

237-1166

TOWN OF MIDDLETON BOARD OF APPEALS

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

APPLICANT: Villebridge Acquisitions LLC (the "Applicant")

PROPERTY: 10 Boston Street and portions of 18 Boston Street and 49 So. Main Street (the "Property" or "Site" or "Lot 2")

DATE: August 22, 2024

By virtue of its authority under Chapter 40A of the General Laws of the Commonwealth of Massachusetts and the Town of Middleton, Zoning Bylaws, Chapter 235, with amendments adopted by Town Meeting on November 29, 2005 and amended and restated on May 13, 2008 with amendments adopted by Town Meeting and approved by the Attorney General through the date hereof (the "Bylaw"), the Board of Appeals of the Town of Middleton (the "Board") held a public hearing in the Media Center at Fuller Meadow School at 143 South Main Street, Middleton concerning the above referenced Application. Notice of said hearing was duly advertised in a newspaper having general circulation in the Town of Middleton; posted in a conspicuous place in the Town Office Building (Memorial Hall); and mailed, postage prepaid, to all interested parties as certified by the Board of Assessors in conformance with Sections 9 and 11, Chapter 40A, M.G.L.A. The matter came to be heard before the following Board Members, including Chairperson Richard Benevento; Vice Chairperson Carolyn Damato-MacPherson; Clerk Ann Cote; and members of the Board Craig Hartwell, William Renault, Jr.

I. PROCEDURAL HISTORY AND JURISDICTIONAL FINDINGS

1. An original application for a Comprehensive Permit (the "Application") was received by the Zoning Board of Appeals (the "Board") on or about August 22, 2023. The Application is for sixty (60) rental units on the Property, twenty-five percent (25%) of which would be affordable in one building on the Site which consists of approximately 2.205 acres in the Town's Business (B) and Residential (R-1a) Zoning Districts (the "Project").
2. The Property is located at 10 Boston Street and portions of 49 South Main Street and 18 Boston Street and shown on the Assessors' Maps as Parcel 25-66 and portions of Parcels 25-65 & 25-67 and is the location of an existing residential building and a portion of an existing restaurant building.

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3. The Applicant is a limited dividend entity that will limit its profits for the entire project in accordance with legal requirements. Accordingly, the jurisdictional requirements under 760 CMR 56.04(1)(a) will be satisfied if and when the Applicant executes a Regulatory Agreement and other related documentation, as referenced more fully in Section IV hereof. The Application also provided an "eligibility/site approval letter," dated February 8, 2023, issued by MassHousing (the "Subsidizing Agency") under the New England Fund Program ("the Program"). The approval contained in the eligibility letter is expressly limited to the development of not more than sixty (60) rental units under the terms of the program, of which not less than twenty-five percent (25%) of such units shall be restricted as affordable for low or moderate-income persons or families as required under the terms of the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development ("DHCD"), which is now known as the Massachusetts Executive Office of Housing and Livable Communities ("EOHLC" or "HLC").
4. The Applicant has "control of the site" as that term is used in 760 CMR 56.04(1)(c) by virtue of two Purchase and Sales Agreements, the first dated 3/21/2022, as amended, from Chris A. Kourkoulis and Paul A. Kourkoulis, Trustees of Chaplain Realty Trust, and the second dated 6/14/2022, as amended, from Stigliano Inc., both entities not being related to the Applicant. Both Purchase and Sales Agreements include extension rights, which the Applicant has exercised throughout the permitting effort. Accordingly, the jurisdictional requirements of 760 CMR 56.04(1) have been satisfied.
5. Upon Final Approval by MassHousing for the Project, the Application and Development proposed as approved hereunder, will satisfy the requirements of 760 CMR 56.04.
6. A duly advertised public hearing was timely commenced on September 20, 2023 and was continued, with good cause, to the following dates: October 26, 2023, November 16, 2023; December 14, 2023; January 25, 2024; February 15, 2024; March 14, 2024; March 28, 2024; April 25, 2024, June 27, 2024, July 11, 2024 (continued due to no quorum), and July 25, 2024 on which date the hearing was closed. The last written agreement for extension of the statutory hearing deadline to July 29, 2024 (copies of which were duly filed with the Town Clerk) was received and accepted by the Board. The Board deliberated and voted to approve this decision on August 22, 2024.
7. The Applicant was primarily assisted by Atty. John Smolak of Smolak & Vaughan, LLP (legal), Joseph Peznola, P.E. of Hancock Associates, Inc. (civil engineering), Jeffrey Dirk, P.E. of Vanasse & Associates, Inc. (traffic), Ed Bradford of The Architectural Team, Inc. (architect), Thom Miner of Hawk Design (landscape architect), and other team members of the Applicant.
8. The Board utilized the services of Town Counsel Jason Talerman of Mead, Talerman & Costa, LLC, along with the services of Jared M. Duval, P.E. and Samuel W. Gregorio, PE, PTOE, RSP1 of TEC Inc., who served as peer review engineers for the Board. Peer review was thorough and cooperative.
9. The Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their

recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.

10. During the course of the public hearing, Town staff, boards and commissions; and local residents submitted oral and written testimony with respect to the Application. The Board considered the technical review of an independent site peer reviewer, in regard to matters of public health and safety, environmental health and safety, traffic, site and preliminary stormwater management plans, and other issues of local concern.
11. The Applicant provided various materials, reports and revised plans throughout the public hearing on the Application.
12. Abutters and other interested members of the public attended the public hearings and offered commentary and correspondence. These individuals asked a variety of questions and offered commentary and testimony, which the Board and the Applicant's representatives responded to.
13. While this matter was being heard by the Board, the Applicant was also engaged in discussions and negotiations with the Middleton Select Board on matters pertaining to traffic improvements in the subject area, with a certain Memorandum of Understanding ("MOU") ultimately being signed by and between the Select Board and the Applicant.

II. PROJECT AND PROPERTY DESCRIPTION

1. The Project, as revised, is described and shown on plans entitled "Middleton, 10 & 18 Boston Street & 49 South Main Street, Middleton, Massachusetts 01949" with a most recent revision date of February 8, 2024 prepared by Hancock Associates and preliminary architectural plans entitled "Villebridge Middleton, 10 Boston Street, Middleton, MA" with a most recent revision date of February 8, 2024, except for the Irrigation Well Location Plan (Sheet IW-1) dated April 18, 2024, prepared by The Architectural Team, Inc., and the set of plans entitled Landscape Plan Submission Set, Revision #4, dated June 12, 2024, and landscape rendering plan entitled Illustrative Site Plan, dated August 22, 2023 (Last revised on June 12, 2024), both prepared by Hawk Design, Inc. These plans and other ancillary plans submitted to the Board are hereinafter collectively referred to as the "Plans".
2. The Property is located in the Town's Residential (R-1a) and Business (B) Zoning Districts. The Site and surrounding properties are located on Boston Street west of the intersection with South Main Street (State Highway Route 114) and include a mix of residential and commercial uses.
3. A portion of the Property was previously improved with a restaurant and function hall. The Property contains no notable natural vegetation and is typified by paved or formerly paved areas. The Property is relatively flat.
4. The Project is not located within the Town's Water Resource Protection Overlay District, Zone II for a public water supply, NHESP estimated habitats of rare wildlife or race species,

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or a FEMA mapped flood zone. The Project is not located within wetlands or wetland resource areas as defined under federal, state and local requirements.

5. Access to the Site is proposed via Boston Street, a two-way street, and emergency access to and from 49 South Main Street (Lot 3), which has access via South Main Street, via a locked emergency access gate. Both Boston Street and South Main Street are busy, heavily used commuter roadways.
6. The Applicant proposes to construct a total of sixty (60) units within a single three story stacked-flat on-grade building. Residential units are proposed on each floor. The units will be a mix of one-bedroom (36 are proposed), two-bedroom (18 are proposed), and three-bedroom (6 are proposed) layouts.
7. The design of the proposed building has been modified several times by the Applicant based upon input from the Board. The Applicant was very cooperative in this manner and the resulting modifications improved the function and appearance of the Project.
8. The Applicant proposes that twenty five percent (25%) of the units, being fifteen units (15), be rented to individuals/families whose total household income does not exceed 80% of area median income (AMI), adjusted for household size, as determined by the U.S. Department of Housing and Urban Development and the Subsidizing Agency.
9. The Applicant proposes ninety-eight (98) surface parking spaces.
10. The Project is proposed to be serviced by a municipal water system that is managed by the Town of Danvers pursuant to an underlying agreement with the Town of Middleton, an-site wastewater system, and an underground stormwater management system.
11. All utilities are to be below-ground, provided however, pedestals, light fixtures, and electrical transformers will be above ground.
12. It is notable that the project contemplated hereunder is only one component of the redevelopment of the property that was the former site of the restaurant and function hall. The Applicant proposes an immediately adjacent commercial development that will front on both Boston Street and South Main Street. Such proposal is the subject of a separate application that was pending before the Board contemporaneously with the residential project that is the subject of this Decision.

III. FINDINGS

1. The Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
2. The Board finds that the Applicant was cooperative and flexible and willingly made project changes to address concerns of the Board, Town officials and members of the public.

3. According to the Commonwealth's Department of Housing and Community Development Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of June 29, 2023, 4.83 % of the Town's total housing stock constituted SHI eligible housing, as defined in 760 CMR 56.02.
4. The Board finds that the Town has a continued need for affordable housing and that this Project will provide such housing.
5. The Board finds that redevelopment of a previously developed site is consistent with *smart growth* principles and further finds that the location of the site, near the Town's center and transportation routes is also consistent with such principles.
6. The Board finds that Boston Street and South Main Street already exhibit substantial traffic and poor levels of service. The Board finds that the Project, along with the proposed commercial traffic will exacerbate existing conditions and that some mitigation is required. The Applicant has agreed to a variety of mitigation measures and the Board finds that these measures, along with other measures contained in the conditions stated below are essential to address and improve traffic conditions. With the incorporation of all these collective traffic measures into this permit, the Board finds that the Project will improve local concerns relating to traffic. In addition, the Board finds that the Applicant and the Town have worked diligently to finalize and execute an agreement (the "MOU") under which the Applicant has conditionally agreed to a variety of other traffic-improving measures including, but not limited to, the conveyance of easements for the Town's potential widening of Boston Street and South Main Street in the vicinity of their intersection. The Board further acknowledges that, if the contingencies in such agreement are satisfied, certain changes to the Project may be required, all of which may be processed administratively, as described herein.
7. The Board finds that proposed conditions recommended by TEC with respect to various civil and traffic engineering components of the project are necessary in order to mitigate impacts to local concerns. Such conditions are described in Section IV hereof.
8. Notwithstanding the preceding findings, and the Board's concerns with respect thereto, as noted, the Board finds that, when built in accordance with the Plans and the conditions imposed herein, the Project will be "consistent with local needs" as such phrase is contemplated by G.L. c. 40B, §§20-23. The Board also finds that any unmitigated impacts posed by the Project will not outweigh the benefits provided by the Project's affordable units.
9. The Board also finds that the Applicant has worked in good faith to mitigate adverse impacts to the best of its ability.
10. The Board finds that the grant of certain waivers from local by-laws and regulations, as described both herein and in Attachment "A" hereto, is acceptable although the grant of any waivers will cause adverse impacts to local concerns. Nevertheless, the Board finds that any local concerns that have been affected thereby do not outweigh the Town's need for

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affordable housing, particularly given the mitigation that has been provided by the Applicant.

11. The Board finds that the conditions imposed in the following section are necessary in order to properly address local concerns. The Board finds that such conditions will not render the Project uneconomic. To the extent that such conditions do render the Project uneconomic, the Board finds that the local concerns in imposing the same outweigh the statutory requirements for the affordable units that have been proposed.

IV. DECISION AND CONDITIONS

Pursuant to Chapter 40B, the Board, after public hearings and findings of fact, Chairperson Benevento called for a motion. Member Hartwell made a motion to grant a Comprehensive Permit to the Applicant for the Development. Seconded by Member Renault. Chairperson Benevento asked for any further discussion, hearing none he called for a vote. The members of the Board voted unanimously in favor of the motion (voted 5 to 0) as described and conditioned herein:

1. Except as otherwise required by the conditions imposed by this Comprehensive Permit or by the Final Site Plans, as defined below, the Project shall be developed, constructed and completed in substantial conformance with the Plans. It is understood that minor variations in design shall be permitted but any material variations, whether insubstantial or substantial, shall be submitted for the Board's review, as set forth herein.
2. The Project may have no more than sixty (60) rental units.
3. No building permits may be issued unless and until the Applicant provides the Board with evidence of Final Approval issued by the Applicant's Subsidizing Agency under 760 CMR 56.04(7).
4. No building permits may be issued unless and until the Applicant provides the Board with evidence that the Application for a MassDOT Access Permit has been filed with the MassDOT.

A. FINAL SITE PLANS/PRE-CONSTRUCTION

4. Final, fully designed site plans (the "Final Site Plans") shall be submitted to the Board, the Board's designated engineer, and the Building Commissioner no less than 45 days prior to the submission of the application for building permits for the commencement of construction of the Project. The Final Site Plans shall be of a quality and level of detail sufficient to allow the Building Commissioner and the Board's engineer to review the Final Site Plans for consistency with the Plans, the terms of this Comprehensive Permit, legal requirements and industry standards. No building permits shall issue under this Comprehensive Permit until the Board's engineer has determined that the Final Site Plans are consistent with the Plans, the terms of this Comprehensive Permit, legal requirements, and industry standards, with said determination to be in writing, but this shall not preclude the applicant from commencing site work including demolition and a foundation permit, provided that a demolition permit and/or a foundation permit (as applicable) has been

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secured, and that the "CMP" (as described below) has been approved and implemented. If no written response or comments have been given to the Applicant by the Board's engineer concerning the Final Site Plans within forty-five (45) days after the Final Site Plan submission date, the Final Site Plans, as delivered, will be deemed to be consistent with the Plans, the terms of this Comprehensive Permit, legal requirements, and industry standards, provided that, for good cause shown, the Applicant shall allow a 30-day extension of such approval period. The Board's engineer's services in reviewing the Final Site Plans shall be limited to project configuration, infrastructure design and general consistency with this decision, and shall not include review of issues arising under the Building Code. Nothing herein shall be construed to limit or otherwise affect the Building Department's authority and obligations under the State Building Code. The Final Site Plans shall include complete construction plans, final stormwater management plans, erosion control plan, landscaping plan, a lighting plan, a Construction Mitigation Plan (CMP), an endorsable lotting plan as well as all other plans described below and plans that are customarily submitted for projects of this scope, as may be reasonably determined by the discretion of the Board's engineer. The 45-day time period under this paragraph shall not commence if the Board's engineer notifies the Applicant in writing within ten (10) business days that the Final Site Plans are incomplete, with a description of any and all additional materials that are required to cure such determination that the Final Site Plans are incomplete.

5. The storm water management plan that is included with the Final Site Plans shall comply with applicable best management practices and/or any applicable Stormwater Management Guidelines promulgated by the DEP or the Commonwealth of Massachusetts.
6. Final Site Plans shall include the final architectural plans. The final architectural plans shall be substantially in conformance with the building design and layout as represented on the revised Plans submitted to the Board. The Board's engineer's review of any such plans shall only be to ensure that the configuration of the building is consistent with the Plans. In all other respects, the Building Commissioner shall retain their customary review of the architectural plans.
7. The Construction Mitigation Plan ("CMP") included with the Final Site Plans shall address all aspects of construction mitigation, including, but not limited to: (i) any blasting; (ii) reasonable provisions that meet the prior approval of the Fire Department, Middleton Police Department and the Massachusetts Department of Transportation (MassDOT) for traffic flow, emergency vehicle ingress/egress and off-site traffic management; (iii) stockpiling of materials; (iv) trucking routes that meet the prior reasonable approval of the Police Department; (v) a concise construction mitigation and sequencing plan; and (vi) an erosion control plan. The CMP shall also include preconstruction, construction and post construction best management practices and which shall include, at a minimum, days of the week and hours for construction activities (including interior and exterior work and/or site preparation, drilling, blasting, etc.), Best Management Practices which address pre-development site preparation, construction control during development, and post-development and which shall, at a minimum, include provisions for infrastructure repair and cleaning (on and off-site as may be reasonably appropriate) as well as erosion and sediment

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controls, dust controls, noise, odor, emissions, vehicle idling, vibration, trash or debris, and/or any other condition which may constitute a nuisance by virtue of litter, vermin or bird hazards. The CMP shall attempt to minimize the area(s) left exposed at any given time to the extent reasonably possible. The terms of that CMP are incorporated herein as if restated in this Decision. To the extent applicable and as deemed reasonably appropriate by the Board's engineer, the Project Stormwater Pollution Prevention Plan (SWPPP) may be substituted for certain sections, and incorporated by reference into, the CMP. Provisions for water/fire suppression and safe, uninterrupted and convenient access to adjacent properties/homes shall be provided at all times. The Final Site Plans and CMP shall include a narrative of the construction sequencing for the Project, including provisions required by MassDOT.

8. The Final Site Plans shall include a final lotting or subdivision plan, in a form that is endorsable by the Board. The signature block thereof shall reference that the endorsement is made under the Board's authority under G.L. c. 40B, §§20-23. Such plan must be endorsed and recorded prior to the issuance of building permits.
9. Except as modified by waivers approved in this Decision, the Applicant shall adhere to all terms, requirements and conditions of any other applicable permits, licenses and/or approvals from any other State or local entity. The terms of those permits, licenses and/or approvals are incorporated herein as if restated in this Decision. To the extent such permits, licenses and/or approvals may conflict or be inconsistent with the terms of this Decision, the more restrictive requirements shall apply unless the Board amends this Decision to remove such conflicts, upon request by the Applicant in a manner consistent with 760 CMR 56.00 et seq.
10. The Applicant shall follow and effectuate all reasonable recommendations of the Fire Chief as to building layout and emergency vehicle access, which are incorporated into the Plans or Final Site Plans. The Project shall demonstrate adequate fire flow for fire protection purposes, as confirmed by the Fire Chief and DPW.
11. Prior to the Final Site Plans submission, the Applicant shall perform a flow test in coordination with the Town's DPW and shall confirm with the Fire Department and DPW that, based upon the testing results, the flow rate is sufficient for the Project. This Decision is explicitly conditioned on the Applicant securing sufficient flow prior to construction.
12. The Affordable Units, as originally designated, shall not be substantially different in size or exterior appearance from the market-rate units so as to not be segregated from the market-rate units; and, unless otherwise required by the Applicant's Subsidizing Agency or EOHLC, shall be proportionately distributed at original construction amongst units and shall have approximately the same bedroom ratio or mix as the other units in the Project. The Affordable Units and the market-rate units shall be constructed on the same schedule.
13. The approval hereunder is contingent upon the Applicant obtaining approval from the Town of Danvers for a connection to the Danvers water supply. Except as to note Middleton's

assent to such connection, nothing herein shall constitute an approval to connect to the Danvers water supply.

14. To the extent that the Town may reasonably require any access or utility easement to any water lines or water infrastructure on the Property, the Applicant shall provide the same to the Town for review by its counsel and acceptance and, upon acceptance, such instruments shall be recorded by the Applicant with proof of same being provided to the Town immediately thereafter.
15. As outlined in the cumulative report of TEC, dated February 7, 2024, the Applicant shall be subject to the following conditions:
 - a. With respect to trash removal, any Lot 3 development (the commercial project) shall adequately address trash removal from the Project, including access easements, as necessary. If Lot 3 development is delayed, revisions to the Project shall be submitted to address this issue.
 - b. All necessary access easements will be established in a form reasonably acceptable to Town Counsel, and recorded prior to receipt of occupancy permits.
 - c. Per Paragraph 33(f) of the TEC Report, all subsurface infiltration systems shall be adjusted accordingly following additional soil testing and determination of subsoil infiltration rates to confirm compliance with water quality pre-treatment and depth/volume requirements.
 - d. The Final Site Plans shall include provisions for managing/abating pet waste.
 - e. Any required easements relating to the storm water systems, access, and other utilities shall be provided and recorded prior to receipt of occupancy permits.
16. Traffic Conditions. The following conditions shall be implemented, based upon the scenarios described below, to mitigate traffic impacts.

There are varying scenarios under which certain traffic improvements shall be undertaken. Specifically, subparagraphs a. through c. of this Paragraph identifies the traffic improvements which shall be completed by the Applicant under all scenarios. Subparagraph d. lists those traffic improvements which may or may not be completed by the Applicant, depending on whether the Select Board's pending Community One-Stop for Growth Grant Application under the HousingWorks Grant Program is awarded in full to the Town (the "Grant"), including any conditions to the award of such Grant. Subparagraph d. also includes a breakdown and allocation of work between the Applicant and the Town depending on the outcome of, and compliance with, the Grant, and also establishes the "not to exceed" dollar amount and conditions associated with each scenario.

- a. The Applicant shall fund and facilitate a Road Safety Audit (RSA) for the S. Main St./Maple St. intersection. Within four (4) months of the later of receipt of the building

permit for the primary structure and the MassDOT Access Permit (unless otherwise extended by the Board due to seasonal considerations), the Applicant agrees to implement short-term low cost improvements as recommended in the RSA for the Maple Street/South Main Street Intersection including but not limited to signage, pavement markings and signal timing adjustments.

b. The Applicant shall implement the following Transportation Demand Management (TDM) measures:

- i. Transportation coordinators (TCs) will be assigned for the Project and adjacent commercial project, who may also have other duties, to coordinate the TDM program;
- ii. Information regarding public transportation services, maps, schedules and fare information will be made available to residents and employees of the Project and adjacent commercial project;
- iii. A "welcome packet" will be provided to residents and employees that will include the contact information for the TCs and detailing available public transportation services, bicycle and walking alternatives, and other commuter options, including the services provided by the Middleton Council on Aging (COA);
- iv. Commercial tenants of the adjacent commercial project will be encouraged to offer specific amenities to discourage off-site trips, which may include one or more of the following: providing a breakroom equipped with a microwave and refrigerator; offering direct deposit of paychecks; coordinating with a dry-cleaning service for on-site pick-up and delivery; allowing telecommuting or flexible work schedules; and other such measures to reduce overall traffic volumes and travel during peak traffic volume periods;
- v. Two (2) parking spaces located within the parking area for the Project will be designated as short-term parking for use by ride-hailing, delivery service providers and emergency vehicle parking, and will be situated proximate to the pedestrian entrance to the residential building;
- vi. Pedestrian accommodations shall be incorporated within the Project site to encourage walking and will be extended to include connections to Boston Street and South Main Street; and
- vii. Secure bicycle parking will be provided at appropriate locations within the Project and adjacent commercial project.

c. Prior to receipt of the building permit, the Applicant agrees to deposit, in a fund established under G.L. c. 44, §53K, the sum of \$10,000 and any such deposit shall be dedicated solely to traffic mitigation measures, as may be determined by the Town.

d. Subject to the conditions outlined in this section IV.A.16.d., the Applicant shall fund and implement improvements up to the stated scopes and amounts, as may be applicable, as follows:

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- i. The Town of Middleton has applied for a Massachusetts Community OneStop for Growth HousingWorks ("HousingWorks") grant in the amount of \$2.5 million to expand the South Main Street / Boston Street intersection and implement an Adaptive Traffic Control System (ATCS) at the Boston St. / S. Main St., Maple St. / S. Main St., and Central St. / Lake St. / S. Main St. / N. Main St. intersections (the "Three Intersections"). Notification of Grant award will occur no later than December 31, 2024 or shall be deemed not received;
- ii. In the event the Town of Middleton receives the full Grant, the Applicant agrees as follows, provided MassDOT agrees that, upon the completion of the work described in Paragraphs IV. A.16.a through c and IV.A.16.d.ii, the Applicant may open and operate the Project:
 - a. Within 60 days of the receipt of the building permit for the primary structure and subject to MassDOT approval, fund and implement the first round of signal timing and phasing at the Three Intersections, as specified in the TIA;
 - b. Make a cash contribution of \$207,000 toward the work contemplated under the HousingWorks grant, said contribution comprising the following components, subject to the conditions specified in this section IV.A.16.d:
 - Second round of signal timing and phasing at the Three Intersections prior to or upon the Certificate of Occupancy, with a value of \$24,000;
 - The incremental cost of implementing ATCS in lieu of conducting multiple rounds of signal timing and phasing at the Three Intersections, with a value of \$131,000; and
 - The cost of installing granite curb and sidewalk along Boston Street, with a value of \$52,000.
 - c. Any remaining funds after completion of the HousingWorks project, shall be utilized solely for transportation related design and construction as determined by the Town.
- iii. In the event the Town of Middleton does not receive the HousingWorks Grant or only receives a portion of the Housing Works Grant, the Applicant shall complete the following infrastructure improvements prior to or upon the Certificate of Occupancy, and the Applicant will have no further transportation improvement obligations under this Section IV.A.16.d:
 - a. Subject to MassDOT approval, fund and implement ATCS at the Three Intersections; and

b. Install granite curb and sidewalk along Boston Street.

iv. Additional conditions for implementation of mitigation:

- a. MassDOT Access Permit does not require any other substantially material (i.e. excessively costly) improvements, provided however that additional improvements that are insubstantial shall not affect the obligations hereunder;
- b. In the case that the MassDOT Access Permit conditions do require any other substantially material improvements, the cash contribution specified in section IV.A.16.d.ii.b. will be reduced on a dollar-for-dollar basis in the amount of the cost of such improvements;
- c. The Project and adjacent commercial project receive any and all final approvals and provided that such final approvals do not require any other substantially material (i.e., costly) improvements or mitigation excepting the obligations and commitments outlined in this Decision and further that such final approvals are otherwise in a form that is “reasonably satisfactory” to the Applicant, as such term is defined in the MOU between the Town and the Applicant;
- d. As such, providing the cash contribution specified in this section IV.A.16.d. will not occur until after the MassDOT Access Permit has been issued, with all appeal periods having expired; and,
- e. At such time of making the cash contribution as specified in this section IV.A.16.d., the Town is in compliance with the conditions of the Grant.

17. The Board acknowledges that the implementation of the terms and provisions of the MOU with the Town may require certain changes to the Project to facilitate future traffic improvements, as follows:

- a. Upon the transfer of easements and construction of roadway improvements contemplated under said MOU, the Project may need an amended waiver to the Minimum Open Space in a Business (B) District requirement under the Zoning Bylaws to change from 24.7±% to 22.1±%, and the Board hereby approves the waiver and deems the change as an insubstantial change within the meaning of 760 CMR 56.05(11); and,
- b. As an option designed to facilitate Project financing, the Applicant may choose to change the current subsidy/financing program of the Federal Home Loan Bank of Boston’s New England Fund Program (“NEF”) administered by MassHousing by replacing the same with the subsidy offered through the Local Initiative Program (“LIP”) administered by the Massachusetts Executive Office of Housing and Livable Communities (“EOHLC”).

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The Board agrees that such changes are insubstantial within the meaning of 760 CMR 56.05(11) and may be implemented by the filing of a plan with the Board and the Building Commissioner.

18. Prior to the issuance of a building permit for the Project, the Applicant shall submit the following to the Board:
 - (a) a signage/monument plan, including signs/monuments, if any, to be used during the marketing of the Project or any component thereof and permanent signage/monuments, if any, shall be submitted to the Board for its administrative approval, and to any other Town official, board or body if also required, prior to the installation, erection or construction of any such sign, such approval not to be unreasonably denied.
 - (b) the name, address and phone number of the contact person for construction management of the project. Said contact person shall be available 24 hours per day, seven days per week throughout construction. Such information shall be provided to the Board, Planning Board, Select Board, DPW, Building Commissioner, the Board's engineer and the Police Department.
19. The Project is being funded by the New England Fund Program where MassHousing acts as the Program Administrator per the Executive Office of Housing and Livable Communities (HLC) "Comprehensive Permit Guidelines," as amended (the "Guidelines"). The Regulatory Agreement that is required for the Project is subject to the reasonable review and approval by Town Counsel prior to the commencement of construction. Evidence of a fully executed and recorded Regulatory Agreement for the Project shall be provided to the Board and the Building Commissioner prior to the issuance of any building permits. The aforesaid Regulatory Agreement shall also incorporate affordable housing restriction(s) which shall be in perpetuity, pursuant to G.L. c. 184, §§ 31-33 and shall survive foreclosure. The maximum rental price of the Affordable Units, as applicable, shall be "calculated at what is affordable to a household earning no more than 80% of the [A]rea [M]edian [I]ncome adjusted for household size," per the Guidelines.
20. The Monitoring Agent for the Project shall be a qualified entity approved by the Applicant's Subsidizing Agency or HLC. Upon the Board's request, the Applicant shall provide the Board with copies of any statements required by any Affordable Monitoring Services Agreement, the Regulatory Agreement or any applicable laws or regulations provided by the Applicant to the Monitoring Agent or from the Monitoring Agent to the Applicant. Copies of the fully executed Affordable Monitoring Services Agreement(s) for the Project shall be provided to the Board prior to the issuance of occupancy permits.
21. As shall be detailed in the Regulatory Agreement, the income for all households occupying affordable units shall be verified on an annual basis. In the event that the income of any such tenant household exceed allowable limits, the next equivalent vacant market rate unit in the Project shall be reserved and restricted for lease to a low or moderate income household, with such process and requirements to be further detailed in the Regulatory Agreement.

22. The Applicant's profit for the Project, shall not exceed limitations imposed by applicable law and as may be prescribed under the Regulatory Agreement and applicable guidelines. The Board shall be provided with a copy of any and all limited dividend audits and certified cost/income statements that are shared by and between the Applicant and the Monitoring Agent. As the Applicant is a limited dividend entity, all excess profits shall be used for affordable housing purposes.
23. The Board shall prepare and/or execute any and all of any documents that may be required by HLC in order to have the units in the Project included on the Town's Subsidized Housing Inventory. The Applicant shall reasonably assist the Town in these efforts and execute any documents that may be required to complete the process.

B. CONSTRUCTION

24. Excepting unforeseen circumstances, essential infrastructure shall be complete and the commencement of construction of the Project's building shall be commenced within three (3) years from the date that construction is commenced, provided that, for reasonable cause the Applicant may seek reasonable extensions of one (1) year each, such extensions to be requested and considered consistent with the provisions of 760 CMR 56.05(12)(c). The Board shall review and approve such requests administratively without need for a public hearing, provided that there has been no substantial change in the Project.
25. The Applicant shall be responsible for scheduling a pre-construction meeting with the Building Commissioner and the Board's engineer thirty (30) days before the commencement of work on the Project. During the construction of the Project's infrastructure, the Applicant shall be responsible for the scheduling of a meeting with the Board's engineer and the Building Commissioner at least once every three months to discuss the progress of construction, unless otherwise agreed by the parties to accommodate scheduling. The Applicant's failure to schedule and attend such a meeting may be grounds for a stop work order. The conference shall be requested at least fourteen (14) days prior to commencing construction, by contacting the Board's engineer and Building Commissioner in writing or via email. A schedule of inspections shall be established at the initial conference.
26. Before any site clearing, grading, demolition, or construction may begin on the Site, the Applicant shall provide to the Board a municipal lien certificate that shows all outstanding assessments and betterments have been paid in full and there are no outstanding municipal liens on the Property.
27. The Applicant shall be responsible for securing and paying for local and/or State police details that may be necessary for traffic control throughout the construction process as reasonably required by the Police Chief and/or MassDOT.
28. The Applicant shall be responsible for repairing any damage to public ways and public property caused by the construction, including as a result of any construction vehicles traveling to or from the Site to a condition equal to or better than its original condition before the damage occurred. All repair work shall be done prior to the issuance of the final

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certificate of occupancy for the Project, unless DPW determines either: (a) that the damage to the public is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of such determination or immediately if a threat to public health or safety is evident, shall be conducted consistent with Town standards, and shall be completed within an appropriate time frame as determined by DPW.

29. Clean-up of tracked materials and debris on local roads as a result of the Applicant's construction activities shall be completed daily.
30. The Applicant shall provide a Stormwater Pollution Prevention Plan (SWPPP) as required under the NPDES Construction General Permit to the Board and the Applicant shall adhere to said SWPPP during all construction activities.
31. During construction, the Applicant shall maintain all feasible and reasonable means of dust control and shall collect all debris on a daily basis. No construction, deliveries or any other activities may occur on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve or Christmas Day. No construction or deliveries may begin before 7:00 a.m. nor continue past 6:00 p.m., unless approved in advance by the Board. Notwithstanding the foregoing, interior construction that doesn't generate excessive noise may occur on weekday evenings, until 8:00 p.m. Deliveries may be made after 6:00 a.m., until 6:00 p.m., provided, however, that access to the Site by excavators, skidders, bulldozers, or other heavy equipment, tractor trailers, flatbeds or any other oversized trucks and/or construction vehicles hauling earth moving equipment, trusses, modular wall panels, and other building materials that require either "wide-load" vehicles and/or are scheduled to be delivered within or by a convoy, may occur between 9:00 a.m. and 4:00 p.m. Trucks and other equipment may not idle or warm up until 6:30 a.m. on approved construction days.
32. Upon completion of construction stormwater management system, the Applicant's engineer shall provide a report to the Board's engineer, with a copy to the Board, certifying that the stormwater management system was installed in accordance with the approved plans. Such report shall include a certification that the excavations of the proposed infiltration systems were inspected by the Applicant's consultants prior to backfilling. An as-built plan of the stormwater management system shall be provided with the report.
33. Unless permission to close a public street or way is received in writing from the proper authority, vehicular and pedestrian traffic shall be maintained at all times. Should the Local or State Police deem it necessary, uniformed officers will be assigned to direct traffic at the Applicant's expense.
34. When necessary, detours or lane closures around construction will be subject to the approval of the Police Department and MassDOT, as may be applicable. Where detours are permitted, the Applicant shall provide all necessary barricades and signs of the size and configuration as required to divert the flow of traffic. While traffic is detoured the Applicant shall expedite construction operations.

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35. The Applicant shall take precautions to prevent injury to the public due to open excavations. The Applicant shall be fully responsible for damage or injuries whether or not police protection has been provided.

C. MISCELLANEOUS

36. With respect to each of the Applicant's requests for waivers from local by-laws and regulations, the Board hereby decides as follows:
- a. Subject to the conditions hereof, the Board expressly waives any and all local rules, regulations and/or bylaws relating to the proposed use and dimensional regulation of the Project, as may be necessary to construct the Project consistent with the Plans, but only to the extent necessary in order to build and operate the Project that is shown on the Plans and approved Final Site Plans, including Project rights for utilities, grading, and access on the adjacent Lot 3 development.
 - b. Requested waivers that do not relate to the use of the Property, or which are not related to dimensional matters as shown on the Plans, are discussed in **Attachment A**, hereto.
 - c. To the extent the approved Plans and the conditions of approval set forth in this Decision conflict with any un-waived local regulations, the requirements of the Plans and conditions as approved shall supersede such conflicting regulations.
 - d. Nothing herein may be construed as a waiver of any applicable State or Federal law.
 - e. No waivers are granted from requirements that are beyond the purview of M.G.L. c. 40B, §§20-23.
 - f. No waivers are granted from any local fees existing as of the date of this decision, including, but not limited to, any building permit, inspectional fees, electrical and plumbing fees, DPW fees.
 - g. Any by-law or regulation not inconsistent with the Project as approved and not expressly (or implicitly) waived hereunder shall be strictly enforceable. Any subsequent revision to the Plans, including but not limited to revisions that are apparent in the Final Site Plans 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). To the extent any such requested waivers are consistent in material respects with the Plans approved by this Decision, such approval by the Board shall be deemed to be an insubstantial change under 760 CMR 56.05(11)(b).
37. The Project together with the infrastructure and improvements shown on the Plans (and Final Site Plans) and related documents are an integrated plan. As security for completion of the infrastructure shown on the Final Site Plans, including but not limited to the roadways, sidewalks, parking, stormwater management system,

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lighting, water and sewer systems, landscaping, utilities, and traffic improvements as defined (collectively the "Infrastructure"), the release of occupancy permits for the Project shall be subject to the following restrictions:

- a. No occupancy permit for a residential unit shall be issued until (1) completion of "Essential Infrastructure", which is defined to be driveways and parking (excepting the final course of pavement for both), drainage, traffic improvements as defined, and utilities; and (2) all other Infrastructure as shown in the Final Site Plans essential for occupancy, as approved by the Board's engineer, has been constructed or installed so as to adequately serve the building.
- b. The "Finish Infrastructure" for the Project, including, but not limited to, final top course of pavement, final striping, final landscaping, and completion of any "punch list" items identified by the Board's engineer, shall be completed prior to the issuance of occupancy permits for the final six (6) units in the Project; or, alternatively, the Applicant may post cash security or a lender's agreement in a form approved by Town Counsel, to complete Finish Infrastructure
- c. The determination of completeness of any infrastructure shall be at the sole reasonable discretion of the Board's engineer.
- d. Upon completion of all such infrastructure, as described above, the Board's engineer shall inform the Building Commissioner accordingly, who shall then release occupancy permits. No occupancy permit shall be issued without such authorization from the Board's engineer and such authorization shall only be effective if it is in writing.
- e. Notwithstanding anything to the contrary in this Decision, the Building Commissioner shall maintain its authority to issue temporary certificates of occupancy consistent with authority under the Massachusetts State Building Code.

38. Following installation of the final coat of asphalt on the driveway and parking for the Project, if any, but in no event later than one (1) year following the issuance of the final certificate of occupancy in said phase, if any, the Applicant shall provide an as-built plan of the building foundation, impervious features, and subsurface utilities to the Board for the Project, which shall be approved by the Board or its engineer.
39. Notwithstanding the procedures of the preceding paragraphs, the Board may institute an enforcement action in order to compel the completion of any infrastructure not adequately completed by the Applicant in accordance with this Decision, provided, however, that prior to the Board instituting such enforcement action, it shall provide the Applicant with 30 days prior written notice of alleged violation (excepting emergencies), and the Applicant shall be afforded a right to cure the same.

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40. In that the Plans reviewed by the Board were preliminary, no occupancy permits shall be issued until the Applicant complies with any other customary and reasonable requirements or specifications that are reasonably required by the Board's engineers for compliance with the Final Site Plans and this Decision, provided that such other requirements or specifications are either specifically detailed to the Applicant in writing either upon completion of the review and comment period outlined in Section IV.A.4 above or during any inspections of the installation of project infrastructure.
41. If certificates of occupancy are sought on a per unit basis, then no more than three certificates of occupancy (temporary or final) shall be issued for market rate units until at least one certificate of occupancy (temporary or final) issues for an affordable unit. At no point will the number of certificates of occupancy issued for affordable units be less than 25% of all certificates of occupancy issued.
42. The paved areas, open space, landscaping and infrastructure depicted on the Plans shall be maintained by the Applicant. The Applicant and/or any management company engaged by the Applicant shall be responsible for the installation, operation, maintenance, repair and replacement of the above aspects of the Project. In the event that a management company is engaged for fulfilling these obligations, the Applicant shall provide the Board with the name and contact information for the management company.
43. Snow and ice removal shall be the responsibility of the Applicant. Snow and ice removal shall be undertaken as soon as is practicable after snowfall and shall not impede or obstruct the driveways or the sight lines thereon and so as not to impede or obstruct the hydrants. Accumulated ice on the ways shall be promptly removed or sanded such that vehicles may pass safely. To the extent practical, use of sodium-based de-icers shall not be utilized. Snow shall be deposited and stored in the areas designated on the Plans.
44. The Applicant shall be responsible at its sole cost for trash and recycling disposal for the Project.
45. The Board's engineer shall be charged with general inspectional authority over the construction installation of infrastructure for the Project, while deferring to the Building Commissioner to all building-related inspections under the Building Code. In this capacity, the Board's engineer may, during periods of active construction, conduct periodic inspections as reasonably necessary to ascertain the status and nature of work at the site and provide monthly reports to the Board. In addition, the Applicant shall also provide the Board's engineer with any pertinent photographs, logs, data or other information relating specifically to Project infrastructure that may be reasonably helpful in the monitoring process. The Applicant shall be entitled to receive email or other written notice at least two business days in advance of any inspection by the Board's engineer, unless otherwise agreed by the Applicant or in the event of an emergency. All inspections must be accompanied by the Applicant or the Applicant's authorized representative, unless waived in writing or by email by the Applicant. Such inspections shall be reasonably tailored to the extent and type of infrastructure work being conducted at any particular time. The Applicant shall be

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provided with an opportunity to review and reasonably approve the scope of the Board's engineer's services prior to commencement thereof.

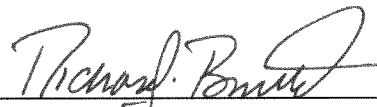
46. The Board's peer review engineering consultants' reasonable fees for any services contemplated hereunder shall be paid by the Applicant in the manner prescribed by G.L. c. 44, §53G. The Applicant shall also pay for all third-party inspections of project infrastructure, as may be reasonably required by the Board's engineer, the scope of such review to be agreed-upon by the Board and the Applicant prior to the commencement of work by the review consultant.
47. Upon their construction and initial occupancy, the buildings in the proposed development shall be considered post-existing, non-conforming. In no event shall additional bedrooms be added. No loft, nook or other area within a dwelling unit, not shown on the Plans as a bedroom shall be converted to a bedroom. No storage, common or other area not designated on the Plans as part of a dwelling unit in the Project shall be converted to additional dwelling unit(s), or part thereof, without application to and receipt of express, written permission from the Board.
48. This permit shall not be valid until recorded with the Southern Essex Registry of Deeds and evidence of such recording is provided to the Building Inspector and the Board.
49. Except as may be otherwise required in this Decision, changes to the Project, the Plans and the conditions contained herein shall be processed in accordance with 760 CMR 56.05(11), as may be amended or re-codified.
50. Any and all easements that may be necessary to complete and occupy the Project shall be in a form approved by the Town's legal counsel, such approval not to be unreasonably withheld, delayed or denied.
51. This Permit shall run with the land and be binding on the Applicant and any of its assignees and successors in interest at the Property or with respect to the Project. Any transfer of this permit prior to substantial completion of the Project or a phase thereof shall be subject to written confirmation from the Subsidizing Agency and otherwise subject to 760 CMR 56.05(12)(b). In addition, any sale, transfer or assignment of this permit, and any sale of more than 50% of the assets or interests in the Applicant, shall require the Board's administrative approval, such approval not to be unreasonably withheld. The Applicant shall provide 20-days advance written notice to the Board of any such request and, if the Board does not act on such request within twenty (20) days, such request shall be deemed approved.
52. This permit shall expire if construction is not commenced within three years from the date it is filed by the Board with the Town Clerk, as provided in 760 CMR 56.05(12)(c). For purposes of this paragraph, commencement of construction shall be defined as the installation of a foundation for the Project's building. However, the Applicant may seek extensions in accordance with 760 CMR 56.05(12)(c). Extensions of the term of the

Decision shall be governed by 760 CMR 56.05(12)(c) and the extension of the Decision shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).

53. Prior to any site preparation activities or the commencement of construction, the Applicant shall provide a point of contact to the Board along with that individual's name and direct telephone number and that person shall be someone with the authority and ability to receive notifications and communication relating to the Project on behalf of the Applicant from the Town at any and all times. That point of contact shall also serve as a neighborhood liaison to communicate via email with the neighborhood, all property owners and businesses within 300 feet of the Site. The substance of the communication shall include updates related to key construction activities and the Project timeline and shall facilitate an open line of communication between the general contractor/Applicant, Town and the neighborhood.
54. Any finding, by any court of competent jurisdiction, that any condition hereof is unenforceable shall not otherwise affect the enforceability of the remainder of the conditions hereof.
55. Appeals of this permit shall be made pursuant to G.L. c. 40B.

Board of Appeals of the Town of Middleton

Date: September 3, 2024


Richard J. Benevento, Chairman

Filed with the Town Clerk:

September 5, 2024
DATE


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ATTACHMENT "A"

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**LIST OF REQUESTED WAIVERS FROM THE APPLICABLE
TOWN OF MIDDLETON BY-LAWS AND REGULATIONS
COMPREHENSIVE PERMIT APPLICATION -10-18 BOSTON STREET
(As of February 8, 2024)**

**ZONING BYLAW (Adopted by the Special Town Meeting of the Town of Middleton 11-29-2005 by Art. 23; amended in its entirety
by the Annual Town Meeting 5-13-2008 by Art. 30.**

**Property: 10-18 Boston Street, Middleton, MA
Zoning District: Residential(R-1a) and Business (B)
Assessor's Map/Parcel: 25/66 and portions of Parcels 25/65 & 25/67**

TOWN OF MIDDLETON GENERAL BYLAWS, RULES AND REGULATIONS, AS AMENDED THROUGH JULY 13, 2023 (THE "MIDDLETON GENERAL BYLAWS")		
REGULATION / TITLE / DESCRIPTION	REQUIRED	DISPOSITION
Chapter 124 - Demolition Delay Demolition Delay Requirements Requirements and procedures for structures or building deemed by the Middleton Historical Commission to be defined as a "significant building or structure" or "preferably preserved" prior to demolition	No demolition of a building or structure, or any portion of a building or structure, deemed significant by the Commission shall be permitted except in conformity with the provisions of Chapter 124.	Waived. To be governed by the Comprehensive Permit.

<p>Chapter 130</p> <p>Earth Removal</p> <p>Earth Removal</p> <p>Earth Removal Requirements</p>	<p>No sod, loam, clay, sand, gravel, quarried stone or other earth material which forms a part of the real estate of the Town of Middleton shall be carried, conveyed or moved outside the boundaries of the Town of Middleton for any purpose whatsoever, except for new building construction, at which time the Board of Appeals may grant a special permit for removal of clay, sand, gravel, or quarried stone from the Town of Middleton.</p>	<p>Waived. To be governed by Comprehensive Permit.</p>
<p>Chapter 204. Stormwater Management and Illicit Discharge, Article I – Stormwater Management, and Chapter 248. Stormwater Management Reg's</p> <p>Stormwater Management and Illicit Discharge</p> <p>Requirements for Stormwater Management and Prevention of Illicit Discharges</p>	<p>Requires a Stormwater Management Permit to be issued by the Stormwater Permitting Authority (SWPA).</p>	<p>Waived. Stormwater Management and related design shall comply with the performance standards of the most recent version of Massachusetts Department of Environmental Protection (DEP) stormwater management standards and accompanying Stormwater Management Handbook, and as regulated under the coverage requirements of the US EPA Construction General Permit for Massachusetts (MAR100000), all as provided in the Comprehensive Permit. Shall otherwise comply with the Comprehensive Permit</p>

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<p>Chapter 206. Streets and Sidewalks, Section 206-7</p> <p>Street Excavations</p> <p>Regulation of Street Excavation.</p>	<p>No person, corporation or Town department shall make any temporary or permanent excavation under the surface of any street, way, sidewalk, square or intersection or break up or dig up any part of such street, way, sidewalk, square or intersection or assist in any such act, for any purposes whatever, without the written permission of the Superintendent of the Division of Public Works</p>	<p>Waived. Comprehensive Permit operates to issue road opening permit to perform work in Boston Street and, if applicable, South Main Street, in accordance with DPW and State requirements. Details of such work to be approved by the Board's engineer, in consultation with the DPW.</p>
<p>Chapter 220. Vehicles and Traffic,</p> <p>Article 1, Parking Regulations, § 220-1. Middleton Square.</p> <p>Middleton Square</p> <p>Parking in Middleton Square</p>	<p>No person shall park a motor vehicle for a period to exceed two hours between the hours of 9:00 a.m. and 6:00 p.m. in the area known as Middleton Square, bounded and described as the Business District on the Zoning Map of Middleton, as amended.</p>	<p>Waived to the extent this Bylaw regulates parking on the Applicant's Property. Not waived with respect to the right of way adjacent to the Property</p>
<p>Chapter 343. Water Supply Systems</p> <p>Water Supply Wells</p> <p>Standards Related to Installing Water Well for Public, Irrigation, or Geothermal Supply Purposes.</p>	<p>Well Construction Permit to be issued by Board of Health; Siting and Testing Standards.</p>	<p>Waived to allow Board of Appeals to issue any locally required Well Construction Permit as provided in the Comprehensive Permit, subject to meeting applicable standards. Such permit may be issued by the ZBA upon Applicant's demonstration to the Board's engineer that the requirements of Chapter 343 have been satisfied. Board's engineer may consult with the Town's Health Agent</p>

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ZONING BYLAWS OF THE TOWN OF MIDDLETON, MASSACHUSETTS, AS AMENDED THROUGH ANNUAL TOWN MEETING HELD ON JUNE 5, 2021 (THE "MIDDLETON ZONING BYLAWS")**		
BY-LAW/REG. / TITLE / DESCRIPTION	REQUIRED	PROPOSED
SECTION 5.0. General Regulations		
Sections 5.2.3 (Administrative) Signs Unless otherwise provided herein, no sign shall be erected unless it complies with the terms and provisions set forth in this regulation and the owner or applicant has submitted a sign application and paid the associated fee and the Building Commissioner has issued a sign permit.		Waived. Allow the construction of signage as specified in this Waivers table.
Section 5.2.5.3 (General Requirements) and Section 5.2.10.1.b (Signs in Residential Districts) Ground sign setbacks Ground signs shall be set back a minimum of 10 feet from all property lines, including rights-of-way (both public and private), and a minimum of 40 feet from all residential districts and all off premises structures.		Waived. Allow zero (0) feet from all property lines, including rights-of-way (both public and private).

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<p>Section 5.2.9.3 (Signs)</p> <p>Illumination</p> <p>Signs that are illuminated in any residential district between the hours of 11:00 p.m. and 7:00 a.m. unless indicating time or temperature or an establishment open to the public during those hours.</p>		<p>Waived. Allow signs to be illuminated up to 24 hours per day.</p>
<p>Section 5.2.10 (Signs in Residential Districts)</p> <p>Signs in Residence Districts</p> <p>Allowed accessory signs in residential districts include: (a) One sign, either attached or ground, indicating only the name of the owner or occupant, street number and permitted uses or occupations engaged in thereon such as accessory professional office, home occupation, or other accessory uses permitted in a residential district. Such sign shall not exceed two square feet in area; and, (b) One ground sign identifying a housing development at each public entrance to a subdivision, provided such sign shall be set back a minimum of 10 feet from the boundary lines of any adjacent streets and a minimum of 40 feet from all structures. Such sign shall not exceed 24 square feet in area and shall not extend more than six feet above ground level.</p>		<p>Waived. Allow the construction of two permanent illuminated ground signs (one double-sided) of no more than 24 square feet in size and not exceeding 6 feet in height to be located as shown on the Site Plans.</p>

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<p>Section 5.2.10 (Signs in Residential Districts)</p> <p>Permitted Signs in Residence Districts</p> <p>Certain Accessory, Nonaccessory, and Temporary Signs Allowed</p>		<p>Waived. Allow the following additional signs within the Residence R1-a district as are allowed in the Business B zoning district:</p> <ul style="list-style-type: none"> • Window Signs, as defined in 5.2.11.5; • Directional Signs, as defined in 5.2.11.7; • A-Frame Signs, as defined in 5.2.11.11; and, • Banners, as defined in 5.2.11.12.
<p>Section 5.2.10.3 (Signs in Residential Districts)</p> <p>Temporary Construction Signage</p> <p>One temporary unlighted sign maintained on the premises while construction is in process and containing information relevant to the project, including the name and address of the parties involved in the construction or financing of a project on the premises. The construction sign shall not be larger than six square feet and shall not extend more than six feet above ground level. Such sign shall be removed 14 days after completion of construction or as required by the Building Commissioner if a waiver is granted.</p> <p>The Building Commissioner may waive the size limitations set forth above and allow a sign larger than six square feet if: the premises fronts on a state highway, such as Route 114 or Route 62; or if the sign is advertising lots in a subdivision and a larger sign is needed for legibility purposes. The total area of the sign shall not exceed 24 square feet.</p>		<p>Waived. Temporary non-illuminated construction signs of no more than 64 square feet from the commencement until completion of construction, directional wayfinding signage to direct deliveries and personnel, as well as signage integral with construction fencing / screening identifying the name, logo, and contact information of the development company (e.g. "Villebridge Development", financing provider(s) (e.g. "Construction Lender"), general contractor (e.g. "Construction Company", and/or the development (e.g. "Villebridge Middleton").</p>

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<p>Section 5.2.11.1.a (Signs in Business District)</p> <p>Number of Ground Signs</p> <p>Ground signs. Only one ground sign is permitted on any premises regardless of the number of buildings on such premises.</p>		<p>Waived. A second illuminated ground sign located within the Business B zoning district is allowed at the southeast corner of the site facing toward the abutting commercial property, as shown on the Site Plans.</p>
<p>SECTION 6.0 Special Regulations</p> <p>Section 6.2</p> <p>Earth Removal</p>	<p>The removal of sod, loam, sand, gravel, or other products from a lot is prohibited. However, where such removal is permitted as an accessory use, the Board of Appeals, subject to the Town bylaws, may authorize incidental removal by the grant of a special permit. In such cases, the Board shall impose conditions relative to the hours of operation and routes for transporting the material through the Town and impose requirements for regrading and planting the area to suitable cover when operations are completed. Said Board shall require a bond or other security for compliance with the terms of its authorization.</p>	<p>Waived. Earth removal and movement to be conducted to enable the construction of the Project, and as governed by the Comprehensive Permit.</p>
<p>SECTION 9.0. Administration and Procedures</p> <p>Section 9.1.4</p> <p>Occupancy Permits</p>	<p>No building erected, under a permit or otherwise, shall be occupied or used without an occupancy permit, signed by the Building Commissioner. Such permit shall not be issued until the building and its uses comply in all respects with these bylaws or with a decision of the Board of Appeals taken thereunder</p>	<p>Waived to allow occupancy permit to be issued based upon compliance with the terms of the Comprehensive Permit Decision and Mass. State Building Code.</p>

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Section 9.2.1 Building Commissioner Enforcement	The Building Commissioner shall institute proceedings to enforce these bylaws and to enjoin the construction, alteration, enlargement, reconstruction or use of any building or the use of any premises in violation of these bylaws.	Waived in part. Building Commissioner retains authority to enforce the Zoning Bylaw but as modified by the Zoning Bylaw waivers granted governed by the Comprehensive Permit.
Section 9.5 Site Plan Review	Conditions, criteria and procedures for the issuance of site plan approval.	Waived. To be governed by the Comprehensive Permit.

TOWN OF MIDDLETON BOARD OF HEALTH REQUIREMENTS		
REGULATION / TITLE / DESCRIPTION	REQUIRED	PROPOSED
Part III, Board of Health, Chapter 339. Wastewater Disposal, § 339-12. General design criteria and plan preparation. Wastewater Disposal/ Local Title 5 Requirements Board of Health requirements for on-site wastewater disposal systems.	Requirements for the siting, design, construction, and inspection of on-site wastewater disposal systems, along with related administration requirements.	Waived. To be governed by the requirements for on-site sewage disposal systems regulated under State Title V Regulations, 310 CMR 15.000 et seq.

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TOWN OF MIDDLETON (OTHER LOCAL REQUIREMENTS)		
REGULATION / TITLE / DESCRIPTION	REQUIRED	PROPOSED
Chapter 250 – Subdivision of Land (Rev. September 10, 2014) Rules and Regulations Governing the Subdivision of Land in the Town of Middleton, Massachusetts Approval Not Required (ANR) Plan Requirements	Application and endorsement form application and other requirements for ANR Plan	Waived. At Applicant's election, ZBA to endorse lotting plan included with the Final Plans in accordance with Chapter 40B.
Public Shade Tree Act, M.G.L. Ch. 87 “Public shade trees” defined as “all trees within a public way or on the boundaries thereof.” Requirements governing the cutting or removing of public shade trees delegated to local tree warden or other local official.	Public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden unless a permit is issued after a public hearing.	Waived. The removal or cutting of any public shade trees along Boston Road as depicted on the Final Plan are approved, and as may be conditioned within the Comprehensive Permit.

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