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**TOWN OF WINCHESTER**
**BOARD OF APPEALS**
**Decision No. 3892 – Comprehensive Permit**
**19-35 River Street, Winchester, MA**

**Applicant:** SLV River Street, LLC, by Geoffrey Engler

**Application For:** Comprehensive permit under G.L. Chapter 40B, Sections 20-23 for the construction of 147 apartments in a 4-5 story building at 19-35 River Street, Winchester (the "Site").

**Dates of Hearing:** September 16, October 29, December 4, 2019, and December 18, 2019 and January 27, and February 12, 2020. A site visit was held on October 5, 2019, as described in a memorandum dated October 29, 2019. The Board deliberated on February 12 and March 2, 2020.

**Board of Appeals:** Chair Kevin Sarney
Member Mark Regan and Rakel Meir
Alternate members Dorothy Simboli and Mark Waterbury

**Decision:** To grant the comprehensive permit subject to the conditions stated below.

1. On April 23, 2019, the Applicant submitted a project eligibility application to MassHousing (the "Subsidizing Agency") in order to develop 147 rental units at the Site (the "Project"). Thirty-seven (37) units (25.2%) will be designated as affordable rental units with rents at or below 80% of the Area Median Income, adjusted for household size, as determined by the Subsidizing Agency.

2. The Site, which contains approximately 137,186 square feet (3.15 acres), is shown as Map ___, Lot ___ on the Winchester Assessors Map. It is located in the IL (Light Industrial) district under the Winchester Zoning Bylaw.

3. On May 17, 2019, MassHousing issued a Project Eligibility Letter for the Project.

4. On June 20, 2019, the Applicant submitted a Comprehensive Permit Application to the Board of Appeals (the "Board"). The Application included plans for the Project, as well as civil engineering, environmental, drainage and stormwater management, and traffic reports by the Applicant's consultants.

5. Under G.L. c. 40, § 53G, the Board retained the following consultants to conduct peer reviews of the Application at the Applicant's expense:

DRAFT

- Traffic: Toole Design;
- Water and Sewer: Weston & Sampson;
- Storm Water and Flood Plain: VHB; and
- Design: Carlone & Associates.

The Board also retained Ezra Haber Glenn of Public Planning, Research & Implementation, Inc. as a consultant at the expense of MassHousing Partnership.

6. The Board held duly noticed public hearings on September 16, October 29, December 4, 2019, and December 18, 2019 and January 27, and February 12, 2020. It heard public comment at several of those hearing sessions.

7. The Project and peer review memoranda were reviewed and commented on by the relevant Town departments, boards and officials.

8. On February __, 2020, the Applicant submitted a complete set of revised plans for the Project dated February __, 2020 (the "Approved Plans").

9. The documents submitted to the Board regarding the Project are listed in **Exhibit A** and constitute the record for this decision.

**FINDINGS**

10. The Applicant is qualified to submit the Application pursuant to 760 CMR 56.04 in that (a) it is or will become a "limited dividend corporation" under G.L. c. 40B, § 21 and 760 CMR 56.02; (b) it has a funding commitment from the Subsidizing Agency (New England Fund Program); and (c) it has "control of the site" under G.L. c. 40B, § 21 and 760 CMR 56.02 by virtue of a signed purchase and sales agreement dated January 15, 2019, which was submitted to the Board and filed with the Town Clerk on April 23, 2019.

11. The Town of Winchester has not met the statutory minimum under G.L. c. 40B, § 20 or 760 CMR 56.03(3), and affordable housing is not located on sites comprising 1.5% or more of the total land area zoned for residential, commercial or industrial use. The development of affordable units described in the Application will not result in the commencement of construction of such housing on sites comprising more than 0.3% of such land area.

12. The Project will have one five-story apartment building containing 147 dwelling units. The dwelling units will have the following mix of units:

DRAFT

| | |
|---|---|
| Studio units | ___ (__%) |
| One-bedroom units | ___ (__%) |
| Two-bedroom units | ___ (__%) |
| Three-bedroom units | ___ (__%) |

The Project will provide 221 surface-level parking spaces on the Site.

13. On January 15, 2020, Toole Design submitted its Memorandum regarding the traffic issues.

14. On January 20, 2020, Weston & Sampson submitted its Final Report: Water and Sewer System Peer Review.

15. On January 27, 2020, VHB submitted a Memorandum (3rd Review) regarding storm water and flood plain issues.

16. On February 11, 2011, Dennis Carlone submitted a memorandum entitled Final 50% Schematic Design Review Comments and Sign-Off with Conditions regarding the revised Project design.

17. The recommended conditions of each of these peer reviewers are included in the Conditions below. The Board finds that those conditions are necessary for the preservation of public health, safety and the environment.

18. Based on all the evidence, the Board finds that, provided that Project complies with the conditions below, the need for the affordable housing provided by the Project outweighs the local concerns identified during the public hearing.

## DECISION

Pursuant to G.L. c. 40B, the Board **grants** a Comprehensive Permit to the Applicant for the Project contingent on compliance with all of the conditions stated below. The term "Applicant" means the Applicant, its heirs, successors and assigns. Unless otherwise stated, the Board may designate an agent or agents to take any actions or make any decisions described below.

## CONDITIONS

### A. Regulatory Conditions

19. The total number of dwelling units developed and occupied at the Site shall be limited to 147, as shown on the Approved Plans.

20. At least 25% of the units shall be and remain affordable and shall be marketed to eligible households whose annual income does not exceed 80% of Area Median Income (AMI), adjusted for household size as determined by the Subsidizing Agency (the "Affordable Units"). Subject to approval by MassHousing as the Project Administrator, the Affordable Units and all the other units shall be eligible to be included in the Town's Subsidized Housing Inventory (SHI) maintained by DHCD.

21. The Applicant shall notify the Board and the Town Manager when building permits are issued and cooperate with the preparation of request forms to add the units to the SHI.

22. The Applicant shall notify the Board and the Town Manager when occupancy permits are issued and cooperate with the preparation of request forms to add the units to the SHI permanently.

23. The Affordable Units shall permanently remain affordable, and the Project shall remain a rental project, for as long as the Project is not in compliance with the Zoning Bylaw, so that the units shall continue to serve the public purpose for which this Comprehensive Permit is granted.

24. The Affordable Units shall be located throughout the Project as designated by the Applicant by agreement with the Subsidizing Agency, and they shall not be segregated from the Market Rate units. To the extent feasible and subject to the approval of the Subsidizing Agency, Affordable Units and Market Rate units shall be constructed comparably with respect to the number of bedrooms, unit size, and floor location. The Affordable Units shall be indistinguishable from the Market Rate units.

25. The Applicant shall execute a Regulatory Agreement, countersigned by the Subsidizing Agency as required under G.L. c. 40B, and submit annual reports to the Subsidizing Agency in accordance with the Regulatory Agreement.

26. The Applicant shall recertify to the Subsidizing Agency annually, or less frequently as may be required by the Subsidizing Agency, the continuing eligibility of any tenant in an affordable unit. If a previously eligible tenant becomes ineligible to occupy an affordable unit, the Applicant may charge the tenant market rate rent; however, the Applicant shall comply with the Subsidizing Agency's requirements for converting another unit to an Affordable Unit. Upon request by the Town, the Applicant shall provide the Town with all necessary information to determine whether the required affordability levels are in place.

27. The Applicant shall enter into a Local Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Subsidizing Agency, the Board and Town Counsel (the "Local Regulatory Agreement"), which shall be recorded

with the Middlesex County Registry of Deeds against the Property before issuance of any building permit for the Project. The Local Regulatory Agreement shall secure the affordability of the units and their monitoring after the expiration of the Regulatory Agreement for as long as the Project is not in compliance with the Zoning Bylaw.

28. The Local Regulatory Agreement shall (a) become effective only if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (b) require that the Project shall remain a rental project so long as it does not comply with the Zoning Bylaw; (c) require that at least 25% of the apartments shall be rented in perpetuity to low- and moderate-income households as those terms are defined in G.L. c. 40B, §§ 20-23; (d) restrict or limit the dividend or profit of the Applicant if and as required under G.L. c. 40B and 760 CMR 56.00, *et seq.*; and (e) restrict the number of allowed units as set forth in this Comprehensive Permit. If this Comprehensive Permit is modified, the Applicant shall request a modification of the Local Regulatory Agreement to conform to the modified Comprehensive Permit.

29. The Local Regulatory Agreement shall constitute a restrictive covenant, be recorded, be enforceable by the Town, and require that the Affordable Units remain affordable rental units in perpetuity as long as the Project is not in compliance with the Zoning Bylaw.

30. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible to monitor compliance with affordability requirements pursuant thereto. However, the Town may request, and the Applicant shall provide, all information that was provided to the Subsidizing Agency, and it may take any enforcement steps allowed under G.L. c. 40B and 760 CMR 56.00 regarding excess profits and affordability.

31. If and when the Local Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town to the full extent allowed by G.L. c. 40B.

32. Nothing in this Decision shall be deemed to limit the Town's authority to enforce this Comprehensive Permit in the legal exercise of its zoning enforcement powers. If and when the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall pay the Town a monitoring fee that is consistent with the monitoring fees required by the Subsidizing Agency.

33. To the extent allowed by the Subsidizing Agency, the Applicant shall provide local preference categories with respect to at least 70% of the Affordable Units, as requested by the Town during the initial lease-up of the Project.

DRAFT

34. The Applicant shall implement this preference pursuant to procedures approved by the Subsidizing Agency. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units, shall be borne by the Applicant.

35. The Applicant shall develop a marketing plan for the Affordable Units for review and approval by the Subsidizing Agency, said plan to comply with the local preference. The Applicant shall maintain records of its marketing efforts, which the Town may review for compliance with the preference upon request. It shall submit to the Town a report on marketing activity at the Project during the initial lease-up period, demonstrating compliance with the local preference requirement.

36. The Applicant shall assist the Town to prepare any documentation required for approval of the local preference categories by the Subsidizing Agency.

37. The Applicant shall annually submit to the Board copies of all documents and information regarding its costs and revenues from the Project that it has provided to the Subsidizing Agency or its auditor.

38. The Town, by and through the Board, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.

39. Before receiving any building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Commissioner and the Board.

**B. General Conditions**

40. The Project shall be constructed in accordance with the Approved Plans and the Applicant's representations in the public hearing. The Applicant shall comply with all local by-laws, rules and regulations of the Town of Winchester and its boards, officers and commissions unless expressly waived in this Decision.

41. The Project shall comply with all applicable state and federal laws and regulations including, but not limited to, the following:

a. Massachusetts State Building, Plumbing, and Electrical Codes;

b. Massachusetts Department of Environmental Protection ("DEP") sewer extension regulations;

c. DEP storm water management standards and industry best management

DRAFT

practices (except where stricter standards are imposed in this Decision) for construction of the drainage infrastructure;

d. Massachusetts Architectural Access Board regulations; and

e. Any Order of Conditions by the Winchester Conservation Commission under the Wetlands Protection Act.

42. There shall be no exterior construction activity, including fueling of vehicles, on the Site before 7:30 a.m. or after 6:00 p.m. Monday-Friday or before 8:30 a.m. or after 4:30 p.m. on Saturday. There shall be no construction on the Site on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving or Christmas, unless the Winchester Police Department has approved such work. The days and hours of operation shall be enforceable by the Winchester Police Department.

43. All utilities on the Site shall be installed underground. However, the requirement for underground utilities within the State right of way shall be subject to review and approval by MassDOT. The Town shall support any application to MassDOT to install underground utilities within the State right of way. If MassDOT does not allow any such utilities, they may be installed above ground.

44. The Project shall be served by municipal sewer and water, at the Applicant's sole expense, in accordance with the requirements of the Winchester Department of Public Works (DPW) and Engineering Department. All facilities shall be installed as shown on the Approved Plans.

45. The Project shall be subject to the review and approval by the DPW. The Applicant shall request any waivers of DPW requirements from the Board.

46. All water and sewer infrastructure facilities for the Project shall be constructed and fully operational before the issuance of the first occupancy permit.

47. All exterior and garage lighting for the Project shall be shielded and directed so as to avoid light trespass exceeding 0.5 foot candles at the property line or unshielded point sources of light visible from public ways or adjacent properties.

48. The following final plans shall be submitted for review and approval before issuance of a building permit:

a. Lighting plan, to the Building Commissioner;

b. Landscaping plan, including screening from neighboring properties, to the Board. If the Board determines that additional landscaping is necessary,

DRAFT

the Applicant shall place the estimated cost in an escrow account with a bonded landscaping company to pay for and perform such work.

c. Plan showing play areas, including specifications for the play equipment and for the screening of play areas to mitigate noise to the adjacent properties, to the Building Commissioner;

d. Snow removal plan, the DPW; and

e. Screening plan, including screening of the rooftop HVACs and the garage from the surrounding streets and properties, to the Building Commissioner.

The review of these plans shall not require a new public hearing or an amendment to this decision.

49. Final design plans for the storm water management system shall comply with DEP regulations (except where stricter standards are set forth in this Decision). The system shall be constructed consistent with the Approved Plans.

50. All utility work and any other roadwork in any public right of way shall be performed in compliance with the applicable regulations of the Town and MassDOT, including requirements for street opening permits and trench permits.

51. Contractors shall be duly licensed and insured. All construction shall be performed in accordance with accepted engineering and construction standards.

52. Any internal sidewalks and street trees shall be installed before issuance of an occupancy permit unless a performance guarantee acceptable to the Town is in place.

53. All structures and site improvements within the Property shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, and sewer and water infrastructure. The Applicant shall bear the cost of all maintenance, repairs, replacement, snowplowing and trash removal in perpetuity.

54. The Applicant shall provide 24/7 monitoring of the Project, during and after construction, either by on-site management or an off-site property management entity that is available by phone. If the Applicant engages a property management company, the Applicant shall post the company's name and telephone number prominently on or adjacent to the front door of the building and shall give the Board and the Town a current copy of the property management contract. The Applicant shall give the construction supervisor's telephone number to the Town Manager and the Police Department.

DRAFT

55. Fire hydrants shall be located consistent with the Approved Plans and as required by the Fire Chief.

56. The Project shall be sprinklered, including attics, parking garage and storage spaces. The Applicant shall submit, in its building permit application, final fire alarm/sprinkler plans to the Fire Chief for review and approval. It shall install the sprinklers in compliance with G.L. c. 148, § 261 and the State Building Code.

57. Every bathroom, kitchen, and laundry area in the Project shall have water-saving plumbing fixtures, and all underground water pipes shall have water-tight joints.

58. No certificate of occupancy shall be issued until the infrastructure specified in this Decision and shown on the Approved Plans is constructed and installed so as to adequately serve the building; provided, however, that the Applicant may obtain a certificate of occupancy if a performance guarantee acceptable to the Town is provided for all uncompleted work. No such performance guarantee shall be requested until all drainage facilities and the base course of the pavement have been installed. The choice of performance guarantee shall be governed by G.L. c. 41, § 81U (excluding the statutory covenant, which shall not apply in this matter) and shall be approved by Town Counsel. The Applicant shall have all statutory choices of performance guarantees available under G.L. c. 41, §81U at all stages of construction up until the request for a certificate of occupancy. The Applicant acknowledges that a letter of credit is not a suitable form of surety under G.L. c.41, §81U, par. 7.

59. Before the commencement of construction, final construction drawings showing the on-site water distribution system, drainage and storm water management facilities, and sewer system shall be submitted to the Engineering Department for review and approval.

60. Before the commencement of construction, the Applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) General Permit from Environmental Protection Agency as necessary for construction of the Project. For the purposes of this Comprehensive Permit, "commencement of construction" shall include grubbing and clearing.

61. Before issuance of any building permit, the Applicant shall:

a. Submit to the Building Commissioner a final Storm Water Pollution and Prevention Plan (SWPPP) to address specific sedimentation, erosion and dust control;

b. Submit to the Building Commissioner a description of the specific

DRAFT

operation and maintenance ("O&M") measures for all storm water/drainage facilities, including any temporary facilities required to minimize the threat of transmission of mosquito-borne diseases to the residents in and near the Project.

62. Before issuance of a building permit, the Applicant shall conduct a hydrant flow test to determine available flow and pressure to fight a fire, and provide the test results and any report to the Water Superintendent and Fire Chief. If there is insufficient water pressure or volume for fire protection, the Applicant shall construct on-site improvements such as a fire pump or off-site improvements to the municipal water distribution system as required to maintain a residual pressure of 20 psi in the municipal water distribution system. The procedure for flushing, disinfecting and pressure testing of the water mains shall be approved by the Water Superintendent.

63. Fertilizer, pesticide and herbicide use shall be minimized to the extent practicable. Fertilizer shall be phosphorus-free.

64. Only environmentally benign de-icing chemicals, not road salt, shall be used in the parking lot. The lot shall be swept annually by April 15.

65. All grading shall be consistent with the Approved Plans.

66. The Applicant shall submit post-Comprehensive Permit documents and plans required in this Decision to the Board for review and approval, as required.

67. When the Applicant has submit a complete set of post-Comprehensive Permit documents and plans, the Board shall have 45 days determine whether the final design submittals and plans comply with the conditions in this Comprehensive Permit. If the Board determines that the documents and plans are deficient, it shall notify the Applicant of the deficiencies. The Applicant shall have 45 days from the notice to cure the deficiencies, which period may be extended by the Board in writing. If the Applicant fails to cure the deficiencies within 45 days (or any extension), the Board may find that the relevant conditions of the Comprehensive Permit have not been complied with.

68. The Project shall have the radio intercom infrastructure requested by public safety officials, including bi-directional amplifiers for police and fire communications.

69. The Project shall have elevators that return to the ground floor during a power outage.

70. Before the issuance of an occupancy permit, the Applicant shall submit to

DRAFT

the Board and the Board of Health an adequate operations plan for the storage and collection of solid waste and recycling that avoids any odors or nuisances. Trucks may collect or otherwise service the solid waste and recycling containers only between 7:00 a.m. and 4:00 p.m. on Monday-Friday.

71. Any irrigation system shall comply with the specifications of the Town.

72. All water and sewer facility construction and materials shall conform to the Approved Plans.

73. Silt sacks shall be provided in all catch basins on River Street before the commencement of construction.

**C. Construction and Bonding Conditions**

74. The Applicant shall authorize the Board and its agents to enter the Site during construction of the Project – with reasonable prior notice and subject to compliance with applicable health and safety requirements such as hardhat, safety glasses and work boot requirements – to determine compliance with this Decision.

75. The Applicant shall comply with any orders by the Building Commissioner regarding construction of the Project.

76. All existing trees that are not to be removed during construction shall be adequately protected, and they shall be replaced by the Applicant if destroyed or significantly damaged during construction. Before the commencement of construction, physical barriers shall be installed to protect trees and along the limit of the clearing line. Erosion controls and tree protection measures shall be continuously maintained throughout the construction. Adjacent public streets shall be swept as needed to remove sediment and debris. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized using annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures.

77. No certificates of occupancy shall be issued by the Town until the Applicant has fully completed all site drainage and utility work appurtenant to any parts of the Site for which an occupancy permit is to be issued and has installed a binder course of pavement on all driveways and parking areas on the Site.

78. Before the issuance of a certificate of occupancy, a satisfactory surety instrument, which shall not expire unless and until it is satisfactorily replaced or released, shall be provided to the Town, in an amount to be determined by the DPW

DRAFT

sufficient to ensure the completion of the top coat of paving and completion of all trench repair work and all other required work. The surety shall be held in accordance with the Town's normal procedures, and it shall be released only upon the satisfactory completion of the work in question as determined by DPW.

79. To the extent that landscaping for the Project is not completed before the issuance of the first certificate of occupancy, the Applicant shall provide to the Town a satisfactory surety instrument, which shall not expire unless and until it is satisfactorily replaced or released, in an amount to be determined by the Board based on the Applicant's reasonable estimate of the cost of completion. The work to be secured shall include any screening and fencing along the limit of work boundary.

80. Before the commencement of construction, the Site and Engineering Plans, finalized as necessary as provided in this Decision, shall be signed and sealed by a Massachusetts Professional Engineer and a Massachusetts Registered Landscape Architect and filed with the Board and the Building Commissioner, and shall include the following at a minimum:

a. Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of the Town, private utility companies having jurisdiction, and all applicable codes;

b. Storm Water Pollution and Prevention Plan (SWPPP) describing the mitigation of sedimentation and erosion, including details regarding temporary drainage basins; and

c. Details of any temporary construction signs.

81. Before the issuance of a building permit, the Applicant shall submit to the Building Commissioner a letter from the Project architect confirming that the Project complies with applicable Architectural Access Board Regulations.

82. A surety instrument, which shall not expire until it is satisfactorily replaced or released, in an amount to be determined by the DPW, shall be given to the Town by the Applicant before starting any activity authorized by this Decision in a public way, on Town property, or in any Town easement ("Authorized Activity") to ensure the proper and timely completion of all such work.

83. Requests to reduce the surety may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding, and a cost estimate for

DRAFT

that work. The surety retained shall be based on the cost estimate of the remaining work.

84. Before the commencement of construction, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Commissioner, DPW Director, and Town Engineer to review this Comprehensive Permit and to establish a construction and inspection schedule. The Applicant and the general contractor shall submit a construction management plan for review and approval by those officials. The Applicant shall be subject to the Town's construction bylaws.

85. Before starting any Authorized Activity, the Applicant shall provide to the Building Commissioner:

a. The company, name, address and business telephone number of the construction superintendentavailable 24/7 who shall have overall responsibility for construction activities on site;

b. A copy of a municipal lien certificate showing that all taxes, assessments and charges due on the Property have been paid;

c. Certification that all required federal, state and local licenses and permits for the Project have been obtained;

d. Evidence that Dig-Safe was notified at least 72 hours before.

e. Proof that street signage is in place to ensure that emergency personnel can locate the Site to protect and secure the Site and construction personnel; and

f. At least 48 hour written notice. If activity on the Site ceases for longer than one month, notice shall be given again before work is resumed.

86. The Applicant shall obtain a Street Opening Permit from the DPW before starting work in a public way. The application for such a permit will trigger the Town's mark-out of its utilities.

87. During construction, at the end of each work day, the Applicant shall ensure that all erosion control measures are in place and secure all materials and equipment. Upon completion of all work on the Site and before as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations, and the Applicant shall notify the Building Commissioner in writing of the final disposition of the materials.

DRAFT

88. Any blasting shall be performed in compliance with 527 CMR 1.00, *et seq.* and with the approval of the Fire Department, so as to prevent injury or off-Site property damage. Before any blasting, the Applicant shall submit to the Fire Chief for review and approval a blasting plan and evidence of sufficient insurance.

89. Before the issuance of a certificate of occupancy, the Applicant shall submit to the Building Commissioner for review and approval two sets of draft As-Built Plans for all improvements and evidence of compliance with this Comprehensive Permit and any other permits required for the Project.

90. The Applicant's site engineer of record shall certify that the Project was constructed in conformance with the Approved Plans. Once approved, the Applicant shall submit to the Engineering Department a mylar of the As-Built Plans stamped by a Registered Professional Engineer, a .pdf copy, and AutoCAD plans in a version approved by the Engineering Department, and shall submit a paper copy to the Building Department.

91. All catch basins, detention basins, infiltration systems, and other storm water management facilities shall be cleaned at the end of construction. Thereafter, the Applicant and its successor shall be responsible for maintaining that system in accordance with generally accepted practice.

92. Any further soil testing shall be done by a Massachusetts Registered Professional Engineer who is a Licensed Soil Evaluator, who shall observe soil conditions in the subsurface storm water disposal area and shall relocate or modify the design of the facility if necessary because of impervious soils or bedrock. Those observations shall be witnessed by the Town Engineer or its designee, and by a licensed soil evaluator at the Applicant's expense if the Town Engineer deems it necessary.

93. The Applicant shall be permanently responsible for the following:

a. All plowing, sanding, and snow removal. Snow shall be piled in designated locations shown on the Approved Plans or alternate locations acceptable to the Fire Chief. If snow narrows any travel area on the Site to less than 18 feet and all designated snow removal locations have been filled, the Applicant shall transport snow from the Site for legal disposal at the direction of the Fire Chief. Snow accumulations at the Site entrance shall not be more than 3' high or impair sight distances for vehicles;

b. All Site maintenance and a regular schedule for that maintenance;

DRAFT

c. Repair and maintenance of all on-Site driveways and infrastructure;

d. Annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;

e. Operation and maintenance of the water and sewer service from the connection at the Town-owned mains;

f. Maintenance of any easements shown on the Approved Plans; and

g. Site lighting.

94. Before issuance of a certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of any location and equipment for mail boxes and parcel delivery areas.

95. Before any Authorized Activity, the Applicant's final construction plans shall provide for compliance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control, and blockage of Town roads, and the Applicant shall install aprons at entry points and provide for dust control in the form of sweeping and spraying of water whenever necessary.

96. No stumps or construction debris shall be buried or disposed of at the Site.

97. The Applicant shall use all reasonable means to minimize inconvenience to residents in the vicinity of the Property during construction.

98. The Applicant shall route all construction vehicles to access and egress the Site via River Street from and to Cross Street. All construction vehicles shall park on the Site or other locations approved in the construction management plan.

99. Subject to the issuance of a building permit, building construction may begin simultaneously with construction of the infrastructure, but no occupancy permit shall issue unless and until all of the infrastructure necessary for the part of the Project covered by that occupancy permit is completed and has received final approval.

**D. Special Conditions**

100. The Project shall comply with EPA's MS4 storm water permit, which became

DRAFT

effective July 1, 2018, including the increased focus on phosphorus controls, resulting from the Aberjona River's status as an impaired waterbody.

101. Because the Site is in the 100-year floodplain, the Project will require review and approval by the Conservation Commission. The Board will share its peer reviews regarding storm water management and flooding with the Commission.

102. Before issuance of a certificate of occupancy, the Applicant will pay the Town $5,000 for additional trees in the Wendell Street cul-de-sac to screen the Project, to be spent at the direction of the Winchester Tree Warden after consultation with those residents.

103. The Applicant shall pay all of the Board's outstanding peer review fees within 30 days of the issuance of the Comprehensive Permit by continuing the existing escrow account under G.L. c. 44, § 53G. No occupancy permit shall issue if an outstanding bill for any fee is 30 days overdue.

104. The Applicant shall continue to replenish the Section 53G account for the Project to pay for the Board's consultants to review the final design and construction for compliance with this Decision No occupancy permit shall be issued unless and until the consultants confirm that the Project is in full compliance. Any funds remaining in the account after such confirmation will be returned to the Applicant.

105. This Comprehensive Permit may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board as required by 760 CMR 56.05(12)(b).

106. Any changes to the Project after issuance of the Comprehensive Permit shall be reviewed by the Board in accordance with 760 CMR 56.05 (11). Proposed adjustments to the Approved Plans shall be submitted to the Building Commissioner, who may determine whether the adjustment constitutes a "change". Minor adjustments may be approved by the Building Commissioner. Any proposed insubstantial or substantial change shall be submitted to the Board under applicable regulations.

***Traffic***

107. The Applicant will ensure that plantings, landscaping and signage along the Site frontage do not restrict sight distance and are maintained at no more than 3' above street level.

108. Before issuance of a certificate of occupancy, the Applicant will provide

DRAFT

bicycle parking on the Site in a number and at a location(s) to be determined in consultation with the Town.

109. Before issuance of a certificate of occupancy, the Applicant will provide additional crosswalks and detectable warning panels in and adjacent to the Site at locations to be determined in consultation with the Town.

110. The Applicant will install a school bus waiting area on the Site in consultation with the Winchester School Department.

111. Before the issuance of a certificate of occupancy, the Applicant shall design and install to the Town's standard requirements a sidewalk along River Street between the Site and Cross Street.

112. Before the issuance of a building permit, the Applicant shall pay the Town $275,000 for traffic improvements and mitigation measures on River Street and Cross Street as described in the Toole Design Memorandum dated January 15, 2020.

113. One year after issuance of certificates of occupancy for all or substantially all of the Project, the Applicant shall, if the Town requests, conduct and submit to the Building Commissioner a traffic study of the Site and surrounding neighborhood.

***Storm Water Management***

114. After demolition of existing structures and before construction of the Project, the Applicant will conduct confirmatory test pits within the existing building footprint and will submit the results to the Engineering Department for review and approval to confirm that the actual soil texture and seasonal high groundwater are consistent with those reflected in the Approved Plans.

115. Certain pipes of the proposed drainage system are within 10 feet of the building corners. Those pipes will be subject to the Plumbing Code. Before construction of the Project, the Applicant shall consult with geotechnical and mechanical engineers to determine pipe inverts and pipe materials based on the footing zone of influence and depth of pipe, and promptly submit to the Building Commissioner documentation of compliance with the Code.

116. Before construction, the Applicant shall submit to the Board and the Engineering Department a "no-rise" certification based on the preliminary design of the Project and an updated "no-rise" certification based on the final design.

***Water and Sewer***

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117. On Sheet C-104 of the Approved Plans there is 6 inches of clearance between the existing 12-inch RCP drain and the proposed 8-inch PVC sewer service. The Applicant shall install a DI sleeve around the 8-inch sewer service below the drain, with the DI pipe centered on the drain crossing.

118. Before issuance of a building permit, the Applicant shall complete the following improvements to mitigate the Project's sewer impacts:

- Install one lateral liner;
- Abandon existing sewer services at 19-35 River Street. Plug service with grout and install cured-in-place short liner; three services, 12 linear feet of short liners;
- Perform manhole chemical root treatment at CO-44;
- Perform grouting and cementitious lining of manholes at CO-2 and CO-44; 17.0 vertical feet;
- Install new precast manhole at CO-45 for building service connection and gas/oil separation connection, [illegible] vertical feet; and
- Perform heavy cleaning and television inspection, CO-44 to CO-2, 290 linear feet.

119. Before the issuance of a certificate of occupancy, the Applicant shall pay the Town $352,800 ($2,400 per dwelling unit x 147 units) for Infiltration & Inflow ("I&I") reduction.

120. On Sheet C-104 of the Approved Plans, the existing water main consists of asbestos cement (transite). Cutting into that main and disposal of removed pipe sections shall comply with all applicable regulations.

121. All existing water services shall be cut, capped and abandoned at the water main (not at the property line).

122. On Sheet C-104 of the Approved Plans, the looped water main is proposed as 6-inch CLDI. That main shall be a minimum of 8 inches in diameter per DEP Guidelines.

123. On Sheet C-104 of the Approved Plans, the looped water main is proposed under the retaining wall. It shall be moved at least 10 feet from the base of the wall.

124. On Sheet C-104 of the Approved Plans, the proposed fire hydrant locations appear to be close to the building, which could render them unusable. All fire hydrant locations shall be approved by the Winchester Fire Department.

125. The Applicant shall add fire hydrant installation detail to Sheet C-501 of the

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Approved Plans.

***Design***

126. Before issuance of a building permit, the following aspects of the Project shall be reviewed and approved by the Board, using one or more test walls as the Board requires:

a. Coordination of façade development;

b. Preliminary materials and colors for all areas of the façade;

c. Final materials and colors for all areas of the façade.

***Nuisances***

127. Before the commencement of construction, the Applicant shall submit a rodent and pest management plan to the Board and the Board of Health for review and approval. In constructing the Project, the Applicant shall strictly adhere to that plan as approved.

128. The Applicant shall promptly (a) report all complaints regarding rodents and other pests to the Board and the Winchester Board of Health, (b) investigate the complaints and report the results of any such investigations to those boards, and (c) take corrective measures to eliminate the nuisance to the extent it is attributable to the Project.

**E. Lapse**

129. This Comprehensive Permit shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the event of any appeal and as provided in 760 CMR 56.05(12)(c)) unless construction on the Project has commenced within such period.

130. Construction under this Comprehensive Permit shall be completed within five years from the date the Permit takes final effect.

131. The Applicant may apply to the Board for extensions of these deadlines for good cause before any lapse occurs.

**F. Waivers**

132. The Applicant shall comply with the Winchester Zoning Bylaw and all other Town regulations in effect on the date the Application was filed with the Board except as expressly waived in this Decision. All the waivers granted by the Board are listed in **Exhibit B**.

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## G. Validity, Modification, and Appeal

133. This Comprehensive Permit shall not be valid until it is recorded with the Registry of Deeds and evidence of such recording is submitted to the Building Commissioner.

134. Any modification of this Comprehensive Permit shall be subject to 760 CMR 31.03 or any successor regulation.

135. Any person aggrieved by this Decision may appeal within 20 days as provided by G.L. c. 40B, §§ 20-23.

Dated this ____ day of _____, 2020.

**Board of Appeals**

_____
Kevin G. Sarney, Chair

_____
Mark Regan, Member

_____
Mark Waterbury, Alternate Member

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Winchester Board of Appeals
Decision 3892 – Comprehensive Permit
19-35 River Street, Winchester, MA

**EXHIBIT A – The Record**

DRAFT

Winchester Board of Appeals
Decision 3892 – Comprehensive Permit
19-35 River Street, Winchester, MA

**EXHIBIT B – Waivers**

[To be inserted from Section 10 of the Comprehensive Permit application. The Board should review that list to confirm that it intends to grant all those waivers.]