Sprague Fields, and school-age children walking to/from the Sprague Elementary School, the Wellesley Middle School, or the Sprague Fields. Since there are no sidewalks on Francis or Stearns Roads, the pedestrian traffic uses the roadway itself to walk. The impact of the traffic associated with the Project on the existing pedestrian traffic was one of the significant issues during the public hearing. The ZBA's architectural peer

reviewer Clifford J. Boehmer stated the opinion that by adding 24 new dwelling units at the end of a dead end road currently used by only eight (8) single family houses, the Project was appropriating the use of this roadway. The Applicant did not propose any solution to this problem nor did it address this issue to the ZBA's satisfaction before the close of the public hearing. There was consensus among the neighbors that they did not want major improvements to Stearns Road, but rather preferred to have the road stay the way it is.

#### **c. On-site Parking**

On-site parking will be provided for 48 vehicles consisting of 36 parking spaces in a garage to be located beneath the proposed residential building and 12 surface parking spaces located at the main entrance circle or adjacent to the garage entrance. The proposed parking results in a parking ratio of 2.0 spaces per dwelling unit. This parking ratio is at the upper end of the range of values documented by the ITE for an apartment community in a suburban setting.

### **7. Stormwater Management**

The proposed drainage system consists of a closed stormwater collection system in the parking lot which flows through a treatment unit before being infiltrated to groundwater using subsurface chambers. The roof runoff from the building also discharges to a second set of subsurface chambers for infiltration with a four inch overflow.

Consistent with accepted engineering practice, the Applicant prepared and submitted the "Stormwater Management Report" dated July 6, 2018 (the "Stormwater Report") that compared the runoff from the existing vacant lot to the runoff from the lot with the Project constructed. In addition, the Stormwater Report analyzed the stormwater management system to determine compliance with MassDEP Stormwater Management Policy.

The DPW, as the ZBA's stormwater peer reviewer, did not raise any major concerns in its memorandum regarding the proposed drainage plan. The memorandum indicates that in general the Project will improve water quality and reduce peak runoff rates, and is in compliance with the Massachusetts DEP Stormwater Management Policy.

### **8. Utilities**

Within Stearns Road, the Site is served by a variety of public utilities including water, sewer, natural gas, storm water, electric, telephone and cable.

#### **a. Water and Sewer**

The Applicant has indicated that the Project will consume about 6,171 gallons of water and produce 5,610 gallons of sewerage per day. The initial assessment of the DPW is that the existing infrastructure in Stearns Road is sufficient to meet those estimated needs.

#### **b. Solid Waste**

All residents of the Project will be responsible to collect their waste and dispose of in the designated trash/recycling area located in the garage level of the building. Waste will be

collected from the garage-level storage area by a private rubbish removal company engaged by the condominium association (as defined below). The collection will be scheduled at off peak hours so as not to impede any entering or exiting traffic from tenants/guests. Therefore, the Project will not adversely affect the Town's Recycling and Disposal Facility

### **c. Private Utilities**

Natural gas, electric service, telephone service, and cable service can be provided on the same basis as to other residences in the Town.

## **8. Environmental Considerations**

There are no wetlands located on the Site, and a Negative Determination of Applicability was issued by the Wellesley Wetlands Protection Committee for the Site on December 15, 2015. The Applicant has shown the approximate 500-year flood plain on the Site plan, but the Site is not known for flooding based on a review of DPW records.

Other than customary snow and ice control chemicals and fuel stored in the automobiles parked in the garage, storage of chemicals that would threaten groundwater or surface water is not part of the Project. The Site is not in a water supply protection district. Exterior lighting is planned to be dark-sky compliant, and the submitted photometric plan demonstrates that light spill-over to adjacent properties is prevented.

During the public hearing, members of the public noted that the adjacent Sprague Fields was subject to an activity and use limitation (an "AUL") due to contamination found during construction of the natural grass and artificial turf playing fields between 2005 and 2009. Since the Sprague Fields abut the Site, there was an expressed concern about activity on the Site adversely impacting the contamination, especially if such contamination spread to the neighborhood.

During the construction of the Sprague Fields, the Town had prepared the requisite studies and remedial measures to safely construct and use the Sprague Fields, including the preparation of a final report on the environmental activities, entitled "Phase IV Completion Statement, Response Action Outcome and Activity and Use Limitation" dated July 30, 2009 (the "Completion Statement"). Among other things, the Completion Statement found that the groundwater beneath the Sprague Fields is not a drinking water source. According to the MassDEP Priority Resources Map, there are no public water supply wells, zones of contribution to public water supply wells, or potentially productive aquifers mapped on or within one-half mile of the Sprague Fields. According to information from the Wellesley Board of Health, no private wells are located within 500 feet of the Sprague Fields. None of the identified concentrations of the relevant chemicals tested for exceeded the applicable groundwater clean up standards. Based on this data, the Completion Statement concluded that a condition of no significant risk exists with respect to the groundwater beneath the Sprague Fields.

Further, the Completion Statement explained that an AUL was required because a condition of no significant risk to safety, public welfare, and the environment has not been achieved at the Sprague Fields in regards to glass and sharp objects present in the subsurface. Visual and subsurface testing did indicate the surface soil and grass layers

contained appreciable sharp objects to present a hazard to public health or safety. Based on the test pit excavations, visual inspection of the surface areas, discussions with maintenance personnel and the historic information on the property, the Completion Statement concluded that the top 12 inches of fill material in the southwest (Oak Street) portion of the field appear to contain sufficient metal or glass to be considered a hazard to users of the field. These areas have been capped with a geotextile fabric, clean fill and/or natural or synthetic field turf with the construction of the new fields, and the AUL was implemented.

Based on the Completion Statement and on the test pits dug on the Site, there is no significant risk that groundwater contamination at the Sprague Fields will impact the Site. Further, there is no evidence in the Completion Statement that activities on the Site, including controlled blasting, will cause the glass, metal and wood objects that are the cause of the AUL to migrate to the Site.

Finally, the Completion Report mapped the boundaries of the municipal waste disposal that was the source of all of the testing at the Sprague Fields, and determined that the municipal waste disposal area did not extend to the Site.

## **9. Public Safety/Life Safety**

During testimony at the public hearing, the Applicant stated that the building will be fully sprinklered, and the Deputy Fire Chief concurred with the statement. The Applicant also testified that a hydrant test was performed, and that sufficient flow and volume is available to meet the fire protection needs of the Project.

The Applicant submitted a fire vehicle access plan showing computer simulations of pumper truck and ladder truck turning movements demonstrating that the vehicles could safely access and egress the Site. Hence, fire vehicles and fire fighters will be able to access the building from the central circular drive, from the garage drive, or from the Sprague Fields. Similar vehicle access drawings show that police and fire emergency vehicles (ambulance) can also access the building whether at the main entrance or via the garage.

The Fire Department has not raised any concerns with the Project, but will review subsequent design development and construction drawings prior to the issuance of any building permit for compliance with State Code.

## **10. Signage**

The submitted drawings indicate a sign located to the right of the main entrance drive, about one foot back from the property line. No further details have been provided, so it is not yet known whether the sign complies with the other Zoning By-Law requirements with respect to the area, height, illumination, and lettering of the sign.

The submitted drawings indicate that signage related to traffic and parking control on the Site will comply with the applicable standards of the Manual of Uniform Traffic Controls.

## **Disposition of Major Local Concerns**

### **1. Health**

The concerns expressed about health issues related principally to the assertion that vibration and sound from the construction of the Project will adversely affect the patients at the NWCAC.

The expressed concerns did not quantify the levels of sound or vibration, but the NWCAC is subject to man-made sound and vibration from the school bus and vehicular traffic at the Sprague School and Sprague Fields, and vehicular traffic on Worcester Street which carries an average weekday traffic of 43,850 vehicles (two-way, 24 hour volume) with approximately 22,000 east bound. Further, the NWCAC has experienced construction of the adjacent Sprague Fields in 2006-2008, and the adjacent Sprague School in 2001-2002 without any documented distress to patients. Neither were any documents introduced into evidence that indicated what levels of sound or vibrations would adversely impact patients.

In addition, the controlled blasting plan indicates the vibrations from the planned controlled blasting will be limited to levels that are designed to cause no damage to building materials such as plaster, though such vibrations may be perceived by people.

In considering this local concern, the ZBA finds that the patients at the NWCAC have been exposed to sound and vibrations from past construction projects without submitted evidence of adverse effects, and hence the regional need for low- and moderate-income housing outweighs this local concern.

### **2. Safety**

#### **a. Vehicular Traffic Safety**

The concern expressed for vehicular traffic was that Stearns Road is narrow, and that large vehicles such as trash removal truck cannot make a u-turn, but must backup the length of Stearns Road to exit, creating a safety hazard for pedestrians.

Both VAI and VHB studied the issue and concluded that the existing width of the traveled-way (paved area) along Stearns Road varies from 21 to 23-feet along its alignment, a width that is sufficient to accommodate two-way travel, and on-street parking is prohibited along both sides Stearns Road. These existing accommodations are sufficient to support access to the Site and the existing residences along Stearns Road given the low-volume, low speed environment of the roadway. The driveway that will provide access to the parking garage that will serve the Project has been designed to allow a school bus, fire truck or other similar vehicle to enter the driveway in order to reverse direction and exit Stearns Road in a forward travel, and represents an improvement over current conditions.

In considering this local concern, the ZBA agrees with the conclusions of its transportation peer reviewer, and to mitigate any safety hazard due to large vehicular backing, will accept the offer of the Applicant to allow large vehicles to turn around in

the Project driveway, thus allowing vehicles to exit Stearns Road in a forward direction.

### **b. Pedestrian Traffic Safety**

Anecdotal evidence provided during the public hearing showed that due to the isolated nature of the Francis Road/Stearns Road neighborhood, the bulk of the pedestrian traffic is local residents walking to/from the Sprague Fields, and school-age children walking to/from the Sprague Elementary School, the Wellesley Middle School, or the Sprague Fields. Since there are no sidewalks on Francis or Stearns Roads, the pedestrian traffic uses the roadway to walk.

In reviewing this local concern, the ZBA considered the comments of its architect peer reviewer who suggested a requiring the Applicant to redesign Stearns Road as an architectural feature for shared space between vehicles and pedestrians akin to Downtown Crossing, and its transportation peer reviewer who suggested that liability issues may with such a plan may indicate that engineering solutions such as speed humps, walking paths or guardrails should also be considered.

In balancing the local concern for pedestrian safety with the regional need for low- and moderate-income housing, the ZBA concluded that the best solution was to study the impacts of the vehicular traffic on the pedestrian traffic after the Project has been completed. The Board proposed that the Applicant fund a study to be performed after completion of the Project to assess the impacts, and to propose measures to insure that pedestrian can safely continue to use Stearns Road.

### **c. Controlled Blasting Damage**

During the public hearing the concern expressed was that controlled blasting at the Site would adversely impact stormwater infrastructure and natural gas pipelines that underlie the Sprague Fields and the NWCAC and Sprague School parking lots and would place responsibility for repairs on the Town rather than the Applicant.

The controlled blasting plan submitted by the Applicant indicates that the level of vibrations from the controlled blasting is limited to levels low enough to avoid damage to plaster materials. Since the stormwater infrastructure and the natural gas pipelines are constructed of concrete and steel materials substantially stronger than plaster, the ZBA concludes that adverse impacts to the underground infrastructure are unlikely and that the regional need for low- or moderate -income housing outweighs this local concern.

## **3. Environment**

The concerns expressed about environmental issues related principally to the assertion that excavation and controlled blasting of ledge at the Site will disturb untested on-site soil which may contain and release the same substances found at the adjacent Sprague Fields, which overlie a former site for municipal waste disposal.

The Completion Report mapped the boundaries of the municipal waste disposal and shows

that the dump area did not extend to the Site of the Project. Further, the test pits dug at the Site, including one at the corner of the Site closest to the adjacent Sprague Fields, did not show evidence of the materials found in the former municipal waste disposal area on the Sprague Fields. The former municipal waste disposal area filled in what were low spots in the topography, not the hills that the Stearns neighborhood occupies, and not the higher elevations present on the Site. As noted above, the test pits dug at the Site did not exhibit signs of municipal solid waste, and in fact exhibited the presence of rock, not solid waste over much of the Site.

The ZBA finds that the documentary evidences does not support the presence of municipal solid waste on the Site. Further, in the event that such material (or other hazardous material) is found on the Site, the Massachusetts Contingency Plan already contains procedure for treating such a discovery. Hence, the ZBA concludes that the regional need for low- or moderate-income housing outweighs this local concern.

### **Waivers**

The Applicant submitted a final list of requested waivers from the Town's bylaws, rules and regulations dated February 6, 2019. The ZBA acted on this specific list of requested waivers as follows:

**A. Zoning Bylaws:**

1. Section IIA. Single Residence Districts. The Applicant seeks a waiver of the use requirements of the Single Residence District to allow for the construction of a multi-family use that is not allowed in the district. The ZBA balanced the regional need for low- or moderate-income housing against the local concern for single family residences, and finds that the regional need for low- or moderate income housing outweighs the use of land for single family residences. Therefore, the ZBA grants the requested waiver to allow for a multi-family condominium development consisting of 24 units (18 market rate and 6 affordable) with parking and appurtenances as shown on the Approved Plans.

2. Section XVI. Restrictions Affecting All Districts. The Applicant seeks a waiver of this section to allow for the construction of a multi-family use that is not allowed in the district. The ZBA grants the requested waiver to allow for a multi-family condominium development consisting of 24 units (18 market rate and 6 affordable) with parking and appurtenances as shown on the Approved Plans. With respect to the specific requirements of this section, the ZBA finds that the Project complies with Sections XVI §§(A) through (C), and §§(G) through (I); the ZBA grants the procedural request to waive §(D)(4) to allow for the parking of an office trailer and a storage trailer on the Site during the period of construction of the Project only; the ZBA grants the procedural request to waive §(E) to the extent that the Comprehensive Permit procedure replaces the project approval process specified in Section XVIA and the special permit process specified in Section XXV; and the ZBA denies the waiver request in part by finding that, consistent with §(F), construction shall not start unless and until the Comprehensive Permit has been perfected, the Subsidizing Agency has granted final approval, and the Regulatory Agreement has been recorded at the Registry of Deeds. The ZBA waives any bonding requirements of §(F).

3. Section XVIA. Project Approval. The ZBA grants a waiver of the requirement that the Project obtain design review, site plan review, and a Project of Significant Impact Special Permit. The ZBA notes that the subjects normally addressed in these reviews were reviewed as part of the ZBA's public hearing on the comprehensive permit application.

4. Section XVIC. Drainage Review. The ZBA grants a waiver of the requirement that the Project undergo separate drainage review pursuant to this section of the Zoning Bylaw. Notwithstanding the foregoing, the ZBA notes that the drainage was reviewed as part of the ZBA's public hearing on the comprehensive permit application.

5. Section XVIE. Tree Protection & Preservation. The ZBA waives the requirements of this section of the Zoning Bylaw; provided, however, that a waiver of the conditions contained in this section requiring maintenance of replanted or new trees in §(F)(4) is denied.

6. Section XVIIIB. Ratio of Building to Lot Area. The ZBA reviewed the actual ratio of building to lot area and finds that the regional need for low- or moderate income housing outweighs the local concern for the ratio of building to lot area. Therefore, the ZBA grants a waiver of the required ratio of 0.15 to allow for an actual ratio of 0.33 as shown on the Approved Plans.

7. Section XX. Heights of Buildings or Structures. The ZBA reviewed the actual building height and compared it to the allowed height of 45 feet, finding that the local concern for building height does not outweigh the regional need for low- or moderate income housing. Therefore, the ZBA grants a waiver of the maximum building height to allow for an actual building height of 48.9' (based on the average finished grade of 155.2') and 4 stories as shown on the Approved Plans.

8. Section XXI. Off Street Parking. The ZBA grants a waiver of the requirements of Section XXI so as to allow for the construction of resident parking spaces, guest parking spaces, and maneuvering aisles as shown on the Approved Plans, which the ZBA finds is consistent with accept industry practice for residential buildings in suburban areas and which outweighs the local concern for off-street parking.

9. Section XXII. Design Review. The ZBA grants a waiver of the requirement for separate review by the Design Review Board for this Project. The ZBA notes that subjects normally addressed during Design Review were reviewed as part of the ZBA's public hearing on the comprehensive permit application.

10. Section XXIIA. Signs. The ZBA grants a waiver of Section XXIIA with respect to the location of the signs shown the Approved Plans (as defined below). The Applicant did not present any dimensions, depictions, or renderings of any signs associated with the Project as part of its application, therefore no further waiver is granted with respect to the Town's regulations regarding signs.

11. Section XXIID. Retaining Walls. The ZBA finds that to the extent the proposed rock wall on the western lot line and a portion of the southern lot line retain less than four feet of unbalanced fill, no waver is required. The ZBA grants the waiver to the extent that

its action on this comprehensive permit shall obviate the need to apply for any special permit under Section XXIID, and to authorize, as a matter of zoning, the retaining wall as shown on the Approved Plans. The ZBA notes that nothing contained in this decision affects any applicable requirement of the State Building Code.

## B. Other Rules and Regulations.

11. Rules and Regulations for Tree Preservation and Protection. The ZBA grants a procedural waiver of the need for separate review under these rules and regulations. Landscaping has been reviewed and approved by the ZBA through M.G.L. c.40B comprehensive permit process in accordance with State law and regulations. The ZBA notes that nothing contained herein obviates the need for the Applicant to comply with the *Public Shade Tree Act*.

12. DPW Municipal Stormwater Drainage System Rules and Regulations. The ZBA grants a waiver of the need for separate review by the DPW. Stormwater management has been reviewed by the ZBA during the M.G.L. c.40B Comprehensive Permit process and is approved as shown on the Approved Plans..

13. DPW Utility and Work in Public Way—Rules and Regulations. The Applicant requested a waiver of “DPW Utility and Work in Public Way—Rules and Regulations.” The ZBA denies this requested waiver because the Applicant has not made clear what specific DPW requirements it is seeking a waiver of. The DPW has reviewed the plans submitted during the public hearing on the comprehensive permit application, but there is nothing in the record of the hearing to support a waiver of any regulation with respect to specific work to be performed in the public way, or with respect to utility connections associated with this Project.

\* \* \* \* \*

The ZBA grants only the specific waivers itemized above. If it appears after issuance of this Comprehensive Permit that any additional waiver is needed, the Applicant shall be required to seek the approval of the ZBA.

## Conditions to the Comprehensive Permit

The ZBA's approval of the Comprehensive Permit for the Project is subject to the Applicant's and the Project's compliance with the following conditions. All requirements imposed by these conditions or this Comprehensive Permit shall be applicable to the Applicant, the organization of unit owners of the condominium to be established pursuant to M.G.L. c.183A (the "Condominium Association"), and the unit owners, regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

### General

1. The Project shall be constructed in accordance with the following plans and written materials, subject to all revisions specifically provided for in the conditions of approval set forth herein:

Plan Number	Drawing Title	Date of Issue	Prepared By	Date of Revision
C	Cover Sheet	7/6/18	Grazado Velleco Architects, Inc.	1/28/19
A1	Garage Level	7/6/18	James A. Velleco, R.A.	1/28/19
A2	First Residential Level	7/6/18	James A. Velleco, R.A.	1/28/19
A3	Second Residential Level	7/6/18	James A. Velleco, R.A.	1/28/19
A4	Third Residential Level	7/6/18	James A. Velleco, R.A.	
A4	North and West Elevations	1/28/19	Grazado Velleco Architects, Inc.	
A5	Elevations	7/6/18	Grazado Velleco Architects, Inc.	2021 APR 14 A 10:56
A5	South and East Elevations	1/26/19	Grazado Velleco Architects, Inc.	
A6	Eye Level Sketch	1/12/18	Grazado Velleco Architects, Inc.	
A7	Eye Level Sketch from Playfields	1/12/18	Grazado Velleco Architects, Inc.	
C1	Layout Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 4/5/18, 7/6/18, 10/19/18, 12/3/18, 12/7/18, 12/11/18, 12/21/18, 2/20/19, 3/7/19

C2	Grading Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C2A	Soil Test Pit	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/11/18, 12/21/18, 3/7/19
C3	Utility Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C4	Erosion Control Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C5	Photometrics Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C6	Fire Vehicle Access Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18
C6A	Fire Vehicle Access Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C6B	Bus Vehicle Access Plan	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18,

				12/3/18, 12/11/18, 12/21/18, 3/7/19
C6C	Fire Vehicle Access Plan	1/12/18		2/15/18, 7/6/18, 10/19/18, 12/11/18, 12/21/18, 3/7/19
C7	Utility Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C8	Utility Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C9	Site Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
C10	Erosion Detail Sheet	1/12/18	William R. Bergeron, P.E.	2/15/18, 7/6/18, 10/19/18, 12/3/18, 12/11/18, 12/21/18, 3/7/19
	Existing Conditions	7/19/17	Field Resources, Inc.	1/12/18
	Plan of Land	7/19/17	Field Resources, Inc.	1/12/18
L1	Landscape Plan	1/12/18	James K. Emmanuel, R.L.A.	2/15/18, 7/6/18, 10/19/18, 12/11/18, 12/21/18, 1/14/19, 3/7/19

WSE	Existing Watershed Map	7/6/18	William R. Bergeron, P.E.	
WSP	Proposed Watershed Map	7/6/18	William R. Bergeron, P.E.	
A5a	Elevations without landscaping	7/6/18	Grazado Velleco Architects, Inc.	
H1	Design Phase Height Comparison Neighboring Houses are Approximate	11/12/18	Grazado Velleco Architects, Inc.	
H2	Design Phase Height Comparison Neighboring Houses are Approximate	11/12/18	Grazado Velleco Architects, Inc.	
H4	Stearns Road Height Comparisons	3/3/19	James A. Velleco, R.A.	
H5	Stearns Height Comparison 2	3/3/19	Grazado Velleco Architects, Inc.	
C1	Context Map Stearns Road and Worcester Road	10/10/18	Hayes Engineering, Inc.	
C1	Context Map Stearns Road and Worcester Road	10/10/18	Hayes Engineering, Inc.	
	16 Stearns Road and 680 Worcester Street Shadow Study Diagram Summer Solstice June 21 – 6:40 am, Noon, 5 pm			201 APR 14 A 10:56
	16 Stearns Road and 680 Worcester Street Shadow Study Diagram Autumnal Equinox (Spring Similar) September 22 – 8 am, Noon, 3:30 pm			201 APR 14 A 10:56
	16 Stearns Road and 680 Worcester Street Shadow Study Diagram Winter Solstice December 22 – 9:10 am, Noon, 2:10 pm			201 APR 14 A 10:56

Stormwater Management Report dated December 5, 2018 and revised December 26, 2018. Operation and Maintenance Plan and Long-Term Pollution Prevention Plan dated June 20, 2018 and revised December 14, 2018.

Construction Management Plan Project: 16 Stearns Road, Wellesley, Ma.  
Transportation Impact Assessment dated June 2018.

(collectively, the "Approved Plans").

2. This Permit authorizes the construction, use and occupancy of twenty four (24) dwelling units, with twenty-one (21) two bedroom units and three (3) three bedroom units. Building size and unit mix, including the number and location of bedrooms, shall be as shown on the Approved Plans.

3. Six (6) dwelling units shall be reserved in perpetuity for purchase and occupancy by low or moderate-income households earning no more than eighty (80) percent of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA (HUD Metro Fair Market Rent Area), as determined by the U.S. Department of Housing and Urban Development (HUD) and as adjusted for household size (the "Affordable Units"). None of the Affordable Units shall be one (1) bedroom units, five of the Affordable Units shall be two (2) bedroom units, and one of the Affordable Units shall be three (3) bedroom units, or as otherwise may be required by the subsidizing agency. The initial sales prices of the Affordable Units shall be established in accordance with the requirements established by the Department of Housing and Community Development in its Comprehensive Permit Guidelines.

4. All dwelling units approved under this Comprehensive Permit shall be ~~2021 APR~~ ownership units.

5. The Project shall contain a total of 48 parking spaces as shown on the ~~Approved~~ Plans.

6. There shall be no parking on the internal Site driveways, outside of ~~designated~~ parking areas shown on the Approved Plans, and no parking outside of the Site on Stearns Road or Francis Road.

7. Locations of signs identifying the development shall be limited to those shown on the Approved Plans.

8. There shall be no pavement added to the Project beyond that which is depicted on the Approved Plans and there shall be no additional accessory structures added to the Project or to the Site other than what is shown on the Approved Plans.

9. All utilities shall be installed underground (with the exception of junction boxes, transformers and similar appurtenances) by the Applicant using methods standard to those installations. Utilities shall include electric service lines, gas service, telephone lines, water service lines, CATV lines, municipal conduit, stormwater management systems, and the like.

10. The water, wastewater, drainage, and stormwater management systems servicing the buildings shall be installed and tested in accordance with applicable Town of Wellesley standard requirements and protocols.

11. The stormwater design shall function consistent with the Approved Plans, as revised, and with the Stormwater Report, prepared by Hayes Engineering dated July 6, 2018.

**Submission Requirements—Prior to Commencement of Any Construction Activity**

12. No construction activities for the Project shall commence on the Site until the Applicant has submitted evidence to the Building Inspector that the Applicant is the record owner of the Site.

13. No construction activities for the Project shall commence on the Site until the Applicant has submitted evidence that it is in good standing with the Corporations Division of the Secretary of the Commonwealth's Office.

14. No construction activities for the Project shall commence on the Site until the Applicant has obtained Final Approval of its Subsidizing Agency and presented evidence of same to the Building Inspector.

15. No construction activities for the Project shall commence on the Site until the Applicant has recorded at the Norfolk Registry of Deeds copies of this Comprehensive Permit and the Regulatory Agreement for the Project and delivered certified recorded copies of the Regulatory Agreement to the Building Inspector.

16. No construction activities for the Project shall commence on the Site until the Applicant has properly marked the limits of disturbance around the Site. The Building Inspector shall inspect the Site after such marking prior to any disturbance.

17. No construction activities for the Project shall commence on the Site until the Applicant has submitted to the Building Inspector a revised Construction Management Plan and Construction Management Schedule (CMP) as necessary to conform to accepted industry practice and addresses all construction-related conditions specifically set forth below in this Comprehensive Permit. Without limiting the foregoing, the CMP shall include:

- a. Construction schedule in order to provide guidance and facilitate inspections.
- b. Trucking plan, which shall specify planned truck routes, estimated volumes of any imported and exported materials, estimated truck trips and construction period mitigations measures consistent with the conditions set forth herein, including without limitation details and locations of crushed stone entrance pads, street sweeping protocols and dust control measures.
- c. Construction administration (hours of construction, deliveries, trash and debris removal).
- d. Communication (designated contacts on site).

2021 APR 14 A 10:57

- e. Noise and dust control.
- f. Controlled blasting schedule.
- g. Erosion control.
- h. Dewatering.
- i. Identification of existing underground utilities.
- j. Construction staging (staging areas, trailer locations, open storage areas, deliveries, truck holding locations), which shall be sufficient to ensure that there is no vehicle queuing, idling, parking or staging on Stearns Road, Francis Road and Route 9 under any circumstances.
- k. Deleted pursuant to March 15, 2021 Decision of the Housing Appeals Committee.
- l. Location of trailers, dumpsters, and restrooms.

18. The CMP shall be included or incorporated by reference in the general construction contract and all sub-contracts, and compliance with its terms shall be a contract condition for all contractors working at the Site.

19. No construction activities for the Project shall commence until the Applicant has provided to the Building Inspector and the Town Engineer video documentation of the condition of Francis Road from Worcester Street to Stearns Road, and of Stearns Road from Francis Road to the Sprague School property for the purpose of establishing the baseline condition of these roads before the beginning of Project construction.

20. No construction activities shall commence for the Project until the Applicant has created a website or adapted an existing website, to provide Town officials and residents access to the most current scheduled activities and to provide notification of upcoming Project events that reasonably have the potential to impact the surrounding neighborhood, the traffic on Stearns Road, Francis Road or Worcester Street. Such scheduled activities shall be shown in a two-week or three-week (whichever the Applicant 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 Applicant 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 Comprehensive Permit. The number will be provided to Town officials, posted at the Site in a conspicuous location visible to the public from Stearns Road, and published once in the Wellesley Townsman prior to or concurrent with the start of construction.. The Applicant shall provide written notice to the Building Inspector that this website is up and running. The Applicant shall maintain this website throughout the term of construction for the Project, and update it regularly as schedules change.

**Submission Requirements—Prior to Issuance of a Building Permit**

21. During design development and the preparation of construction documents, the Applicant shall assure that the southern elevations of the building (all those that face Sprague Field) provide for the increased articulation of the massing of those faces of the building in accordance with the testimony of the ZBA's architectural consultant Clifford J. Boehmer during the March 26, 2019 public hearing, through the use of differing color schemes for the different facets, as well as contrasting color schemes for the porches.

22. Deleted pursuant to March 15, 2021 Decision of the Housing Appeals Committee.

23. The Applicant will provide an easement in a form suitable for recording, and which shall be subject to review by Town Counsel, over the 24' x 24' "Proposed Access Easement" shown on the approved plans. This access easement shall provide for vehicles, including public, municipal and private service vehicles, to use the easement area to turn around within the site in order to avoid the scenario where vehicles would otherwise be required to reverse down the length of Stearns Road.

24. The Approved Plans show a sidewalk from the Site to Sprague Field that passes partially over Town-owned land. Accordingly, prior to issuance of a building permit the Applicant shall work in good faith with the Town to obtain the right to install and maintain the sidewalk on Town-owned land as shown on the Approved Plans, and shall provide written documentation of its efforts to the Building Inspector.

25. No building permit shall issue until the Applicant has prepared subsequent detailed design development and construction drawings (including without limitation civil, structural, mechanical, electrical, landscaping and architectural plans) that have been revised in accordance with the terms of the Conditions of Approval, and said construction drawings have been reviewed and approved by the Building Inspector and others as specifically provided for below, solely for consistency with this Comprehensive Permit:

- i. Revised stormwater plans shall be submitted to the Town Engineer for review to confirm consistency of such plans with the Approved Plans;
- ii. Detailed plans of the following utilities and services shall be prepared in accordance with all applicable regulations and requirements and shall be submitted for review and approval by the listed authorities prior to endorsement of the final plans:
  - 1. Water mains - Town of Wellesley DPW;
  - 2. Fire hydrant locations -Town of Wellesley Fire Chief;
  - 3. Primary and secondary electrical cables including distributions boxes and transformers – Wellesley Municipal Light Plant & Wiring Inspector;
  - 4. Telephone cables and street lighting - Wiring Inspector.

The Applicant shall submit with the subsequent detailed design development and construction drawings provided for herein an itemization of all revisions to the

Approved Plans and a certification from the Engineers of Record that these plans fully incorporate all requirements of these conditions as set forth herein.

### **Conditions on Construction**

26. Site work and construction shall be restricted to the hours between 7:00 am and 5:00 pm, Monday through Friday and between the hours of 8:00 am and 4:00 pm on Saturday. There shall be no construction on Sundays, or on state or federal holidays. Additionally, construction vehicles and/or equipment shall not be started or operated prior to, or after the times stated herein. For this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and the erection of new structures.

27. There shall be no queuing, idling, parking or staging of construction vehicles, construction worker vehicles, or delivery vehicles on Stearns Road and Francis Road under any circumstance.

28. Erosion control shall be employed on the Site to stop erosion during construction and prevent sedimentation from entering the abutting public ways and adjacent wetland areas.

29. During construction, the Site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner.

30. The Applicant shall regularly remove construction trash and debris from the Site in accordance with good construction practice.

31. All potential safety hazards that may exist on the Site from time to time during the period of construction shall be adequately secured prior to the end of each workday.

32. The Applicant shall implement measures to ensure that noise from Project construction activities does not exceed permissible regulatory levels, including without limitation, DEP's noise regulations at 310 CMR 7.10 and noise pollution policy interpretation.

33. Controlled blasting shall be conducted in accordance with the requirements M.G.L. c.148, 527 CMR 1.00 and the Wellesley Fire Department; provided, however, that given the number of sensitive receptors in the immediate area, including residential abutters to the east and north, the NWCAC to the north, and the Sprague Elementary School and Town athletic fields immediately to the west, the Applicant shall at a minimum employ seismographs during controlled blasting operations to provide readings relative to 10 Stearns Road, the Stearns Road frontage, the NWCAC, and the Sprague School property, under the supervision of the Fire Department.

34. The Applicant shall notify the Wellesley School Department, the administration of the Sprague School, the Wellesley Recreation Department, and the Newton-Wellesley

Center for Alzheimer's Care in writing, by certified mail, of its intent to commence controlled blasting at the site at least sixty (60) days before the first scheduled day of controlled blasting operation, and shall include with this notice its anticipated controlled blasting schedule for the duration of the controlled blasting operation. This information shall also be published on the website required above.

35. If the applicant encounters any contaminated or unnatural fill, or buried debris, during site preparation, controlled blasting, or construction, it shall investigate, report and remediate the contamination and/or fill as required by the Massachusetts Contingency Plan, 310 CMR 40.0000.

36. During construction the Applicant shall ensure that dewatering activity does not create (a) offsite issues or (b) problems for the proposed stormwater recharge system.

37. The Applicant shall be permitted to remove and/or replace earth from the Site incidental to the construction of the residential building, the construction of the drainage and underground infiltration system and the construction of the roadway and utility infrastructure as shown on the Approved Plans. Hours of operation for earth removal shall be 7:00 am - 5:00 pm, Monday through Friday; there shall be no hauling on Saturday or Sunday.

38. The Applicant may locate trailers on the Site during construction activity only. During construction all trailers, dumpsters, and portable restrooms shall be placed within the Site so as to not impact the residential abutters or users of Sprague Field.

39. The Applicant shall maintain all portions of any road used for construction access free of soil, mud or debris due to use by construction vehicles associated with the Project. Any material tracked onto a public way shall be swept up and removed by the Applicant on a daily basis.

40. The Applicant shall repair in a timely manner any damage to roads adjacent to the Project that results from the construction and/or maintenance of the Project to the standard that existed prior to commencement of construction, as established by *video documentation provided for above.*

41. A temporary construction sign no greater than twenty (20) square feet in size may be erected on the Site at the time of issuance of a building permit. This sign shall list the website required above and include contact information.

42. No construction workers or contractors may park on Stearns Road, Francis Road or any other way [...] during construction. [Remainder of Condition 42 deleted pursuant to March 15, 2021 Decision of the Housing Appeals Committee].

43. Any idling of vehicles on the Site shall be limited to five minutes or less in accordance with M.G.L. c.90, §16A, and the Applicant shall post clearly visible signage on the Site, to be maintained for the duration of the construction period, noting this requirement. As stated in Condition 27, there shall be no idling whatsoever on Stearns Road or Francis Road.

44. The construction process shall conform to all applicable local, state and federal laws and regulations regarding noise, vibration, dust and sedimentation, use and interference with Town roads.

45. The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation DEP's dust regulations at 310 CMR 7.09, as amended, as directed by the Building Inspector. Methods of controlling dust shall meet all applicable air pollutant standards as set forth by Federal and State regulatory agencies.

46. The Applicant shall, upon advance notice, permit Town and Board members, agents, and representatives to observe and inspect the Site and construction progress until such time as the Project has been completed.

47. The Applicant shall notify the relevant town departments of installation of utilities and infrastructure for inspections prior to backfilling.

48. Upon completion of the Project, soil material used as backfill for pipes, access drives, infiltration beds, and other underground drainage structures shall be certified by the Engineer of Record to the Building Inspector as meeting design specifications.

49. The Project shall conform to all pertinent requirements of the Americans with Disabilities Act and the Architectural Access Board Regulations (521 CMR 1.0 et. seq), except as may be waived, in accordance with applicable law and regulation.

50. The ZBA notes that Jay J. Derenzo, a principal in the Applicant 16 Stearns LLC has, through another entity, proposed to construct a separate project at 680 Worcester Street pursuant to M.G.L. c.40B, §§22-24. There shall be no use of the Site whatsoever to support any site work, construction activity or administration, parking, or vehicle, equipment or materials storage associated with property located at 680 Worcester Street.

### **Legal Requirements**

51. The Applicant has proposed, and the ZBA hereby requires, that the following common facilities and services of the Project, to the extent located on the Site, shall be and shall remain forever private, and that the Town of Wellesley shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- a. All internal roadways, walkways and parking areas;
- b. Stormwater management system, including the maintenance of catch basins, infiltrator units, bio-swales, underground infiltration structures and the like;
- c. Snow removal;
- d. Landscaping and landscape maintenance;
- e. Trash removal;
- f. Water system within the Site for both domestic use and fire protection, including hydrants; and
- h. Wastewater infrastructure within the Site.

The common facilities referred to above shall be maintained in perpetuity by the Condominium Association to be established as provided for herein.

52. The Applicant shall provide for the Condominium Association and each owner to maintain and repair all common areas and facilities, including the stormwater management system, wastewater disposal systems, landscaping, and other improvements within the Site. The condominium documents shall set forth the obligations of the Condominium Association for the operation and maintenance of all such common areas and improvements and shall reference the affordability requirements upon which the Comprehensive Permit is conditioned. Prior to the issuance of any certificate of occupancy, the Applicant shall provide documents establishing such Condominium Association to the ZBA for approval by Town Counsel as to form and for verification that such documents are in conformance with this Comprehensive Permit and shall certify to Town Counsel that same comply with M.G.L. c.183A. The Condominium Association shall adopt rules and regulations and a copy shall be provided to the ZBA.

53. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities and services until the recording of the Master Deed of the condominium, to the extent that such installation, operation and maintenance is a condition required in this Comprehensive Permit. Upon the recording of the Master Deed, the installation, operation and maintenance obligations shall be joint and several with the Applicant and the Condominium Association until the perfection of the sale of the last dwelling unit. Thereafter, such operation and maintenance shall be the responsibility of the Condominium Association. The provisions of this paragraph shall not modify the obligation of the original Applicant and the Condominium Association.

54. The Affordable Units shall constitute a percentage (beneficial) interest in the Condominium Association that shall be in proportion to the initial price of the Affordable Units to the sum of the projected initial prices of the affordable and market-rate units.

55. The Condominium Association and purchasers of all units shall be bound in perpetuity by all conditions and restrictions contained in this Comprehensive Permit.

56. The condominium documents for the Project shall provide that:

- a. There shall be no amendments to provisions regarding or relating to the Affordable Units or conditions set forth in this Comprehensive Permit without ZBA approval.
- b. Conditions set forth in the Comprehensive Permit concerning condominium governance must be set forth in the documents; in the event of any conflict between the condominium documents and the Permit, the terms of the Comprehensive Permit shall control.
- c. The Master Deed shall reference the Deed Rider and the Regulatory Agreement.

57. The Applicant shall assure that the proper covenants are included in the Condominium Association's documents to address the following:

- a. To the extent permitted by law, there shall be no conversion of interior space into additional bedrooms.
- b. Disposal of yard and landscaping waste inconsistent with sound land management and composting practices shall not be permitted in the surrounding wooded areas on the Site.
- c. The removal of trees outside the limitation of disturbance shown on the Approved Plans shall be limited to the removal of invasive species, fallen or dead trees, and trees that in the opinion of a licensed arborist pose a threat to nearby structures.
- d. Trash and recycling receptacles shall be stored inside the designated area shown on the Approved Plans except during collection.
- e. All Town bylaws and regulations concerning home-based businesses shall be applicable to the units.
- f. Operation and maintenance of the stormwater management system and the sewage disposal system shall be the responsibility of the Condominium Association.
- g. Unit owners shall submit to the Condominium Association copies of all applications for building permits.
- h. Pet waste shall be picked up on the Site and disposed of in the toilet or trash receptacle.
- i. The storage, use and disposal of any household hazardous wastes shall be properly and safely conducted.
- j. Only calcium-based deicer substances shall be used.
- k. All catch basins shall be fitted with oil and grease traps.
- l. No new plantings shall include any invasive species.
- m. There shall be no rentals of the market rate dwelling units for terms shorter than twelve (12) months; any rentals of affordable units shall comply with the terms of the Regulatory Agreement and Deed Rider.

58. All necessary easements shall be granted by the Applicant where required by public utility companies or the Town of Wellesley. The aforementioned easements shall be recorded in a timely manner and shall be submitted to the Building Inspector prior to occupancy.

59. All landscaping required by this Permit shall be guaranteed for a period of twelve (12) months by the Applicant. The Applicant shall be responsible for replacing dead, dying and/or diseased plantings within this time period. Verification of the dates of planting must be submitted to the Building Inspector.

60. This Comprehensive Permit shall be recorded at the Norfolk Registry of Deeds senior to all other liens or encumbrances other than pre-existing easements of record and existing mortgages.

61. If at any time during construction, the Building Inspector, Town Engineer or the ZBA determines that a violation of the Approved Plans or this Comprehensive Permit has occurred, the Town, through the Building Inspector or the ZBA, shall notify the Applicant by certified mail and the Applicant shall be given thirty (30) days (or lesser time period if in the sole opinion of the Town that said violation creates an emergency condition) to rectify

said violation or construction activities shall be ordered to cease until the violation is corrected.

### **Affordability Requirements**

62. Twenty five percent (25%) of the total units in this development (or six (6) units) shall be available in perpetuity for purchase and occupancy by households whose income is no more than 80% of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA, adjusted for household size and as determined by the United States Department of Housing and Urban Development (the "Affordable Units"). Applicants must satisfy all other applicable eligibility requirements including, but not limited to First Time Home Buyer status and maximum asset level requirements. Before any Affordable Unit is sold, the Applicant shall submit to the Building Inspector the proposed form of Deed Rider to be attached to and recorded with the Deed for each and every affordable unit in the Project at the time of each sale and resale, which Deed Rider shall restrict each such unit in accordance with this requirement in perpetuity in accordance with the requirements of M.G.L. Chapter 184, sections 31-33. Each Deed Rider for the Affordable Units in the Project shall set forth the period of affordability to be in perpetuity.

63. A Massachusetts Housing Finance Agency Regulatory Agreement for either Comprehensive Permits Projects in Which Funding is Provided Through a Non-Governmental Entity, or for the Housing Starts Program or a regulatory agreement with another qualifying subsidizing agency, shall be executed prior to the issuance of the Building Permit for the Project. This Regulatory Agreement shall set forth the terms and agreements relative to the sale and resale of the Affordable Units in the development. The Regulatory Agreement shall be submitted to the Building Inspector prior to its recording.

64. To the maximum extent permitted by law, and applicable regulation local preference for the occupancy of seventy percent (70%) of the Affordable Units shall be given to residents of the Town of Wellesley satisfying all applicable eligibility requirements. For the purpose of this condition, and subject to any legal requirements, "residents of the Town of Wellesley" shall, to the extent not otherwise prohibited or limited by the provisions of relevant governing regulations or requirements, include, but not be limited to, the following: current Wellesley residents; employees of the Town of Wellesley, Wellesley Public Schools; and members of the household of children attending the Wellesley Public Schools. This Condition shall be enforceable only to the extent the local preference requirement set forth herein is approved by the Subsidizing Agency based on information that the Town shall be responsible to provide in accordance with the requirements of DHCD set forth in its Chapter 40B Guidelines.

65. The affordability requirement of this Comprehensive Permit shall be senior to any mortgage liens on the Affordable Units. The Applicant shall be required to use a Deed Rider consistent with this requirement.

66. The six (6) Affordable Units shall have similar amenities as the market-rate units and the subsidizing agency shall approve the distribution of the Affordable Units throughout the Project.

67. The Affordable Units shall be owner-occupied, except for bona fide temporary absences not to exceed twelve (12) months, during which rental may be permitted to qualified households upon approval of the Monitoring Agent and subject to the affordability restrictions set forth in the Regulatory Agreement.

68. To the extent required by law, if a household or households requiring handicap access modifications is selected in the lottery for the initial sales of the Affordable Units, the Applicant shall make reasonable modifications to the interior of the Affordable Unit(s) provided such modifications do not include structural changes to the building and do not exceed five (5) percent of the initial sales price of the Affordable Unit, at the Applicant's expense to accommodate such household. The Applicant shall not be held responsible for such modifications if the construction of the Affordable Unit has progressed beyond the construction stage that undertaking such changes will cause delays to the construction schedule.

### **Miscellaneous**

69. Enforcement of the conditions of this decision shall be by the Building Inspector or the ZBA to the extent permitted pursuant to the terms of M.G.L. c.40B, §§20-23 and 760 CMR 56.

70. Prior to issuance of the final certificate of occupancy, the Applicant shall:

- a. Submit to the Department of Public Works (DPW), in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all utilities, roadway, sidewalk and associated construction, and stormwater management systems. The file format shall be in accordance with the DPW's requirements. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet [or Meters, as required by the Town].
- b. Submit to the Building Inspector as-built plans for all buildings in the Project.
- c. Complete all items on the Department of Public Works' site construction punch list.

71. The Applicant shall make a payment of \$10,000 to the Town of Wellesley for the purpose of funding a study, to be conducted by the Town or its selected consultants, of the post-construction impacts of the Project on the use of Stearns Road, and in particular on the use of Stearns Road as an active and safe pedestrian corridor, and the recommendation of improvements to the road and/or right of way to address those impacts. The Applicant shall deposit an additional \$25,000 for the purpose of implementing the recommendations of the study. Any portion of the \$10,000 payment not used for the study may also be applied for the purpose of implementing the recommendations of the study. The Applicant

shall make these payments to the Town prior to the issuance of the Certificate of Occupancy for the Project. This study will begin no sooner than one (1) year after issuance of a certificate of occupancy to ensure that the impacts of a fully occupied project on Stearns Road are assessed, and any unexpended funds shall be returned to the Applicant three (3) years after issuance of the Certificate of Occupancy for the Project.

72. Two (2) public shade trees (one 8 inch red maple and one 18 inch red maple) on the Site are identified in the Town's tree census. The Applicant shall comply with the requirements Massachusetts *Public Shade Tree Act* to the extent it seeks to remove said trees.

73. The Applicant shall pay all permit application fees normally charged by the Town.

74. This Permit is granted to the Applicant and, prior to substantial completion of the Project, while individual condominium units within the Project may be sold, this Comprehensive Permit may not be transferred or assigned to any party without approval of the Subsidizing Agency and notice to the ZBA, as required by 760 CMR 56.05(12)(b). The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the Applicant and the successors and assigns of the Applicant, and the obligations contained herein shall run with the land. In the event that the Applicant sells, transfers, or assigns a portion or all of its interest in the development, this Comprehensive Permit shall be binding upon the purchaser(s), transferee(s), or assignee(s) and any successor purchasers, transferees or assignees.

75. Any and all references to the "Applicant" herein shall include any authorized successors or assigns of the Applicant, including, but not limited to, the Condominium Association created relative to the Project and all individual unit owners. The terms, provisions and conditions of this Permit shall burden and benefit the successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance where the Town or the Applicant is named or referred to.

76. Any changes to the Project must be reviewed by the ZBA in accordance with the procedure set forth in 760 CMR 56.05(11).

77. The Applicant shall comply with all local regulations and bylaws as of the date of this Permit, except for those which are waived in accordance with the Exceptions granted in "Waivers" section above or as otherwise expressly set forth in this Decision.

78. This Permit shall become void if the Applicant does not commence with development of the Project as approved herein within three (3) years of the date this Permit becomes final, in accordance with 760 CMR 56.05(12). Commencement of development shall mean that the Applicant obtains a building permit for the construction of the Project and commences substantive construction work under that permit. The ZBA may grant extensions for good cause.

79. All construction of the Project shall be completed within four (4) years from the date of issuance of the building permit unless a request is filed with, and approved by, the ZBA extending such time.

80. If any provision of this Comprehensive Permit or portion of such provision or the application thereof to any person or circumstances is for any reason held invalid or unenforceable, the remainder of this Comprehensive Permit (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

**Additional Conditions Included in the March 15, 2021  
Decision of the Housing Appeals Committee:**

- (a) Construction in all particulars shall be in accordance with all applicable local zoning and other by-laws in effect on the date of the submission of the developer's application to the Board, except those waived by this decision or in prior proceedings in this case.
- (b) The subsidizing agency or project administrator may impose additional requirements for site and building design so long as they do not result in less protection local concerns than provided in the original decision or by conditions imposed by this decision.
- (c) If anything in this decision should seem to permit the construction or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency, the standards of such agency shall control.
- (d) Construction and marketing in all particulars shall be in accordance with all presently applicable state and federal requirements, including, without limitation, fair housing requirements.
- (e) No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the project has been committed.
- (f) This comprehensive permit is subject to the cost certification requirements of 760 CMR 56.00 and DHCD guidelines issued pursuant thereto.

2021 APR 14 A 10:51  
MASSACHUSETTS  
DEPARTMENT OF  
Housing  
Housing Appeals Committee

ZBA 2018-65  
Petition of 16 Stearns Road, LLC  
16 Stearns Road

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.

*Robert W. Levy (Am.)*  
Robert W. Levy, Acting Chairman

*J. Randolph Becker (Am.)*  
J. Randolph Becker

*Derek B. Redgate (Am.)*  
Derek B. Redgate

ZBA 2018-65  
Applicant 16 Stearns Road, LLC  
Address 16 Stearns Road

2021 APR 14 AM 051  
WELLESLEY TOWN CLERK'S OFFICE  
MASSACHUSETTS

**NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK**

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings



## TOWN OF WELLESLEY

## MASSACHUSETTS

## ZONING BOARD OF APPEALS

888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN  
ROBERT W. LEVY, VICE CHAIRMAN  
DAVID G. SHEFFIELD

LENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 489-7450

WALTER B. ADAMS  
DEREK B. REDGATE  
PETER COVO

September 12, 2024  
7:30 pm  
Remote Business Meeting

Zoning Board of Appeals Members Present: Robert W. Levy  
David G. Sheffield  
Derek B. Redgate

ZBA 2018-65, WESTVIEW ALBION, LLC, 16 STEARNS ROAD

Alex Kogan was present at the business meeting, representing Westview Albion, LLC.

The Chairman said that the request before the Board relates to a permit that was granted under Chapter 40B of M.G.L. He said that under the State regulation, 760 CMR 56.05, the Board is charged with making a determination within 20 days after submittal as to whether they consider the proposed change to be substantial. He said that while there is no real definition of substantial in the regulations, there are examples of changes that would be substantial, such as an increase in more than 10 percent in the height of the buildings, an increase in more than 10 percent in the housing units proposed, a reduction of more than 10 percent in the size or number of units, a change in the building type, or a change from one form of housing to another. He said that the regulations further set forth what is deemed not to be substantial, such as a reduction in the number of housing units proposed, a decrease of less than 10 percent of the floor area, a change in the number of bedrooms, a change in the color, style or materials used, or a change in the financing program.

The Chairman said that the Applicant asked that the Board find that a change in the location of the driveway to avoid relocating a telephone pole is a non-substantial change.

The Chairman said that at the time of the hearing for the Comprehensive Permit, there was some discussion that a portion of Stearns Road was a private way and a portion of it was a public way. He said that the portion that was a private way was at the end tail closest to the school. He said that the plans that were submitted to the Board for the current request show that it is public. He said that the area that the Applicant now intends to encroach on may be a private way. He said that as a private way, the property owner owns to the center line and the abutter, which is the Alzheimers facility, owns halfway to the center. He said that the developer at the time opted to move the entranceway off of that parcel so as not to create an argument about overburdening the easement over the portion of the road that was private.

The Chairman said that the purpose of the request is to avoid moving a telephone pole. He said that he assumed that the pole was there when the permit was initially issued. He said that it looks like the driveway will be shifted to the right, where a portion of the way may be private. He said that moving the driveway to the requested location will be at the developer's risk. He said that it potentially gives the right of another party to contest the use of any portion of the way that is private as overburdening the easement.

The Chairman said that, given the standard, he did not believe that the proposed change is substantial. He said that if the Board determines that the proposed change is not substantial, there is no further action that it needs to take. He said that it would thereafter be deemed an amendment.

The Chairman said that the Board's determination is subject to a caveat that the Board is not granting any rights into any portion of a private way.

The Board voted unanimously to find that the proposed modification is not substantial.