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Town of Franklin



Zoning Board of Appeals
Municipal Building

GRANT

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

APPLICANT: FAIRFIELD GROVE STREET LLC (the "Applicant")

PROPERTY: 121 Grove Street, Franklin, MA

ASSESSORS' MAP: Parcel IDs # 295-001-000-000 and # 294-007-000-000

DEVELOPMENT NAME: Grove Street Residences

DATE: April 16, 2024

DECISION

Pursuant to G.L. c. 40B, the Franklin Zoning Board of Appeals ("ZBA") hereby grants a Comprehensive Permit to the Applicant for the construction of 330 dwelling units on the Property, with associated infrastructure and improvements, subject to the following conditions. The term "Applicant" in this Decision shall mean the Applicant, its heirs, successors and assigns. The ZBA may designate an agent or agents to review and approve matters as set forth herein.

I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was received by the ZBA on or about October 31, 2023 (the "Application"). The Application proposes the development of three hundred thirty (330) apartment units in five elevated buildings of four- and five-stories (the "Project") on a 31.4-acre parcel located at 121 Grove Street, Franklin, Massachusetts (the "Property").
2. The ZBA's public hearing on the Application was duly opened on November 30, 2023 (after a mutually agreed upon extension of time), and was continued to February 15, 2024, March 14, 2024, March 28, 2024, and April 11, 2024. The public hearing was closed on April 11, 2024.

3. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application.
4. During the public hearing, the Applicant was assisted primarily by its counsel, Richard Cornetta of Franklin; its civil engineer, Brian McCarthy of RJ O'Connell & Associates and Development Manager John Shipe.
5. The ZBA utilized the peer review services of Joseph Peznola of Hancock Associates, Marlborough, MA, for civil and stormwater, and Howard Stein Hudson of Bridgewater for traffic. Mark Bobrowski of Concord, MA served as special legal counsel to the ZBA.
6. The ZBA received substantial written and oral comments and information from abutters and other interested persons, including Town of Franklin boards, agencies, and officials, throughout the public hearing process.
7. The Applicant's materials submitted during the hearing, and peer review materials and staff correspondence submitted during the public are, are list in Exhibit B, attached hereto.

II. JURISDICTIONAL FINDINGS

7. The Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the ZBA, and the Project fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
 - a. The Applicant is a limited dividend entity, Fairfield Grove Street LLC, which is a single-purpose entity created for the purpose of the Project. Fairfield Grove Street LLC has a principal place of business at 30 Braintree Hill Office Park, Suite 105, Braintree, MA 02184.
 - b. The Applicant has received a written determination of Project Eligibility from MassHousing dated October 2, 2023, a copy of which was provided to the ZBA with the Application.
 - c. The Applicant provided a copy of a Purchase and Sale Agreement dated March 31, 2022, 4th amendment, for the Property. Thus, the Applicant has shown evidence of site control sufficient to apply 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 EOHLIC.
8. The ZBA makes the following findings regarding the statutory minima set forth in G.L. c. 40B, § 20 and 760 CMR 56.03(3)-(7):

- a. At the time of the filing of the Application, the number of low- or moderate-income housing units in the Town constituted 10.86% of the total year-round units in the Town, based on EOHLC Subsidized Housing Inventory, dated June 29, 2023. However, the Town did not invoke its safe harbor within 15 days of the opening of the public hearing as provided by 760 CMR 56.03(8).
- b. The Town did not assert that there are existing affordable housing units on sites that comprise more than one and one half percent (1.5%) of the total land area of the Town 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 (0.3%) 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.

III. FACTUAL FINDINGS

Location of Project

1. The Property consists of 31.4 acres, more or less, at 121 Grove Street, Franklin, Massachusetts.
2. The Property is located in the Industrial Zoning District under the Franklin Zoning Bylaw (the "Bylaw").
3. Grove Street runs along the east side of the site. The Property has approximately 1,200 feet of frontage along Grove Street. It is located across the street from the Franklin Oaks Office Park and New England Appliances. To the north and west is the Franklin Town Forest which encompasses a large area of the surrounding land. To the south is a NGRID Electrical substation and overhead power transmission lines. The industrially zoned land to the east includes warehousing, manufacturing, offices, and general commercial type uses.

Civil Engineering, Site Design, and Stormwater Impact

4. The ZBA engaged in peer review of potential civil engineering, site design, and stormwater impacts of the Project.
5. The Project will connect to the Franklin municipal sewer system, and will contribute 63,900 gallons per day of the total flow to the municipal wastewater system. The Project will connect to the existing 15" PVC gravity sewer line to a pump station at 100 Grove Street. The Town Engineer concluded that with appropriate mitigation as set forth in the Conditions, there is or will be sufficient wastewater treatment and discharge capacity for this Project.

6. The Project will connect to the municipal water system for domestic and fire protection water supply with a demand of 70,356 gallons per day. The Project will connect to the existing water main in Grove Street.

7. Based on hydrant flow tests in 2022, there is ample flow and pressure available to the Property, without the need for domestic flow or fire protection pumps.

8. The Applicant proposes to construct five hundred seventy four (574) parking spaces for the Project, which is just short of compliance with the Franklin Zoning Bylaw. The Board finds the proposed parking should be sufficient for the Project.

Creation of Multi-Family Rental Housing

9. The Project, as conditioned herein, will address the need for rental units, both affordable and market-rate, in the Town.

Traffic Assessment

10. The Board heard testimony from the Applicant and reviewed its traffic consultant's Traffic Impact Assessment ("TIA") dated October 10, 2023. The Project is expected to result in approximately 134 vehicle trips (31 entering and 103 exiting) during the weekday morning peak hour and approximately 129 vehicle trips (79 entering and 50 exiting) during the weekday afternoon peak hour. The TIA concludes that traffic impacts related to existing intersection delays and queuing as a result of the Project will be minimal compared to the daily volumes on nearby roads. The Project will not require an Access Permit from MassDOT.

11. The Board finds, based on the testimony and submittals of its traffic peer review consultant, that the Project is not expected to impact intersection operations significantly and that the increase in delays/queues over the No-Build conditions will be minimal.

Other General Findings

12. The ZBA finds that granting a Comprehensive Permit, with the conditions and waivers contained in this Decision, is consistent with local needs.

13. The ZBA finds that the conditions imposed in this Decision are necessary to address Local Concerns. The Board finds that such conditions will not render the Project uneconomic (as defined in 760 CMR 56.02). Moreover, to the extent that such conditions may render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.

14. The ZBA finds that granting certain waivers from local by-laws and regulations is acceptable even though granting any waivers may have an adverse impact on Local Concerns.

15. The ZBA acknowledges concerns about the Project's potential incompatibility with nearby residential uses, including concerns relating to increased traffic and sewer capacity. The

ZBA has addressed these Local Concerns by the imposition of appropriate conditions. The Board further finds that conditions in this Decision appropriately address these Local Concerns in a manner that acknowledges the regional need for affordable housing.

16. The ZBA finds that the construction of the Project, as conditioned, will be consistent with local needs.

IV. CONDITIONS

All of the following terms and conditions shall apply to this Comprehensive Permit:

A. REGULATORY CONDITIONS.

1. The total number of dwelling units that may be constructed on the Property shall be limited to 330 dwelling units, with an approximate mix of 155 one-bedroom, 142 two-bedroom, and 33 three-bedroom units, as shown on the Approved Plans (defined in Condition B.1, below).

2. At least 25% of the dwelling units in the Project shall be and shall remain affordable and shall be marketed to eligible households whose annual income may not exceed 80% of area median income (AMI), adjusted for household sized, as determined by the United States Department of Housing and Urban Development (the "Affordable Units"). Subject to approval by the Commonwealth's Executive Office of Housing and Livable Communities ("EOHLC"), the Affordable Units and the remaining units shall be eligible to be included in the Town's Subsidized Housing Inventory (SHI), as maintained by EOHLC.

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

4. The Applicant shall notify the ZBA 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.

5. The Affordable Units shall permanently remain affordable, for so long as the Project is not in compliance with the Zoning Bylaw, or for the longest period otherwise allowed by law, if longer, so that the Affordable Units shall continue to serve the public purposes for which this Comprehensive Permit was authorized under G.L. c. 40B, §§ 20-23.

6. At the initial lease up and thereafter, the Affordable Units shall be dispersed throughout the Project as designated by the Applicant by agreement with the Subsidizing Agency. If the construction of the five dwellings is phased, the Affordable Units and the market rate units shall be constructed on substantially the same schedule. The Affordable Units shall be indistinguishable from the market rate units as viewed from the exterior, and shall have the same interior features and amenities as the market rate units, so that the units are interchangeable.

7. The Applicant shall execute a Regulatory Agreement that shall be 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.

8. 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 a market rate rent; however, the Applicant shall comply with the Subsidizing Agency's requirements for converting another unit to an Affordable Unit. Upon request, the Applicant shall provide the Town with all necessary information to determine whether the required affordability levels are in place.

9. The Applicant shall enter into a Springing Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Subsidizing Agency, the ZBA and its legal counsel (the "Springing Regulatory Agreement"), which shall be recorded with the Norfolk County Registry of Deeds prior to issuance of any certificate of occupancy for the Project. ZBA endorsement of said Springing Regulatory Agreement shall not be unreasonably withheld.

10. The Springing Regulatory Agreement: (i) shall 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; (ii) shall require that the Project shall remain a rental project so long as the Project does not comply with the Town's Zoning By-law; (iii) shall require that at least twenty-five (25%) percent of the apartments in the Project shall be rented in perpetuity to moderate income households as that term is defined in G.L. Chapter 40B, Sections 20-23; (iv) shall restrict or limit the dividend or profit of the Applicant only if and as required under G.L. Chapter 40B and 760 CMR 56.00, et seq., and no independent limitation on dividends or profits is imposed hereunder; and (iv) shall restrict the number of allowed units and bedrooms (within a 5% deviation) as set forth in the Comprehensive Permit. If the Comprehensive Permit is modified in the future, the Applicant shall request a modification of the Springing Regulatory Agreement to conform to the Permit as modified.

11. The Springing Regulatory Agreement shall constitute a restrictive covenant recorded against the Property and shall be enforceable by the Town. It shall require that the Affordable Units remain affordable rental units in perpetuity, meaning for as long as the Project does not comply with the By-law or for the longest period allowed by law, whichever period is longer.

12. While the original 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 shall be provided by the Applicant, all information that is provided to the Subsidizing Agency, and it may take any steps allowed under G.L. Chapter 40B and 760 CMR 56.00 in relation to excess profits and enforcement of affordability provisions.

13. When the Springing Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town or its designee to the full extent allowed by G.L. Chapter 40B, Sections 20-23.

14. Conditions A.9 to A.13, above, shall not construed to be or otherwise exercised in conflict with *Zoning Board of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 748 (2010), or any other binding authority, nor shall the foregoing be deemed to limit the Town's authority to enforce the provisions of this Comprehensive Permit in accordance with the legal exercise of its zoning enforcement powers. At such time as the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall pay the Town a reasonable monitoring fee reasonably consistent with the monitoring fees required by the Subsidizing Agency.

15. To the extent permitted by law, in the initial lease up of the Project a local preference for seventy percent (70%) of the Affordable Units shall be given to persons or families who are either (a) Franklin residents; (b) the parents or children of Franklin residents; and/or (c) employees who work for any corporation, firm or entity located within the Town of Franklin; and (d) veterans of the armed forces who reside in Franklin.

16. The Town shall provide the Applicant with all necessary information and data to support the local preference within 30 days of a written request for information. This preference shall be implemented by the Applicant, and the Applicant shall maintain records of its marketing efforts, which records shall be open to review by the Town for compliance with the local preference. The local preference shall be implemented 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.

17. The Applicant shall submit to the ZBA a report on marketing activity at the Project during the initial lease-up of the Project demonstrating compliance with the local preference requirement pursuant to the plan approved by the Subsidizing Agency.

18. The ZBA acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the local preference and to obtain approval of the categories of persons qualifying for it, and the Applicant shall not be in violation of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference or any aspect thereof. If the ZBA or its designee does not provide such information without good cause within thirty (30) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or EOHLC, then this condition shall be void.

19. The Applicant shall develop a marketing plan for the Affordable Units for review and approval of the Subsidizing Agency, said plan to conform to any and all affirmative action requirements or other requirements imposed by federal or state regulation.

20. If at any time the ZBA finds, after a hearing of which the Applicant has been given prior notice, that the Applicant is in violation of the affordable housing restriction with the Town when

said restriction is in effect as described above, the ZBA may pursue such enforcement rights as it may have under the affordable housing restriction and applicable law.

21. Profits from the Project in excess of those allowed under applicable law and regulations shall be utilized as provided in the regulatory agreement with the Subsidizing Agency and as required and provided for under G.L. Chapter 40B and 760 CMR 56.00.

22. The Applicant shall annually provide the ZBA or its designee for informational purposes copies of any and all documents and statements of its costs and revenues that it provides to the Subsidizing Agency or its auditor.

23. The Town, by and through the ZBA or its designee, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.

24. Prior to 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 ZBA.

B. GENERAL CONDITIONS.

1. The Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition B.1., which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project ("Approved Plans"). Reasonable adjustments to the Approved Plans following the issuance of this Comprehensive Permit are allowed. Any deviation from those plans shall be submitted to the Building Commissioner, who may determine whether the deviation constitutes an adjustment or a "change". Adjustments may be approved directly by the Building Commissioner with input from appropriate department heads, if requested. If the Building Commissioner determines that a proposed modification constitutes a "change" after the issuance of the Comprehensive Permit, the proposed modification shall be submitted to the ZBA for review and approval by the ZBA in accordance with 760 CMR 56.05 (11). The Approved Plans consist of the following:

- Site Plans prepared by RJ O'Connell dated 10/30/23., revised to 2/12/24, containing 26 sheets.
- Architectural Floor Plans, Elevations and Renderings, prepared by CNK Architects, dated 4/25/23, revised to 10/24/24, containing 5 sheets.
- Landscaping and Lighting Plans prepared by MDLA, dated 10/30/23, revised to 2/5/24.
- Stormwater Management Report prepared by RJ O'Connell & Associates, dated 12/18/23, revised to 2/12/24.

2. The Project shall conform to all applicable state and federal laws, codes, regulations, and standards including, but not limited to, the following:

(a) International and Massachusetts Building, Plumbing, Fire Protection, Elevator, Access and Electrical Codes;

(b) The Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and the associated Regulations (310 CMR 10.00) and approval as may be granted by the Franklin Conservation Commission or MassDEP;

(c) The Massachusetts Endangered Species Program;

(d) Massachusetts Department of Environmental Protection Wastewater Regulations;

(e) EPA and DEP Stormwater requirements and accepted industry best management practices for construction of the drainage infrastructure; and

(f) U.S. Army Corps of Engineers Regulatory Program under Section 404 of the Clean Water Act.

(g) The Massachusetts Historical Commission's applicable regulations.

3. There shall be no exterior construction activity, including running, idling or fueling of vehicles, on the Project Site before 7:00 a.m., or after 6:00 p.m., Monday through Friday and before 8:00 a.m. or after 6:00 p.m. on Saturday. There shall be no construction or other activity on the Premises on the following days unless a special approval for such work has been issued by the Franklin Police Department: Sundays or the following legal holidays: New Year's Day, MLK Day, Presidents Day, Memorial Day, Juneteenth, July Fourth, Labor Day, Thanksgiving and Christmas. The hours and days of operation shall be enforceable by the Police Department.

4. All utilities within the Property shall be installed underground except for those required by private utility companies to be above ground such as transformers, switch gear and pull boxes.

5. The interior and exterior of all buildings and structures shall be constructed substantially as represented in the Approved Plans.

6. The Project shall be served by the municipal water and sewer system, at the Applicant's sole expense. All facilities shall be installed as shown on the Approved Plans.

7. All lighting for the Project shall be installed as shown on the Approved Plans.

8. Landscaping shall be installed in accordance with the Approved Plans prior to issuance of the final certificate of occupancy.

9. Final design plans for the storm water management system shall comply with Department of Environmental Protection regulations and the Approved Plans.
10. All utility work and roadwork within any public right of way shall be performed and conducted in conformance with the regulations of the Town and MassDOT, if applicable, including requirements for street opening permits and trench permits. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with the Approved Plans.
11. Any internal sidewalk trees and street trees to be planted adjacent to the sidewalk shall be installed before issuance of the final occupancy permit for the Project.
12. All structures and site improvements within the Project site shall remain private in perpetuity, including any and all ways, parking areas, street lighting, drainage, buildings, sewer and water infrastructure, and the Applicant shall bear the entire cost of maintenance, repairs, replacement, snow plowing and trash removal for same in perpetuity.
13. The Applicant shall provide 24/7 monitoring of the Project, either by on-site management or by an off-site management entity that is available by phone 24/7. If the Applicant engages a management company, the Applicant shall post the name and telephone number of that company in each wing of the building in a prominent place. It shall provide the ZBA and Town a copy of any management contract.
14. The Project shall be sprinklered in accordance with applicable state and NFPA standards, including attics and storage spaces. The Applicant shall submit final fire alarm/sprinkler plans in compliance with applicable codes to the Fire Chief for review and approval.
15. The Applicant shall ensure that all underground water pipes shall have watertight joints.
16. Final drawings showing on-site water distribution system and wastewater system shall be submitted to the Town's Director of Public Works for review and approval.
17. Prior to issuance of Building Permits, the Applicant shall:
 - (a) Provide to the Building Commissioner a final Stormwater Pollution and Prevention Plan (SWPPP) to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each detention system, all in conformance with the requirements of the Conservation Commission during the Order of Conditions process.
 - (b) Obtain a National Pollutant Discharge Elimination System (NPDES) General Permit from the United States Environmental Protection Agency as necessary for construction of the Project.

(c) Provide procedures that outline the specific operation and maintenance measures for all stormwater/drainage facilities, including any temporary facilities that shall be employed to minimize or eliminate the threat of transmission of mosquito-borne diseases to the residents of the Project and nearby businesses and residents.

18. Prior to issuance of Building Permits, the Applicant shall conduct, or submit a report if completed, a hydrant flow test to determine available flow and pressure to fight a fire, and provide the results of such test to the ZBA and Fire Chief.

19. All blasting, if any, shall be performed in accordance with 527 CMR 1.0 as coordinated with the Fire Department. Pre-blast surveys shall be offered to all properties required by 527 CMR 1.0 Section 65.9.15.

20. Only organic fertilizers pesticides and herbicides shall be used on the Property.

21. Sodium-based deicing chemicals are prohibited from use on the Property.

22. Dumping of landscape debris, including leaves, grass clippings and brush on the Property is prohibited. No stumps or construction debris shall be buried or disposed of at the Property.

23. No disturbance or construction work shall be done, and no structure or pavement shall be placed, any closer to any wetland than, and tree clearing or cutting shall be limited to the extent of, the Limit of Work depicted on the Approved Plans. Any future proposal to alter this condition shall require advance approval by the ZBA.

24. The Project shall not be gated.

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

26. The Applicant shall provide post-permit documents and plans required in this Decision to the ZBA. The ZBA shall provide to the Applicant an estimated cost for a peer review of those materials for completeness and compliance with this Decision.

27. Once the Applicant has provided a complete set of post-permit documents and plans and the peer review funds are in place, the ZBA shall have forty-five (45) days to obtain the necessary peer review comments and to determine whether the final design submittals and plans conform to the conditions set forth in the Comprehensive Permit.

28. If the ZBA determines that deficiencies exist in the post-permit documents and plans, it shall notify the Applicant of those deficiencies. The Applicant shall have 30 days to cure the deficiencies, which period may be extended by the ZBA in writing.

29. If the deficiencies are not timely cured, then the ZBA may determine that the relevant conditions of the Comprehensive Permit have not been satisfied. The Applicant may avail itself of any avenue of appeal that may exist or may take further action to make additional submissions to the ZBA and its peer review consultant, to try to obtain the approval required by this

condition, so long as this Comprehensive Permit has not lapsed and so long as the Applicant pays the reasonable fees of the peer review consultant.

30. The building shall be equipped with elevators that return to the ground floor when a power outage occurs.

31. The Applicant shall provide the ZBA and the Board of Health, before any certificate of occupancy issues, with an adequate operations plan for the storage and collection of solid waste and recycling, to make sure that odor and nuisance problems are avoided. Trucks may collect or service the solid waste and recycling containers only during daylight hours between 7:00 a.m. and 4:00 p.m. on Monday-Friday.

32. If an irrigation system is installed utilizing municipal water, it may be done only in full compliance with the specifications of the Town.

33. All water and sewer construction and materials shall be in accordance with the requirements and specifications of the Town.

34. There shall be no telecommunication equipment, cell arrays or antenna affixed to the roof or sides of the building.

C. CONSTRUCTION, INSPECTION, AND BONDING.

1. The ZBA and its agents may enter the Premises during construction of the Project (subject to conformance with applicable health and safety requirements, including, but not limited to hard hat, safety glasses, reflective vests and work boot requirements), upon reasonable notice, to determine compliance with this Decision.

2. The Applicant shall pay all of the ZBA's and Town's prior and outstanding peer review and legal fees, if any, within 30 days of the issuance of the Comprehensive Permit. The Applicant shall pay for all post-permit peer review, post-permit inspections, and post-permit legal fees by funding the escrow account now established pursuant to G.L. c. 44, s. 53G. No occupancy permit shall issue if any authorized outstanding bill for any fee is 45 days overdue.

3. The Applicant shall comply with orders issued by the Building Commissioner regarding construction of the Project, subject to the Applicant's rights of appeal under applicable law.

4. Work and activities within the wetland buffer zones, if any, as defined by 310 CMR 10.00 shall be governed by the Conservation Commission.

5. No Certificate of Occupancy for any phase shall be issued until the infrastructure, common facilities, and common improvements specified in this Decision and set forth on the Approved Plans are constructed and installed so as to adequately serve said phase, or adequate security has been provided, reasonably acceptable to the Building Commissioner and approved as to form by the ZBA's legal counsel, to ensure the completion of such improvements. 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 as to form by the ZBA's legal counsel. The Applicant acknowledges that a letter of credit is not a suitable form of surety under G.L. c.41, §81U, ¶7.

6. To the extent that landscaping for the Project is not completed prior to the issuance of the 165th certificate of occupancy, the Applicant shall provide the ZBA a satisfactory surety instrument, that shall not expire unless and until it is satisfactorily replaced or released, in an amount to be determined by the ZBA based upon the Applicant's reasonable estimate of the costs to complete such landscaping work.

7. The work to be secured shall include any landscape screening and fencing along the Limit of Work boundary.

8. In addition, the Applicant shall provide surety sufficient to loam and seed any disturbed areas which are yet to be developed per the Approved Plans. Such surety shall be held by the Town Treasurer until the Treasurer is notified by the ZBA to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and the surety shall be fully released upon the satisfactory completion of the landscaping work.

9. Prior to the issuance of any building permit, 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 ZBA and the Building Inspector, and shall include the following:

(a) Grading Drainage and Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes;

(b) Stormwater Pollution and Prevention Plan (SWPPP) notes that address mitigation of sedimentation and erosion, including details relating to any temporary drainage basins;

(c) Letter from the Project architect confirming that the Project complies with Architectural Access Board (AAB) Regulations, the final Landscape Plan, and the Blasting Plan, if applicable.

10. Prior to starting any activity authorized under this Decision ("Authorized Activity"), the Applicant and the general contractor shall hold a preconstruction meeting with the DPW Director, Building Inspector, Conservation Agent, and Highway Superintendent representative to review this Decision.

11. Prior to starting any Authorized Activity, the Applicant shall provide to the Building Inspector:

- (a) the company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on the Property;
- (b) a copy of a municipal lien certificate showing that all taxes, assessments and charges due on the Premises have been paid;
- (c) certification that all required federal, state and local licenses and permits have been obtained;
- (d) proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work;
- (e) proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services; and
- (f) at least 48 hours written notice. If activity on site ceases for longer than one month, 48 hour written notice shall be given prior to restarting work.

12. During construction, the Applicant shall cause all erosion control measures to be in place and secured. Upon completion of all work on Property and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations, and the ZBA shall be notified in writing of the final disposition of the materials.

13. Within ninety (90) days of the issuance of the final certificate of occupancy, the Applicant shall submit to the ZBA two sets of As-Built Plans for all infrastructure improvements and, if applicable, evidence of compliance with this Comprehensive Permit and any other permits required for the construction of the improvements contemplated by this Comprehensive Permit. The As-Built Plans shall be provided both in paper form and as AutoCAD plans, in a version approved by the Town Engineer so as to be compatible with the Town Engineer's software and hardware. The site engineer of record shall provide a written description of any material deviations from the Building Permit plans and shall certify that work has been completed in substantial conformance with the Approved Plans.

14. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant shall be responsible for maintaining the site's storm-water management system in accordance with generally accepted practices.

15. A plan to implement adequate erosion and sedimentation control measures as required by any Order of Conditions shall be submitted by the Applicant to the Conservation Administrator for approval. Said measures shall be maintained throughout the Project until all disturbed areas have been permanently stabilized with an adequate vegetative or asphalt cover in accordance with the Approved Plans.

16. Any soil testing shall be done by a Massachusetts Registered Professional Engineer in locations confirmed with the ZBA's consulting civil engineer.

17. The Applicant shall be permanently responsible for the following aspects of the Project:
- (a) all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Approved Plans or alternate locations acceptable to the Fire Chief. If snow impairs roadways such that the travel area is less than eighteen feet wide, and all designated snow removal locations have been exhausted, the Applicant, at the direction of the Fire Chief, shall cause snow to be transported from the Project to an off-site location for legal disposal;
 - (b) maintaining the site and establishing a regular schedule for site maintenance;
 - (c) repairing and maintaining all on-site roadways, including drainage structures and utilities therein, and the infrastructure within the Project;
 - (d) maintaining all any and all easements shown on the Plans; and
 - (e) site lighting.
18. Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of any location to be used for mail boxes and parcel delivery.
19. Prior to commencing Authorized Activity, the Applicant's final construction plans shall provide that the construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control and blocking of Town roads. The Applicant shall comply with all such laws and regulations in the construction of the Project. It shall install aprons at entry points and provide for dust control in the form of sweeping and spraying of water whenever necessary.
20. The Applicant shall use all reasonable means to minimize inconvenience to businesses and residents in the general area during construction.
21. This Comprehensive Permit and any permit granted hereunder is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the ZBA, as required by 760 CMR 56.05(12)(b).
23. Building construction may begin simultaneously with the commencement of construction of the infrastructure, but no occupancy permit shall issue until compliance with the State Building Code has been achieved.

D. SPECIAL CONDITIONS.

1. Final plans shall be reviewed by the Fire Department with regard to hydrant locations and access to buildings.

2. As a way to mitigate the impacts of the Project, the Applicant shall contribute to the Town the sum of \$750,000.00 prior to the issuance of the first certificate of occupancy. In addition:

a. Within 90 days of the expiration of the appeal period for the Comprehensive Permit without appeal, or, if an appeal is filed, within 90 days after the dismissal of the appeal in favor of the Applicant, the Applicant shall provide the sum of \$25,000.00 to the Town to pay for the cost of a study of the sewer infrastructure by the Town's consultant ("Study").

b. If said Study determines that sewage infrastructure improvements are required in order to process the wastewater generated by the Project, the Applicant shall forthwith, prior to the issuance of the first certificate of occupancy either (i) construct an on-site storage tank to store and discharge sewage off-hours or (ii) provide additional funds to the Town for improvements to the Town's sewage treatment system, but not to exceed the sum of \$150,000.00.

c. The total amount due to the Town of Franklin under this Condition D.2 shall not exceed the sum of \$925,000.00, depending on the option selected under D.2.b.

3. The Applicant shall replace the two existing hydrants at the front of the Property on Grove Street.

4. Any proposed walls greater than 4 feet in height shall be designed by a structural engineer after a structural analysis that considers the global stability of the wall and backfill and the hydrostatic load imparted on the wall from infiltration systems proximate to the walls.

5. The Applicant shall work with the Conservation Commission to successfully implement the Project in light of the waivers of the local Wetlands Bylaw or Regulations granted by the ZBA as set forth in Exhibit A.

E. LAPSE.

1. 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 both it is duly recorded and construction on the Project has commenced within such period.

F. WAIVERS.

1. The Applicant shall comply with the State Building Code, the Town of Zoning Bylaw, and all other local development controls in effect on the date the Application was filed with the ZBA, except as expressly waived herein. Any waiver not expressly granted or not shown on the Approved Plans is not granted. This Comprehensive Permit and the Waivers are expressly conditioned upon compliance with all of the conditions in this Decision.

2. The Board grants all the Waivers requested in Exhibit A, attached hereto.

G. VALIDITY OF PERMIT.

This permit shall not be valid until recorded with the Registry of Deeds and evidence of such recording is provided to the Building Inspector and the ZBA. Any modification of this permit shall be subject to 760 CMR 56.07(4) or any successor regulation thereto. Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by G.L. c. 40A, § 17 or G.L. c. 40B, § 20 et seq., as applicable.

FRANKLIN ZONING BOARD OF APPEALS



Bruce Hunchard, Chairman



Robert Azeyedo



Philip Brunelli

Filed with Town Clerk on April 16, 2024

Sent to Applicant, certified mail, on April 16, 2024

Notices to interested parties mailed on November 5, 2023

EXHIBIT A

LIST OF APPROVED WAIVERS

EXHIBIT B

LIST OF MATERIALS RECEIVED DURING THE PUBLIC HEARING

EXHIBIT A

5.a.ix List of Requested Exemptions

(and Zoning Summary Table)

The list below identifies the waivers approved by the Franklin Zoning Board of Appeals at its meeting on March 28, 2024, for the Project.

Bylaw Section	Description	Waiver Request
Franklin Zoning Bylaw Franklin Code Chapter 185		
Section 185-7: Attachment 7 Use Regulations Schedule Part VI	Multifamily or Apartment is not an allowed use in the Industrial District	Request waiver to allow Multifamily or Apartment in the Industrial District
Section 185-11: Number of buildings on a lot	Not more than one single-family or two-family dwelling shall be erected on a lot. More than one principal building other than a single-family or two-family dwelling may be erected on a lot, provided that access, drainage and utilities serving each structure are functionally equivalent to that required for separate lots by the Planning Board rules and regulations	Waiver to the extent needed from this section to allow the development as shown on the site plans.
Section 185-13: Attachment 9 Schedule of Lot, Area, Frontage, Yard and Height Regulations	Maximum Building Height of 3 stories. 60 feet may be permitted by Special Permit from the Planning Board	Waiver to allow 5 stories and up to 68 feet
Section 185-19.B(1) Accessory Building and Structures	No accessory building or structure shall be located within a required front yard setback. Lots having frontage on any street will maintain the front yard setback from all street frontage.	Waiver for retaining walls within Front Yard Setback.

FAIRFIELD.

Section 185-19.B(2) Accessory Building and Structures	No accessory building or structure shall be located in any side yard area nearer to the side lot line than 10 feet in any zoning district.	Waiver for retaining walls within 10 feet of side lot line.
Section 185-19.B(3) Accessory Building and Structures	No accessory building or structure shall be located in any rear yard area nearer to the rear lot line than 10 feet.	Waiver for retaining walls within 10 feet of rear lot line.
Section 185-21.B.(3) Parking Loading and Driveway Requirements	2 spaces per dwelling unit (Regardless of the number of bedrooms)	Waiver to allow 1.74 spaces per dwelling unit including parking for the clubhouse as shown. (total spaces = 574)
Section 185-31 Site Plan and Design Review	Site Plan and Design Review Required	Waiver from Site Plan Review and Design Review requirements. Zoning Board of Appeals is the review and approval board.
Section 185-20.B(3)(c) Attachment 10 Sign Regulations	Schedule of Permitted Signs per District	Waiver requested to construct the sign as shown on the plans
Section 185-20.C(2) Sign Permits	Permit required from Building Commissioner and Approval from the Design Review Commission.	Waiver to allow signage to be approved as part of the Building Permit.
Section 185-20.C(4)(c)[1] Sign Dimensions	Properties within the IOPD and CBCD that are directly abutting or facing a residentially zoned district, shall have all signs reduced in size by 50%.	Waiver to not require a 50% reduction in size
Section 185-20.H Sign Approvals	Design Review Commission Sign Approvals	Waiver from Design Review Commission Approval

FAIRFIELD.

Zoning Table

Zoning Table: Industrial Zone			
Description	Required	Proposed	Status
Lot Area	40,000 sf	1,368,634 sf	Complies
Frontage	175 ft	1,203 ft	Complies
Lot Depth	200 ft	954+/- ft	Complies
Lot Width	157 ft	990 +/- ft	Complies
Front Yard	40 ft	60 ft	Complies
Side Yard	30 ft	>30 ft	Complies
Rear Yard	30 ft	125 ft	Complies
Height	3 Stories	5 Stories	Waiver Request
Max Impervious of Upland	70% Structures 80% Total	14% 45%	Complies
Parking	660 spaces (2 spaces/unit)	574 +/- spaces (1.74 spaces/unit)	Waiver Request
Parking (for clubhouse)	N/A	17 spaces (inc. in the 574)	Waiver request for parking as shown

The following waivers are requested from the Stormwater Management Bylaw Chapter 153, the referenced Subdivision and Land Management Regulations Chapter 300-11, Chapter 181 Wetlands Protection Bylaw, Chapter 271 Conservation Commission Bylaws and the Conservation Commission Regulations:

Franklin Stormwater Management Bylaw Chapter 153		
Bylaw Section	Description	Waiver Request
Section 153-10 Surety	Posting a Surety	Waiver requested.
Section 153-15.A(9) Groundwater	Groundwater levels measured (November to April) in areas to be used for stormwater retention, detention, or infiltration.	Waiver from groundwater determination between November and April. Groundwater determination used soil analysis which is current standard practice.

FAIRFIELD.

Franklin Subdivision of Land Stormwater Management Regulations Chapter 300-11		
Bylaw Section	Description	Waiver Request
Section 300.11.B(2)(a) Piping	The drainage pipe shall be reinforced concrete, with bell and spigot gasketed joints.	The drainage pipes will be concrete except for the subsurface detention and infiltration systems which will be plastic chambers or pipes, or corrugated metal pipe or otherwise as shown on the final approved plans.
Section 300.11.B(2)(a) Piping	The minimum cover is 42 inches above the top of the pipe.	Applicant will comply with MassDOT standards of minimum cover 18" for standard Class II RCP and minimum 6" cover for heavy duty Class IV RCP.
Section 300.11.B(2)(c)	At each outfall of a drain line, a Type B winged headwall of reinforced concrete shall be constructed	Majority of the outfalls are at the face of retaining walls, which for all practical purposes, is equivalent to a headwall. Where pipes are not flush with a retaining wall, outfalls have gently sloping embankments that accommodate a flared-end section. (Furthermore, peer reviewers have not commented that headwalls would be more appropriate)
Section 300.11.B(3)(b)	Flat-topped structures are not allowed, unless with written authority of the Department of Public Works Director	Closely related to the minimum cover over pipes, the project will comply with industry standards and implement flat top slabs, H20 loading, where necessary.
Section 300.11.B(3)(d)	Drain manholes, construction of a brick table within the manhole. Arched inverts of 1/2 the pipe diameter shall be sloped upward to the sides of the manhole. The tops of the main drain lines entering and leaving a manhole shall be matched	Waiver requested such that the arched invert for drain manholes be constructed out of cement concrete rather than blocks.

FAIRFIELD.

Franklin Chapter 181 Wetlands Protection Bylaw		
Bylaw/Regulation Section	Description	Waiver Request
Section 181-1 Purpose.	Additional functions, characteristics, standards, and procedures listed under the Bylaw.	General waiver from application of additional standards and procedures of local Bylaw to the Project; Project subject solely to the requirements of the Massachusetts Wetlands Protection Act and Regulations (MGL c. 131, s. 40 and 310 CMR 10.00) thereunder.
Section 181-2 Jurisdiction.	Permit under more expansive jurisdiction under the local Bylaw required from Conservation Commission.	Waiver from local Bylaw jurisdiction; Project to be subject solely to Massachusetts Wetlands Protection Act and Regulations thereunder. This section defines the resource area as inclusive of areas that do not border surface waters, i.e. the Isolated Vegetated Wetland (IVW) discussed in the application to the Conservation Commission.
Franklin Chapter 271 – Conservation Commission Bylaws		
Section 271-6.C(3) Chairman: Powers and Duties	Administering the Town Wetland Protection Bylaw, Chapter 181.	Waiver from local Bylaw requirements. The Project to be subject solely to the Massachusetts Wetlands Protection Act (WPA) and Regulations thereunder.
Section 271-9.D. Vote Requirements	A motion to conduct separate hearings under the Town Wetland Protection Bylaw, Chapter 181, shall require a vote	Waiver from local Bylaw requirements. Voting requirements solely to the WPA and Regulations thereunder.
Section 271-9. H, I, J, K, L & M. Vote Requirements	Motions under or per the Town Wetland Protection Bylaw, Chapter 181.	Waiver from local Bylaw requirements. Voting requirements subject solely to

FAIRFIELD.

		the WPA and Regulations thereunder.
Section 271-13. Definition of key terms in Town Wetland Protection Bylaw	Definitions of terms under the Bylaw.	Waiver from local Bylaw definitions and requirements, to the extent these vary from the WPA and Regulations thereunder.
Town of Franklin Conservation Commission Regulations		
Section 2. Performance Standards	Performance Standards under the Franklin Conservation Commission Regulations	Waiver from compliance with the Performance Standards; Project to be subject solely to the performance standards set forth in the WPA and Regulations thereunder.
Section 4.1.2 0 to 25 Foot Buffer Zone Resource Area.	No work/disturbance including grading activities is allowed within the 0-25 foot buffer zone resource area.	Waiver to allow proposed improvement as shown on the plans. The entire 0-25 foot buffer zone is approximately 190,000 sf. Approximately 66,000 sf of work is proposed in the 0-25 foot buffer zone (35%). Of this, approximately 44,000 sf is temporary disturbance that will return to natural environment. The remaining 22,000 sf is the sum of approximately 12,000 sf of disturbance associated with the steam crossings and IVW (6%) and approximately 10,000 sf of "development" for the buildings and infrastructure in the 0-25 foot zone (5 %). All of this work is entirely permissible under the state regulations.
Section 4.1.3 25 to 50 Foot Buffer Zone Resource Area.	No structures including but not limited to, concrete, stone, or other impervious foundations and/or slabs for construction purposes that for all intents and purposes would significantly increase	Waiver to allow proposed improvement as shown on the plans. The entire 25-50 foot buffer zone is approximately 173,000 sf. Approximately 125,000 sf of work is proposed in the 25-50

	runoff within 25-50 foot buffer zone resource area are allowed. Alteration in the 25-50 foot buffer zone resource area is limited to grading, tree clearing.	foot buffer zone (72% of the total). Portions of this area are paving, building and landscaping. This work is entirely permissible under the state regulations.
Section 4.1.4 50 to 100 Foot Buffer Zone Resource Area.	The Commission may require additional mitigation offsets when the slope within the 50-100 foot buffer zone resource area is steeper than 10%. Additionally, mitigation offsets may be required by the Commission when the applicant proposes that more than 30% of the 50-100 foot buffer zone resource areas is proposed to be impervious surface.	Waiver from requirement for additional mitigation offsets under this section to allow for the Project. This work is entirely permissible under the state regulations. The proposed program has the benefit of two civil engineering peer reviews that contribute to the final design as being a stable and environmentally sound development.
Section 7.11.2 Mitigation Plan	The Commission requires a narrative describing measures to avoid the local Buffer Zone Resource Area.	Waiver from this requirement. Project impacts and measures at avoidance are described in the Comprehensive Permit application and in the NOI as required by the WPA and Regulations thereunder.
Section 7.13.1 Alternatives Analysis	Alternatives analysis for structures proposed within 50 foot buffer zone	Waiver from this requirement; Project to be subject solely to requirements of the WPA and Regulations thereunder.
Section 7.18.1.5 Information to be shown on the plans	Existing vegetation, including turf lawn areas, cultivated herbaceous and woody plant areas, uncultivated field, scrub and woodland areas and woody plants larger than 1” diameter at the base proposed to be removed.	Waiver from these requirements. The limits of wooded and open field areas are shown on the plans included with the Comprehensive Permit filing and NOI.

End of 5.a.ix.

Town of Franklin



Zoning Board of Appeals Municipal Building

Exhibit B

121 Grove Street - Comprehensive Permit
12.18.23 List Exemptions
12.18.23 NOI Site Plans
Jan.2.2024 Cover Letter
Stormwater Management Report 12.18.23
HSH 121 Grove Street-Issues Summary-2024-1-23
HSH 121 Grove Street-Peer Review 2024-1-23
Vanasse & Associates with updated plans from RJOC 2024-2-8
1.17.24 Cornetta letter for Peer review check
McCarthy response to Peer Review Hancock 2.12.24
Franklin Conservation email and letter on waiver requests
Stormwater Report 2.12.24
Residences Revised Submittal Plan
Hancock Peer review 2.13.24
RJOC Response to Peer Review #2 dated Feb.12.2024
121 Grove Street Letter from DPW Traffic Study 2.29.24
2.0.24 Peer Review BETA
Franklin Fire Truck Turning
Franklin Fire letter 10.13.23
March 8.2024 2nd response to HSE from Vanasse & Associates
March 12, 2024 HSH Transportation Peer Review
March 12, 2024 RTC Issues Summary
March 12.2024 Vanasse & Associates traffic impact assessment comments
March 12,2024 Arcadis Sewer Analysis peer review and agreement
March 24, 2024 Mitigation
March 26. 2024 revised waivers
Cover for revised waivers
Hancock Peer Review March 24, 2024
HSE final peer review March 28, 2024
4.8.24 121 Grove St email from Abutter 24 Benjamin's Landing Lane
4.11.24 121 Grove Street- Letter from Jamie Hellen