

TOWN OF AYER
Zoning Board of Appeals
1 Main Street
Ayer, MA 01432

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

APPLICANT: NEIGHBORHOOD OF AFFORDABLE HOUSING, INC.
("Applicant")

PROPERTY: 65 Fitchburg Road, Ayer, Massachusetts

ASSESSORS' MAP: Parcels 019011000000530, 019011000000270,
019011000000030, and 019011000000031.

DEVELOPMENT NAME: Ayer Commons

DATE: January 11, 2023

I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was received by the Town of Ayer Zoning Board of Appeals ("Board") on or about June 24, 2022 ("Application"). The Application proposes the development of one hundred and six (106) rental apartment units within seven (7) residential structures, located at 65 Fitchburg Road, Ayer, Massachusetts ("Project").
2. The Board's public hearing on the Application was duly opened on July 20, 2022, and was continued to August 17, 2022, August 31, 2022, September 21, 2022, November 16, 2022, December 21, 2022, and January 11, 2023. The public hearing was closed on January 11, 2023.
3. The Project is located on the Property, which is located at 65 Fitchburg Road, Ayer, Massachusetts.
4. The Property is located in the A-2, GB and LI Zoning Districts. Nearby uses consist of commercial uses on Fitchburg Road, and residential uses on Isaac Lane to the rear of the proposed development as well as abutting a residential use to the far rear of the Property located on Groton School Road.

5. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application.
6. During the public hearing, the Applicant was assisted primarily by its in-house representative Annika Lambert, its Counsel Stephanie Kiefer, Esq. of Smolak and Vaughan LLP, its Architect Frank Valdes of Dimella Shaffer Associates, Inc., its Civil Engineer Taylor Dowdy, P.E., of the BSC Group and its Traffic Engineer, Sam Offei-Addo, of the BSC Group.
7. The Board utilized the services of its review engineers Green International Affiliates, Inc., with James Thorne, P.E., as project manager and review of civil engineering issues, and Sergio Musto for review of traffic issues. The Board also utilized the services of Paul Haverty, Esq., of Blatman, Bobrowski & Haverty, LLC as its Chapter 40B technical consultant through a grant from the Massachusetts Housing Partnership.
8. During the public hearing, there was significant public input. The Board heard input from abutters and/or other interested persons throughout the hearing process. The Board also heard significant input from town departments, including Director of Public Works Dan Van Schalkwyk and Janet Providakes of the Ayer Affordable Housing Committee.

II. JURISDICTIONAL FINDINGS

9. The Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
 - a. The Applicant is a non-profit entity, and has indicated in its application that it intends to transfer the comprehensive permit to a single-purpose limited liability company that will conform to the limited dividend requirements of G. L. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 143 Border Street, East Boston, MA 02128.
 - b. The Applicant has received a written determination of Project Eligibility from the Department of Housing and Community Development (“DHCD”) dated November 4, 2021 under the Low Income Housing Tax Credit Program, a copy of which was provided to the Board with the original application.
 - c. The Applicant provided a redacted Purchase and Sale Agreement dated September 14, 2020, as amended through a 4th Amendment to Purchase

and Sale Agreement dated May 23, 2022, between First Ayer Realty Trust as Seller and Peace Properties, Inc., a related entity of NOAH. Thus, the Applicant has shown evidence of site control sufficient to qualify as an applicant for a Comprehensive Permit.

- d. The Applicant has agreed to execute a Regulatory Agreement that limits its annual distributions in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by DHCD.
10. The Town of Ayer (“Town”) did not meet the statutory minima set forth in G. L. c. 40B, § 20 or 760 CMR 56.03(3) to 56.03(7) at the time the original application was filed, except as noted below:
- a. At the time of the filing of the Application, the number of low or moderate income housing units in the Town constituted 7.4% of the total year-round housing units in the Town, based on the most recent publicly available copy of the DHCD Subsidized Housing Inventory, dated December 21, 2020. Thus, the Town does not meet the ten percent (10%) statutory minimum.
 - b. The Town does not have information that there are existing affordable housing units that are on sites that comprise more than one and one half percent (1.5%) of the total land area of the Town that 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. The granting of this 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. The Town does have an approved Housing Production Plan pursuant to 760 CMR 56.03(4).
 - e. The Town has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5).

- f. The Project as submitted does not constitute a Large Project pursuant to 760 CMR 56.03(6).
- g. The Applicant's Comprehensive Permit Application does not constitute a Related Application pursuant to 760 CMR 56.03(7).

III. FACTUAL FINDINGS

Location of Project

- 11. The Project is located at 65 Fitchburg Road, Ayer, Massachusetts. The Property has frontage on Fitchburg Road. The Property is located within the A-2, GB and LI Zoning Districts.

Civil Engineering, Site Design, and Stormwater Impact

- 12. The Board engaged in review of potential civil engineering, site design, and stormwater impacts of the Project.
- 13. The Project will connect to the Ayer municipal water and sewer systems. Input from the Ayer Department of Public Works was provided to ensure sufficient capacity exists to allow connection to the municipal systems.
- 14. The Applicant proposes to construct 155 parking spaces for the Project, a ratio of slightly under 1.5 parking spaces per unit.
- 15. On-site amenities will include recreational areas and structures as shown on the Approved Plans, referenced below.
- 16. Approximately 34.6% of the site will consist of impervious surface with the remainder consisting of pervious surface. The Board finds that the total amount of impervious area is acceptable.
- 17. The Board finds that the landscaping proposed by the Applicant, and as conditioned by this decision, is sufficient in light of the site disturbance that the Project will entail. The landscape design objective for the proposed development will be to enhance the built environment through the creation of a sustainable landscape that blends into the site's natural surroundings. The overall design will emphasize the use of low maintenance, native plantings and strive to integrate the proposed development's needs into the site's surrounding environment. The proposed landscape shall be consistent with the quantity and quality compared to other similar developments.

18. Stormwater management has been designed in compliance with the Mass Stormwater management standards in accordance with 310 CMR 10.05(6)(k) through (q) and defined in detail in the MassDEP Stormwater Management Handbook. The system incorporates BMP's to facilitate TSS removal, infiltration and detention of stormwater flows.
19. The Project, as conditioned herein, will address the lack of affordable rental units in the Town.
20. The Board heard testimony from the Applicant and the Board's traffic consultant, including the Applicant's Traffic Impact Study prepared by BSC Group, that the Project is expected to result in approximately fifty-six (56) vehicle trips during the weekday morning peak hour and approximately sixty-six (66) vehicle trips during the weekday afternoon peak hour.
21. The Board finds that the conditions imposed in Section IV of this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the project uneconomic. To the extent that such conditions may render the project uneconomic (as defined in 760 CMR 56.02), the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
22. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting waivers may have an adverse impact on Local Concerns.
23. The Board acknowledges concerns raised by abutters and other interested parties about the Project's potential incompatibility with abutting residential uses, including concerns relating to increased traffic and parking demand. The Board has addressed these concerns by the imposition of appropriate conditions. The Board further finds that conditions detailed below appropriately address these matters of local concern in a manner that outweighs the regional need for affordable housing. The Board finds that the conditions imposed below address local and regional housing needs while properly protecting valid issues of local concern.
24. The Board finds that the construction of the Project, as conditioned, will be consistent with local needs.

IV. CONDITIONS

A. **General**

- A.1 The holder of this Comprehensive Permit is NOAH, although NOAH intends to transfer the permit to a related-entity single-purpose limited liability company that will comply with applicable limited dividend requirements. The Property is defined as the property located at 65 Fitchburg Road, Ayer, Massachusetts, shown on a plan entitled “Ayer Commons” 65 Fitchburg Road, Ayer, Massachusetts, prepared by BSC Group, dated June 14, 2022, revised November 3, 2022 and with revisions through November 29, 2022. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit.
- A.2 Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project (“Approved Plans”). Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Town Planner who shall have the authority to approve such changes as immaterial changes. If the Town Planner determines that the proposed changes do not conform to the requirements of this Comprehensive Permit, he shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this Decision or seek modification in accordance with 760 CMR 56.05(11). The Approved Plans consist of the following plan set from BSC Group:

“Ayer Commons” 65 Fitchburg Road, Ayer, Massachusetts, prepared by BSC Group, dated June 14, 2022, revised November 3, 2022 and with revisions through November 29, 2022, and consisting of the following sheets:

G-100 Title Sheet
1 and 2 Existing Conditions
C-100 Legend and Notes
C-101 Erosion and Sediment Control Plan
C-102 Layout and Materials Plan
C-103 Grading and Drainage Plan
C-104 Utility Plan
C-200 Civil Details
C-201 Civil Details
C-202 Civil Details
C-203 Civil Details
C-204 Civil Details

Additional sheets submitted by the Civil Engineers, include:
Fire Truck Turning Plan, dated August 15, 2022
Sewer Force Main Profile, dated August 15, 2022, revised through November 3, 2022;

Lighting details contained in the plans prepared by Dimella Shaffer and included with the letter submitted to the Board by Attorney Kiefer on October 11, 2022, including the following plans/information:

Dimealla Shaffer Reflex Lighting Schedule
LightLEEDer Relay Panel
LightSync Photo Sensor Controller (00241070xBC4F6)
LightSync Photo Sensor Controller (00241403xBC4F6)
LSDM LightSync Dimming Module
Reflex Lighting
Reflex_Answers
Type L-BL-Ligman Lighting USA
Type L-LP Cooper Lighting

Architectural details contained in the plans entitled “Ayer Commons” prepared by Dimella Shaffer and dated June 17, 2022, with revisions through Applicant’s submission set sheets updated on October 11, , 2022 (indicated by *), and consisting of the following sheets:

Cover Sheet*
A-100 Site Plan*
A-101 Phase 1 – Multiplex A & B Plans & Elevations
A-102 Phase 1 - Multiplex C and Community Center Plans and Elevations
A-103 Phase 1 – Apartment Building Plans and Elevations
A-104 Phase 2 – Levels 1-2 Plans
A-105 Phase 2 – Levels 3-4 Plans
A-201 Phase 2 – Exterior Elevations
A-401 Phase 1 – Enlarged Unit Plans
A-402 Phase 2 – Enlarged Unit Plans
L-100 Landscape Site Plan*

Landscape detail sheets provided through Applicant’s set sheets submitted on December 11, 2022, and consisting of the following sheets:

L-200 Materials and Layout (revised 12/09/22)
L-300 Planting (revised 12/9/22)
L-500 Landscape Details, dated 12/9/22

- L-501 Landscape Details, dated 12/9/22
 - L-502 Landscape Details, dated 12/9/22
 - Reflex Lighting Plan, with Luminaire Schedule and Calculation Summary (2 sheets)
 - Outdoor Cylinder 4" Up and Down Spec Sheet
- A.3 The Applicant intends to transfer the comprehensive permit to a single purpose entity which shall be a Limited Dividend Entity as required by Chapter 40B and such Limited Dividend Entity, its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.
- A.4 The Project shall consist of not more than one hundred and six (106) rental apartment units within seven (7) residential structures, and other related residential amenities, inclusive of a community building, all as shown on the Approved Plans. The Project shall consist of no more than one hundred and ninety-six (196) bedrooms.
- A.5 There shall be a minimum of one hundred and fifty-seven (155) parking spaces (inclusive of required handicap spaces).
- A.6 Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, those waivers from the Ayer Zoning Bylaw and other local by-laws and regulations as specified therein. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of permit or inspection fees has been granted, except as specifically set forth herein. Any subsequent revision to the Approved Plans, including but not limited to revisions in the Final Plans, referenced below, that require additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).
- A.7 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Building Commissioner or other Town Departments, the Town Planner or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission. For submissions that require assistance from an outside consultant, as determined by the Town Planner or applicable Department Head, the thirty-day time period shall not begin until the consultant's fee has been fully funded by the Applicant. Should sixty days elapse without a response as aforesaid, said plans or documents shall be deemed approved .

- A.8 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan financing terms as set forth in the financing entity's Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph.
- A.9 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The applicable limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.
- A.10 The sidewalks, driveways, roads, utilities, drainage systems, and all other on-site infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal, landscape maintenance, and hydrant maintenance. In this regard, the proposed site access road within the Project shall not be dedicated to or accepted by the Town.
- A.11 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.

B. Affordability

- B.1 Except as may otherwise be allowed by the Subsidizing Agency DHCD, or other subsequent Subsidizing Agency, pursuant to the applicable subsidy program, a minimum of twenty-five percent (25%) or twenty-seven (27) units of the rental units shall be reserved for income-eligible households, meaning that they shall be rented to and occupied by households, as proposed by the Applicant, whose income (adjusted for household size) is not more than eighty percent (80%) of the Area Median Income ("AMI"), as determined by the United States Department of Housing and Urban Development ("HUD") and the Subsidizing Agency (the "Affordable Units"). Affordable Units shall, upon initial designation, be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency, except for fluctuations based on changes of household eligibility income allowed by the Regulatory Agreement.

The Applicant shall be responsible for maintaining records sufficient to comply with the Subsidizing Agency guidelines for the location of Affordable Units in the Project and occupancy of such Affordable Units by income-eligible households. As will be set forth more fully in the Regulatory Agreement, the location of the affordable units may change in the event that the income of a household occupying an affordable unit increases beyond allowable program limits. The Board acknowledges that affordable unit location is an issue within the exclusive jurisdiction of the Subsidizing Agency.

- B.2 All of the Project's Affordable Units shall be restricted for rental to households earning no more than the maximum allowable household income, adjusted for household size, as determined by DHCD or any substitute Subsidizing Agency. The Affordable Units shall be maintained as affordable in perpetuity, which for the purposes of this Decision shall mean for so long as the Property does not comply to applicable zoning requirements without the benefit of this Comprehensive Permit.
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan ("AFHMP") prior to the rental of any Affordable Units, and shall ensure that the Project complies with the Subsidizing Agency's Fair Housing requirements.
- B.4 For the initial rent-up of the Project, the maximum number of Affordable Units allowed by law and the applicable subsidy program, but not more than seventy percent (70%) of the Affordable Units, shall be reserved for households that qualify under a local preference definition approved by the Subsidizing Agency. A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project's Monitoring Agent to effectuate this local preference, with an approved secondary lottery for all other Applicants. The Applicant shall assist the Town in the submittal of any evidence required by the Subsidizing Agency to support this local preference requirement. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

C. Submission Requirements

- C.1 Prior to any construction or site development activities (including site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit (except as allowed by the Town Planner, as noted below), the Applicant shall:
- a. Deliver to the Board a check in a reasonable amount determined by the Town Planner to be used for staff to retain outside experts, if necessary, for technical reviews and inspections required under these conditions but at inception shall not exceed \$6,500 unless an alternate amount has been agreed upon by the Board and the Applicant. Said funds shall be deposited by the Board in an account pursuant to G. L. c. 44, § 53G and shall only be used for technical reviews and inspections associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Said funds may be used by the Board to hire civil engineering, traffic engineering, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof.
 - b. Obtain and file a copy of a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA), if necessary. The Board shall also be provided a copy of the Stormwater Pollution Prevention Plan (SWPPP) submitted along with the NPDES filing.
 - c. Submit to the Board for review and administrative approval Final Engineering Drawings and Plans (“Final Plans”), such approval to be that the plans conform to the requirements of this Comprehensive Permit and incorporate the conditions herein. The Final Plans shall also incorporate all conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record, the Professional (Civil) Engineer of record, and a Registered Landscape Architect. Final Architectural Plans shall be stamped by a Registered Architect. The Final Plans shall be submitted to the Board at least forty-five (45) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the “Final Site Plan Submission Date”).

- d. Submit to the Board for its administrative approval, a landscaping plan with the Final Plans, signed and sealed by a Registered Landscape Architect, depicting the following:
 - i. Overall planting plan that includes a demarcation of clearing and the limits of work;
 - ii. Planting plans for drives showing shade trees and lighting fixture locations;
 - iii. Plans of walkways in open space and recreation areas;
 - iv. Prototype planting plans for each building that include shade trees (minimum caliper 3”), ornamental trees (minimum caliper 3”), shrubs, and groundcovers;
 - v. Prototype screening plans for dumpsters, depicting plantings and fencing;
 - vi. Planting details for coniferous and deciduous shade trees (minimum caliper 3”), ornamental trees (minimum caliper 3”), and shrubs;
 - vii. Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;
 - viii. Tree protection and preservation plans
 - ix. Construction fencing along abutting property lines; and
 - x. Construction details.

All plantings shall consist of non-invasive, drought-tolerant species. Plantings installed along drives and walkways shall also be salt-tolerant. The final landscaping plans shall preserve the existing perimeter tree cover to the greatest extent practicable. Twelve (12) months after completion of plantings, the Applicant shall remove and replace any dead or diseased plantings and trees serving as screening. The contract with the Management Company shall address ongoing maintenance of landscaping features.

- e. Submit to the Town Planner a construction mitigation plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Town Planner, no other construction of units shall commence and no building permits shall be issued under this Comprehensive Permit until the Building Commissioner and other applicable staff have approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Building Commissioner or other applicable town staff concerning the Final Site Plans within forty-five (45) days after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.
- f. The Applicant must provide notification to the Ayer Assessor's Office for address and unit numbering.

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

- a. Record this Comprehensive Permit and the Subdivision Plan endorsed by the Board with the Middlesex South Registry of Deeds, at the Applicant's expense, and provide proof of such recording with the Board.
- b. Submit to the Board and the Town Planner evidence of Final Approval from the Subsidizing Agency (DHCD), as required by the Project Eligibility letter and the Chapter 40B regulations.
- c. Submit to the Board a copy of the Regulatory Agreement and Monitoring Services Agreement (per Phase) for the Project. Execution and recording of such Regulatory Agreement with DHCD shall be complete prior to the issuance of any building permit. It is understood and agreed that Monitoring provisions may be included with the Regulatory Agreement, in lieu of a separate Monitoring Services Agreement.
- d. Submit to the Building Commissioner final Architectural Plans prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts ("Architectural Plans"). The Architectural Plans shall be submitted in such form as the Building Commissioner may request pursuant to the State Building Code.
- e. An automatic sprinkler system conforming with NFPA 13 and a fire alarm system conforming to NFPA 72 shall be required in all residential buildings. Both systems shall be monitored by a UL approved central station monitoring service.

- f. Obtain and file with the Building Commissioner a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.
- g. Submit all necessary building, electrical, plumbing, and associated permit applications required to begin construction of the Project as required by state law.
- h. The Applicant will be responsible for all sewer permit, capacity impacts and privilege fees, as applicable, except as waiver herein.
- i. The Applicant will be responsible for all applicable water and sewer system fees as per officially promulgated fee schedules uniformly applicable to all other Town of Ayer projects, except as expressly waived herein.

D. Construction Completion/Certificate of Occupancy

- D.1 Prior to issuance of a certificate of occupancy for any structure in the Project, the Applicant shall:
 - a. Submit engineer's interim certification of compliance with utilities plan and profiles for such Phase (as applicable) to the Building Commissioner.
 - b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the structure and supporting infrastructure has been constructed in compliance with the Final Plans in all material respects.
 - c. Obtain acceptance from the Ayer Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the structure.
 - d. Obtain a sewer connection sign-off from the Ayer Sewer Commission for the structure.
- D.2 Prior to issuance of the certificate of occupancy for the last residential building to be constructed in each Phase, the Applicant shall:

- a. Submit to the Board, in digital file format and full-size paper copies, a final as-built plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.
- b. The Applicant shall provide to the Board evidence of a property management plan (if property management will be done in-house), or shall provide a copy of a contract with a Management Company if property management will be conducted by a third-party. The Applicant shall submit to the Board all information relating to the issues of building security, public access, pet policy, staffing, trash removal, and smoking policies, and other issues addressed in the conditions herein.

E. Project Design and Construction

- E.1 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall attend a preconstruction conference with the Ayer Fire Department, the Ayer Water and Sewer Department, Town Planner, Conservation Agent, Building Commissioner and other Town staff and consultants as may be determined.
- E.2 The Applicant shall permit representatives of the Board to observe and inspect the Property and construction progress until such time as the Project has been completed and the final occupancy permit issued.
- E.3 The proposed construction shall be in accordance with applicable Federal and State laws, rules and regulations.
- E.4 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.


- E.5 During construction, the Applicant shall conform to all local, State, and Federal laws regarding noise, vibration, dust, and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project.
- E.6 Appropriate signage shall be shown on the Final Plans. The Applicant has requested a waiver from the Town of Ayer Zoning Bylaws regarding signs, which shall be subject to the submittal and review of Final Plans depicting the proposed signage.
- E.7 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.
- E.8 The Applicant proposes to use electric heat for the Project.
- E.9 The Applicant shall install lighting on the site that conforms to the Town of Ayer's Zoning Bylaw. Lighting shall be down-lit/shielded to prevent light spillover onto surrounding properties. Management of outdoor lighting shall be the responsibility of the Applicant.
- E.10 Utilities, including but not limited to telephone, electric, and cable, shall be located underground. The contract with the Management Company shall note that no satellite dishes shall be allowed.
- E.11 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Geotechnical Engineer to the Building Commissioner as meeting design specifications, as applicable.
- E.12 The Applicant shall test the soil during construction to confirm soil types in the areas of the infiltration system. Such testing shall be witnessed by the Department of Public Works. All unsuitable material, if any, discovered in excavation for the infiltration system shall be removed and disposed of in accordance with State and local regulations.

- E.13 Construction activities shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday and between the hours of 8:00 a.m. and 4:00 p.m. on Saturdays. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; loading of construction dumpsters and erection of new structures. All off-site utility work shall be coordinated and approved by the Building Department and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on the Property during construction.
- E.14 Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. 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. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- E.15 No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- E.16 All dumpsters serving the Project shall be enclosed and covered (with the exception of construction dumpsters used during construction). The Board shall review the dumpster location as part of the approval of the Final Plans if different from what has been shown on the Approved Plans.
- E.17 All retaining walls visible from a public way or direct abutters, as determined by the Town Planner based upon the time of year when such walls would be most visible, shall be constructed in an aesthetic manner. Specifically, retaining walls shall avoid the use of exposed concrete to the greatest extent practicable.
- E.18 Snow shall be stored within the areas of the Property designated on the Approved Plans. Snow storage areas shall be reviewed by the Conservation Agent as part of the review of Final Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site. Proof of notification of the location of snow storage areas shall be provided to the snow removal contractor.

- E.19 The Applicant shall comply with all applicable state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP's Noise Policy contained in DAQC Policy 90-001. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements.
- E.20 The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways and driveways providing access to both the residents of the Project and emergency vehicles.
- E.21 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris deposited due to such use during the duration of construction.
- E.22 The Applicant shall comply with DPW requirements regarding curb-cut permits, and shall obtain a State Highway Access Permit, as necessary, from MassDOT.
- E.23 To the extent earth removal is necessary, the Applicant shall prepare an earth removal plan, showing all necessary cuts and fills, and describing the number of truck trips necessary for the earth removal.
- E. 24 All catch-basins shall have oil/water separators as shown on the Approved Plans.
- E. 25 Project sidewalks and pathways/walkways shall be compliant with the requirements of the Americans With Disabilities Act ("ADA") and the requirements of the Architectural Access Board ("AAB"). Sufficient information regarding grading shall be included in the Final Plans to allow for a determination of compliance with ADA and AAB requirements.
- E. 26 This Comprehensive Permit shall be a master permit which is issued in lieu of all other local permits or approvals that would otherwise be required, except for the issuance of Building Permits and Certificates of Occupancy by the Building Department under the State Building Code; provided, however, the Applicant shall pay all local fees for such permits or approvals as published in the departmental regulations or bylaws, including but not limited to building permits, inspections, water and sewer connections, and curb cuts.

- E.27 The encroaching pavement on the northwest portion of the site from the abutting property owner's parking lot shall be removed to allow for conformance with the landscaping plans, which show this area as a grassed area. If such pavement is located within the buffer zone to a resource area protected under the Wetlands Protection Act, the Applicant shall obtain necessary approvals from the Ayer Conservation Commission for such work.

F. Traffic/Traffic Safety Conditions / Sidewalks

- F.1 Access and egress to the Project shall be via Fitchburg Road (State Route 2A) via a single twenty-four foot (24') wide driveway.
- F.2 The Applicant shall work with the Massachusetts Department of Transportation ("MassDOT") to obtain permission for the installation of a sidewalk along the Project's frontage on Fitchburg Road only, if such sidewalk is to be located within the public right-of-way. The Applicant shall use best efforts to obtain approval for the installation of such sidewalk and shall copy the Board on all correspondence with MassDOT. If MassDOT declines to authorize the construction of such sidewalk after best-efforts by the Applicant, this condition shall be null and void. 
- F.3 The Applicant shall ensure that emergency vehicles can adequately maneuver through the site. The Ayer Fire Department shall review the Final Plans to ensure compliance with this condition.
- F.4 The Applicant shall submit a revised plan showing fire engine turning movements, which shall show that there is no conflict between the wheel of the fire truck and the proposed curbing.
- F.5 The Applicant shall supply detailed grading information as part of the Final Plans to ensure that all accessible parking, walkways and building entrances will comply with applicable Architectural Access Board and Americans With Disabilities Act requirements.


G. Police, Fire, and Emergency Medical Conditions

- G.1 The Applicant shall provide professional property management and maintenance personnel on the premises during normal daytime hours and an emergency contact name and number for tenants and the Ayer Police Department and Fire Department.

- G.2 The Applicant will provide Knox boxes for all buildings for Police Department and Fire Department. The Applicant will also work with the Fire Department to ensure access during construction.
- G.3 Stairwells and garages must be two-hour fire rated. Residential units must be one-hour fire rated.
- G.4 The residential structures shall be fully sprinklered to NFPA regulations.
- G.5 Compliance with all State Building Code and NFPA requirements relating to fire access and safety shall be met.
- G.6 All elevators must have emergency generator backup.
- G.7 The Project shall maintain fire access to all four sides of each residential structure at all times.
- G.8 The Project shall provide adequate external lighting to ensure safety of the residents of the Project.
- G.9 During times of construction, the Project, including all structures shall be accessible to Fire Department and other emergency vehicles. Additionally, all hydrants shall be operational during construction in accordance with NFPA requirements. Standpipes shall be operational on each floor during construction, as required by the Building Code and the Fire Department.
- G.10 The Applicant shall consult with the Fire Department prior to the commencement of construction to provide an on-site emergency plan, which shall be updated as necessary throughout the construction process.

H. Water, Sewer and Utilities

- H.1 The Applicant shall be responsible for the design and installation of the utilities servicing the Project.
- H.2 All water and sewer infrastructure shall be installed in conformance with the Ayer Water and Sewer Department's technical requirements. The Applicant shall consult with Ayer Water and Sewer Department prior to the commencement of construction. Such consultation shall include a discussion of whether gate valves to the main on Fitchburg Road should be added. The stream crossing to allow the sewer construction shall conform to all state and local requirements not waived by this decision. The Conservation Agent shall review the Final Plans to confirm this information.

- H.3 Fire hydrants shall be placed as shown on the Approved Plans in locations approved by the Ayer Fire Department and the Ayer Water Department. If the Ayer Fire Department approves different hydrant locations, such modification shall be accepted as an insubstantial change pursuant to 760 CMR 56.05(11).
- H.4 The service size for the domestic water service should be verified by the Ayer Water and Sewer Department and information on the fire service size and requirements should be verified by the Ayer Fire Department. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Ayer Water and Sewer Department.
- H.5 The water and sewer utilities servicing the buildings in the Project shall be installed and tested in accordance with applicable Town requirements and protocols, except as may be waived herein.
- H.6 Utilities shall be installed underground by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like.
- H.7 The Applicant shall be responsible for all trash and recycling removal from the Property. The requirement for trash and recycling removal shall be the responsibility of the Applicant and/or its management company, and shall not be the responsibility of the tenants of the Project. The Town of Ayer shall not have any responsibility for trash and recycling pickup at the  Property.
- H.8 Fire hydrants shall remain private, and shall be maintained by the Applicant.

I. Wetlands/Environmental/Stormwater Conditions

- I.1 The Applicant proposes work within the one hundred foot (100') buffer zone to a bordering vegetated wetland and an intermittent stream. The Applicant will be required to obtain an Order of Conditions from the Ayer Conservation Commission under the State Wetlands Protection Act, or a Superseding Order of Conditions from the Department of Environmental Protection.
- I.2 No structure requiring a building permit, including, but not limited to, dwellings, garages, storage sheds, or swimming pools shall be installed or constructed within seventy-five feet (75') of any resource area.

- I.3 Fertilizers utilized for landscaping and lawn care shall be slow release, low-nitrogen (<5%) and phosphorus-free types and shall not be used within 25 feet of a resource area. Pesticides and herbicides shall not be used within 100 feet of a wetland resource area. This condition shall survive this Order of Conditions and shall run with the title of the property.
- I.4 There shall be no dumping of leaves, grass clippings, brush, or other debris into a wetland resource area or associated buffer zones. Dumping of snow into wetland resource areas is also prohibited.
- I.5 Only non-sodium de-icing compounds are to be used within wetland resource areas and/or buffer zones, including calcium chloride or calcium magnesium acetate. De-icing compounds shall be stored in sheltered areas on impervious pads. Any arrangement for snow removal shall stipulate this condition.
- I.6 On land owned by the Applicant and not within the jurisdiction of the Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program ("Natural Heritage"), signs no less than four inches (4") by four inches (4") in size, mounted on a granite post no less than three feet (3') tall, and no less than thirty-six inches (36") below the surface identifying bordering vegetated wetlands, shall be placed every fifty feet (50') along a line twenty-five feet (25') from the bordering vegetated wetlands (excluding lands within Natural Heritage jurisdiction). On land subject to Natural Heritage jurisdiction, markers required by Natural Heritage shall control and markers will be placed in accordance with the Conservation Management Permit issued by Natural Heritage rather than as required above for the areas not within Natural Heritage jurisdiction. The specific location of the signs and markers shall be agreed-to by the Conservation Agent at the pre-construction meeting. The rustproof metal or plastic sign shall be in green background with white lettering and shall contain the following wording "Jurisdictional Resource Area. Any Work Beyond This Point Requires Approval of the Ayer ZBA and the Ayer Conservation Commission."
- I.7 All work shall be conducted in accordance with the approved erosion and sedimentation control plan. Within one week of final grading, weather permitting, all disturbed areas located within wetland resource areas and buffer zones shall be stabilized against erosion. This shall be done either by sodding or by loaming, seeding and mulching according to Soil Conservation Service Standards and the Approved Plans. Stabilization will be completed when the surface shows complete vegetative cover. Temporary stabilization measures approved by the Board's inspectional engineer will be required should work be interrupted for more than ten (10) days.

- I.8 The applicant, successor or assigns shall ensure the cleanliness of all catch basins and roadway affected by the project related activity. All catch basins will be protected by a "Silt Bag Inlet Protection" device or equal during the project work period. The applicant shall inspect and clean as necessary, all catch basins and sweep the roadway at least weekly during construction. It may be required more frequently during rain events.
- I.9 There shall be no sedimentation into wetlands or water bodies from discharge pipes or surface runoff leaving the Property.
- I.10 The Board or its agent (which may by the Conservation Commission Agent acting on behalf of the Board) shall have the right to enter the Property for inspections and to evaluate compliance with the wetlands conditions contained herein upon reasonable notice of not less than twenty-four (24) hours. Access shall be allowed in without the need for advanced notice in emergency situations when necessary to prevent imminent harm to wetlands resource areas.
- I.11 The applicant shall follow all requirements, permits and directives issued by the Commonwealth of Mass Natural Heritage and Endangered Species Program (NHESP), as applicable. All such permits and directives, interim reports, and communications from and to NHESP shall be provided to the Commission as both a paper and electronic copy within 10 days of issuance.
- I.12 During and after work on this project, there shall be no discharge or spillage of fuel, or other pollutants into any wetland resource area. If there is a spill or discharge of any pollutant during any phase of construction, the Commission shall be notified by the applicant within one (1) business day. No construction vehicles are to be stored within 100 feet of wetland resource areas overnight, and no vehicle refueling, equipment lubrication or maintenance is to be done within 100 feet of a resource area.
- I. 12 Prior to any work commencing on-site, the applicant shall submit to the Commission for review, proof that a Self-Verification Notification Form has been submitted to the US Army Corps of Engineers, if necessary.
- I.13 Prior to any work commencing on-site, the applicant shall submit to the Commission for review, proof that a NPDES Stormwater Permit is active for the project, if necessary.
- I.14 Copies of all information and all required reports regarding a US EPA NPDES permit and Stormwater Pollution Prevention Plan (SWPPP) shall be forwarded to the Commission as both a paper and electronic copy.

- I.15 The Applicant shall provide a percolation test prior to the issuance of building permits to confirm the infiltration rate for the proposed stormwater management system.

J. Other General Conditions

- J.1 This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later, as per 760 CMR 56.05(12)(a). In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time construction authorized by the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.
- J.2 The Applicant shall comply with all local regulations of the Town and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
- J.3 The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.
- J.4 This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction.
- J.5 In the event that the Applicant (or its Management Company) fails to maintain the stormwater management system for the Project in accordance with its operation and maintenance plan, within fourteen (14) days of notification by the Town to the Applicant/Management Company, the Town may conduct emergency maintenance and/or repair, as it deems necessary, and the Applicant shall, prior to the issuance of any certificates of occupancy, convey such easement or other rights in a form mutually acceptable to the Town and the Applicant as may be reasonably necessary to complete such repair and/or maintenance. In the event the Town is required to perform such maintenance, the Applicant shall reimburse the Town within forty-five (45) days for all of its reasonable expenses related to such work.

- J.6 The Project entrance way, driveway, and drainage systems associated therewith shall remain private, and the Town shall not have any legal responsibility for the operation and maintenance of such. The Town shall also have no obligations relating to any proposed recreational areas on the Property, the construction and operation of which shall be the sole responsibility of the Applicant.
- J.7 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) enforcement by the Zoning Enforcement Officer pursuant to G. L. c. 40A, § 7; (b) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.
- J. 8 Each residential building shall provide laundry facilities as shown on the Approved Plans.
- J.9 Overhead utility wires run along Fitchburg Road. The Applicant shall revise its Final Plans to ensure that all of the honey locust trees to be planted are a minimum of ten feet (10') to fifteen feet (15') behind the overhead wires. The Applicant shall consult with the utility company prior to commencement of construction and will adjust trees and sidewalks as necessary.

DECISION

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit for the construction of one hundred and six (106) rental apartment units pursuant to Chapter 40B, §§ 20-23, for the development described above.

RECORD OF VOTE

The Board of Appeals voted _____, at its public meeting on January 11, 2023, to grant a Comprehensive Permit subject to the above-stated Conditions, with this Decision as attested by the signatures below.

Decision on Application for Comprehensive Permit
Neighborhood of Affordable Housing, Inc.
65 Fitchburg Road, Ayer, MA
January 11, 2023
Page 26 of 33

Dated: January 11, 2023

Filed with the Town Clerk on January 12, 2023.

Town Clerk

Notice: Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Ayer, Massachusetts. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.

Decision on Application for Comprehensive Permit
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DECISION ON WAIVERS

The Board takes the following action on the waiver requests of local rules and regulations submitted by the Applicant as it has determined necessary for the construction of the Project as approved by the Board:

Preliminary Statement: The Applicant's preliminary statement requests waivers of all Town Bylaws, including, but not limited to the Ayer Zoning Bylaws, the Ayer Zoning Board of Appeals' Chapter 40B regulations, Subdivision Rules and Regulations, Board of Health Regulations and any other local rules. This request goes on to state that the Applicant requests "an exception from each and every provision or requirement of all Local Requirements and Regulations issued by a 'Local Board[.]'" Because the Board believes that blanket waivers of local rules and requirements leave any decision subject to claims that it is arbitrary and capricious, the Board denies the Applicant's requested blanket waivers. The Board addresses the specific waivers requested by the Applicant below.

1. Zoning Bylaws Section 1.4 – This section requires all uses and structures to be in conformance with the Town of Ayer Zoning Bylaws. The Applicant requests a waiver to allow the Project to be approved without strict conformance to the Zoning Bylaws, subject to the conditions and waivers herein.

Board Action: Waiver Granted.

2. Zoning Bylaws Section 3.5 – This section requires Site Plan Review by the Planning Board for multi-family structures. This request is for a procedural waiver and is not required pursuant to G. L. c. 40B, §§ 20-23, which state that a comprehensive permit is a master permit that subsumes all other local permitting requirements. Accordingly, Site Plan Review is not required for this Project.

Board Action: Waiver Denies as unnecessary, as no Site Plan Review is required.

3. Zoning Bylaws Section 3.5.4 – This section contains the decision criteria for Site Plan Review. This waiver request is a mix of both procedural and substantive requirements. While the Applicant is not required to obtain Site Plan Review, and thus the decision criteria is not applicable, it is helpful to acknowledge that the Board has conducted a review of site plans and has applied conditions to its approval.

Board Action: Waiver Granted.

4. Zoning Bylaws Section 3.3.5 – This section allows the Planning Board to impose a performance guarantee as part of Site Plan Approval. The Board may require a performance guarantee as a condition of the comprehensive permit, therefore this

requirement is redundant. While the Board grants a waiver of this requirement, such waiver does not prevent the Board from relying upon this section of the Bylaw as support for any performance guarantee contained as part of the conditions herein.

Board Action: Waiver Granted.

5. Zoning Bylaws Section 3.5.8 – This waiver request is also a mix of procedural and substantive waivers. Section 3.5.8 contains substantive provisions setting forth where multi-family dwellings may be allowed pursuant to Site Plan Review. To the extent that this provision contains substantive requirements, these requirements must be waived to allow the Project to proceed.

Board Action: Waiver Granted.

6. Zoning Bylaws Section 5.2 – This section contains the Table of Use Regulations. The Applicant requests a waiver to allow multi-family dwellings in the A-2, GB and LI Zoning Districts. Multi-family dwellings are not allowed in the A-2 and LI Zoning Districts, and are allowed only through the grant of a Special Permit in the GB Zoning District. A waiver is necessary to allow the Project to proceed as proposed.

Board Action: Waiver Granted.

7. Zoning Bylaws Section 5.2 and 5.3 – These sections address accessory uses. The Applicant requests a waiver of these sections to allow the accessory uses proposed for the Project including parking and infrastructure, the Community Building, recreation area and dog yard, and other amenities proposed on the Approved Plans.

Board Action: Waiver Granted.

8. Zoning Bylaws Section 6.1 – This section requires conformity with the Schedule of Dimensional Requirements. The Applicant is requesting waivers of specific Dimensional Requirements, the grant of which is necessary to allow the construction of the Project as shown on the Approved Plans.

Board Action: Waiver Granted. The Board's waiver of this provision is subject to the more specific dimensional waivers contained herein. Any provision of the Schedule of Dimensional Requirements not included herein remains fully applicable to the Project.

9. Zoning Bylaws Section 6.2 – This section contains the list of specific dimensional requirements. The Applicant seeks waivers of the Building Height requirement from 35' to allow a maximum building height of 56'4". The Applicant also requests a waiver of the maximum number of stories from 3 stories to allow a maximum number of stories of

4 stories. The Applicant also requests a waiver of the minimum front setback requirement of 30' (applicable to General Business [GB] District) to allow a minimum front setback of 25'. The Applicant also requests a waiver of the side setback requirement of 25' (for the LI and GB Zoning Districts) to allow a side setback of 15'.

Board Action: Waiver Granted.

10. Zoning Bylaws Section 6.3B – This section requires all structures to have frontage on a public way. The Applicant requests a waiver to allow the two residential structures and the community building to be accessed via the interior driveway, with aisles at least 20' wide.

Board Action: Waiver Granted.

11. Zoning Bylaws Section 6.3H – This section requires a minimum floor area of 750 s.f. for dwelling units on a single floor. The Applicant requests a waiver to allow for eighteen (18) of the one-bedroom units to be sized between 576 and 686 square feet +/-, as shown on the Approved Plans.

Board Action: Waiver Granted

12. Zoning Bylaws Section 8.2 and 8.2.5 - This section addresses the Floodplain Overlay District. Uses allowed in the Floodplain Overlay District are limited to uses set forth in the Bylaw. These sections also require a special permit from the Board of Appeals. The Applicant requests a waiver to allow the Board to approve the construction of the subsurface 4" sewer line through a portion of the FEMA A Flood Zone as part of the comprehensive permit. This waiver request is partially substantive and partially procedural.

Board Action: Waiver Granted for the substantive portions of these sections. No waiver is necessary for the procedural portions of these sections.

13. Zoning Bylaws Section 9.12 (Off-Street Parking) – This section requires 1.5 parking spaces per one-bedroom unit, 2 spaces per two-bedroom unit plus an additional five percent (5%) for visitor parking. The total required parking for the Project would be 207 spaces. The Applicant requests a waiver to allow for a total of 155 parking spaces.

Board Action: Waiver Granted.

14. Zoning Bylaws Section 9.1.5.A – This waiver request has been withdrawn by the Applicant.

Board Action: Waiver Request Withdrawn.

15. Zoning Bylaws Section 9.1.5.C.2 (Off-Street Parking) – This section prohibits a parking space from being located within eight feet (8') of a building wall (excepting enclosed parking spaces) or ten feet (10') from a lot line. The Applicant requests a waiver to allow seven (7) parking spaces on the eastern side of the Property to be located within five feet (5') of the lot line.

Board Action: Waiver Granted.

16. Zoning Bylaws Section 9.1.6A (Landscaping and Lighting Requirements) – This section requires a landscaped buffer of ten feet (10') for all parking areas having more than five (5) parking spaces. The Applicant requests a waiver to allow a landscaped buffer of five feet (5').

Board Action: Waiver Granted.

17. Zoning Bylaws Section 9.1.6.B.2 (Landscaping and Lighting Requirements) – This section requires a minimum of one (1) tree per ten (10) parking spaces. The Applicant seeks a waiver to allow landscaping as shown on the Approved Plans.

Board Action:



18. Zoning Bylaws Section 9.1.6.C (Landscaping and Lighting Requirements) – This section requires a four-foot landscaped strip to be provided between the right of way and the sidewalk. The Applicant requests a waiver to allow a grassed area between Fitchburg Road and the sidewalk.

Board Action: Waiver Granted.

19. Zoning Bylaws Section 9.1.9 (Bicycle Accommodations) – This section requires one (1) bicycle parking space per two (2) dwelling units for up to ten (10) units, and one (1) bicycle parking space per four (4) dwelling units in excess of ten (10) units. The total number of required bicycle spaces for the Project would be twenty-nine (29) bicycle parking spaces. The Applicant requests a waiver of this section to allow ___ bicycle parking spaces to be provided.

Board Action:



20. Zoning Bylaws Section 9.2.A (Open Space and Landscaping Standards) – This section requires a minimum of fifty percent (50%) of the required open space to be provided in the front of side yards of the Property. The Applicant requests a waiver to allow 34,132 s.f. of open space in the front yard, and a total of 328,954 s.f. of open space on the Property.

Board Action: Waiver Granted.

21. Wetlands Bylaw Section 2, Part B – This section describes the performance standards for work in the outer fifty foot (50') buffer zone and inner fifty-foot (50') do not disturb zone.

Board Action:

22. Wetlands Bylaw Section 5 (Permitting Applications and Procedures) – This section sets forth the process for filing a Notice of Intent under the local wetlands bylaw. The Applicant requests a waiver to allow for the Notice of Intent to be included as part of the comprehensive permit application process. Because a comprehensive permit application subsumes all other local permitting requirements, this is a procedural waiver that is not necessary under G. L. c. 40B, §§ 20-23. The Applicant is not required to file a separate Notice of Intent with the Ayer Conservation Commission.

Board Action: Waiver Denies as unnecessary.

23. Wetlands Bylaws Section 7 (Wetlands Mitigation) – This Section provides the mitigation necessary to meet the performance standards under the local wetlands bylaw. The Applicant requests a waiver to allow the proposed work to be subject only to an Order of Conditions under the Wetlands Protection Act.

Board Action:



24. General Bylaws, Article XVIII (Earth Removal) – This section requires a permit from the Board of Selectmen for earth removal in excess of ten (10) cubic yards. The Applicant requests a waiver to allow the earth removal permit to be issued by the Board. This is a procedural waiver request, as the requirement for obtaining a permit from the Board of Selectmen is subsumed in the comprehensive permit. The Applicant has not set forth any substantive waivers of this Bylaw, and no such waivers are granted by the Board. The Applicant is not required to obtain a separate permit from the Board of Selectmen to authorize earth removal in excess of ten (10) cubic yards.

Board Action: Waiver Denied as unnecessary.

25. General Bylaws, Article XXXXI, Section III (Floodplain District) – This section prohibits the erection of buildings or structures within the Floodplain Overlay District without a special permit. The Applicant requests a waiver to allow the work within the Floodplain Overlay District to proceed, with the requested waivers of Section 8.2 and 8.2.5 as granted above. Because the substantive waivers have been granted elsewhere, this is a procedural waiver that is not necessary.

Board Action: Waiver Denied as unnecessary.

26. General Bylaws Article XXLV, Section 5 (Street Opening and Driveway Access Permits) – This section requires a performance bond to be posted to replace or restore any public way in which the Applicant makes an excavation. The Applicant seeks a waiver of the requirement of a performance bond.

Board Action:



27. Town of Ayer Building Department Fees – The Applicant requests a waiver of all building permit fees, demolition fees and certificate of occupancy fees.

Board Action:



28. General Bylaws Article XLVII, Section 2.8.B(9) (Stormwater Bylaw and Stormwater Regulations) – The Applicant requests a waiver of using the BMP performance evaluation tool provided by the Environmental Protection Agency (“EPA”). The Applicant does not request a waiver of the substantive provisions of this regulation.

Board Action:

29. General Bylaws Article XLVII, Section 2.8.B(10) (Stormwater Bylaw and Stormwater Regulations) – This section requires the stormwater system to have one-foot (1’) minimum of freeboard for storms up to the 100-year storm event. The Applicant requests a waiver to allow .88’ of freeboard in System 2.

Board Action:

30. General Bylaws Article XLVII, Section 2.8.B(15) (Stormwater Bylaw and Stormwater Regulations) – This section requires drainage swales to be designed to accommodate the 25-year storm event and velocities below four feet (4’) per second. The Applicant requests a waiver of this requirement as applied to the drainage swale behind the Phase II building, as this swale directs a minimal amount of water from a small area away from the building and to the infiltration system.

Board Action:

31. Water and Sewer Rate Fee Schedule – The Applicant requests a waiver of the Water Connection Fee of \$1,500 per ERU and up to \$35,000, and a waiver of the sewer connection fee of \$5,400 per ERU.

Board Action: