

SOUTH RIVER ENVIRONMENTAL

61 Meetinghouse Lane, Marshfield, MA 02050 Phone: 978-697-0854

April 23, 2024

Massachusetts Department of Environmental Protection
Attn: Mr. Gerard Martin – Regional Director
20 Riverside Drive
Lakeville, MA 02347

RECEIVED

APR 25 2024

DUXBURY CONSERVATION

Re: Request for Departmental Action / Expedited Review
Determination of Applicability
The Winsor at Millbrook Village
50 Railroad Avenue, Duxbury, MA

Dear Sir or Madam:

On behalf of Matthew Walsh, representative for 50 Railroad Avenue Duxbury, LLC (proponent), South River Environmental (SRE) is submitting this request for Departmental Action associated with a Determination of Applicability issued by the Duxbury Conservation Commission (Commission) on April 16, 2024 for the above-referenced property. The proponent had submitted a Request for Determination of Applicability (RDA) to the Commission on March 7, 2024 to confirm the intermittent status of a stream flowing to the west of and adjacent to the subject property. Although the stream is depicted on the latest U.S. Geological Survey topographic map as perennial, the proponent submitted evidence within the RDA application documenting a lack of flow within the stream over four consecutive days within a non-drought period in accordance with the Wetlands Protection Act Regulations under 310 CMR 10.58(2)(a)(1)(d). At the public hearing held on March 26, 2024, the Commission voted to issue a positive Determination of Applicability with a finding of fact that the stream was perennial. Therefore, the proponent is seeking a Superseding Determination of Applicability from the Massachusetts Department of Environmental Protection (MassDEP) as well as Expedited Review of this request pursuant to MassDEP Policy No. COM-00.002.

History

The proponent submitted a Comprehensive Permit application to the Town of Duxbury Zoning Board of Appeals (ZBA) for a new residential development (the Project) under Chapter 40B of the State of Massachusetts Affordable Housing Act. One of the objectives of the Project is to provide a significant public benefit by providing affordable housing within the Town of Duxbury which is currently below the 10% threshold. The Comprehensive Permit application incorporated review under the Town of Duxbury Wetlands Protection Bylaw. The Project was approved by the Duxbury ZBA on January 22, 2024 and included a finding of fact that the stream located along the western boundary of the property was intermittent (Attachment A).

Concurrent to the ZBA review, the proponent also submitted a Notice of Intent to the Commission solely under the Massachusetts Wetlands Protection Act (DEP File No. SE18-2059). The Notice of Intent submittal as well as supplemental information provided during the review process clearly documented the intermittent status of the stream in accordance with 310 CMR 10.58(2)(a)(1)(d). The Commission, as well as its third-party review consultant, did not agree with the intermittent designation. Since it was clear that the Notice of Intent review process for the Project could not proceed without a definitive determination on the flow status of the stream, the proponent submitted an RDA requesting that the Commission issue a Negative Determination of Applicability confirming the intermittent status of the stream. The RDA application package included and summarized all of the documentation

provided to the Commission during the Notice of Intent review process, which has been continued to a future date predicated on the final determination of the stream status.

Request for Determination of Applicability Review and Decision Process

The Commission held a public hearing on March 26, 2024 at which the proponent presented the information contained within the RDA application package. The Commission's peer review consultant also provided commentary regarding the stream and recommended that the Commission find the stream to be perennial. The Commission subsequently closed the public hearing and voted to issue a Positive Determination of Applicability that the stream was perennial under the MA Wetlands Protection Act. The DOA was issued on April 12, 2024. The rationale behind the decision was that the stream is depicted as perennial on the most recent U.S.G.S. topographic map under 310 CMR 10.58(2)(a)(1)(a). Other language supporting the positive determination included the following:

- (1) Previous decisions by the Commission, including an Order of Resource Area Delineation downgradient of the subject property as well as Orders of Conditions for projects on both sides of the stream were not associated with the subject property, had expired and were, therefore, no longer relevant to the proceeding;
- (2) The proponent's use of StreamStats did not comply with the regulations or did not demonstrate intermittent conditions on the subject stream; and
- (3) The project plan does not show a significant stream diversion.

As demonstrated and discussed below, each of these factors which the Commission cites in its decision document was fully addressed within the RDA application in a manner that clearly demonstrates that the stream within the subject property should be defined as intermittent under the Wetlands Protection Act.

Basis of Request for Departmental Action

The proponent is seeking Departmental Action based on Commission's flawed analysis of the data provided within the RDA application. Specifically:

The stream is depicted as perennial on the most recent U.S.G.S. topographic map under 310 CMR 10.58(2)(A)(1)(a).

A river is defined under the MA Wetlands Protection Act Regulations (Regulations) as any natural flowing body of water that empties to any ocean, lake, pond or other river and which flows throughout the year (310 CMR 10.58(2)(a)(1)). Additionally, a river or stream shown as perennial on the current USGS map is assumed to be perennial. The stream in question within and adjacent to the property is identified as perennial on the USGS map as previously stated and is, therefore, assumed to be perennial. Therefore, the burden of proof lies with the proponent to provide documentation in accordance with the Regulations to rebut the presumption that the stream is perennial.

Section 10.58(2)(a)(1d)) states that *'Notwithstanding 310 CMR 10.58(2)(a)1.a. through c., the issuing authority shall find that any stream is intermittent based upon a documented field observation that the stream is not flowing. A documented field observation shall be made by a competent source and shall be based upon an observation made at least once per day, over four days in any consecutive 12-month period,*

during a non-drought period on a stream not significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other human-made flow reductions or diversions. Field observations made after December 20, 2002 shall be documented by field notes and by dated photographs or video. Field observations made prior to December 20, 2002 shall be documented by credible evidence. All field observations shall be submitted to the issuing authority with a statement signed under the penalties of perjury attesting to the authenticity and veracity of the field notes, photographs or video and other credible evidence. Department staff, conservation commissioners, and conservation commission staff are competent sources; issuing authorities may consider evidence from other sources that are determined to be competent.

Commencing on November 16, 2023, the proponent, under the direction and oversight of SRE, took photographs and video of the stream to document the lack of flow within the channel. Photographs and video were taken on *fourteen (14)* consecutive days. No flow was observed within the channel during any of these dates. Review of the MA Department of Environmental Protection Drought Status mapping (<https://www.mass.gov/info-details/drought-status>) determined that the Town of Duxbury is within a Level 0 (Normal) drought status and that drought conditions were not in effect during the time period within which the stream observations were made. Based on the requirement to document four consecutive days demonstrating a lack of flow within the stream, the performance standard defined under 310 CMR Section 10.58(2)(a)(1d) has been met and exceeded by the proponent, and, per the regulation, the issuing authority (the Commission) should have determined that the stream flow is intermittent.

Historic and Current Regulation of Stream

Over the past five years, the Commission has reviewed multiple projects and filings along the stream in question upgradient, downgradient and directly adjacent to the subject property. These projects and filings are located both upgradient and downgradient of the subject property. Specifically, the Commission has reviewed the following and, in each case, determined that the stream in question was intermittent:

- Abbreviated Notice of Resource Area Delineation – SE18-1786 – 136-139 Alden Street
- Notice of Intent - SE18-1855 – Paddock Subdivision
- Notice of Intent – SE18-1879 – 114 Alden Street

The Commission issued an Order of Resource Area Delineation for SE18-1786 confirming that the stream was intermittent directly adjacent to the subject property based on information provided by Environmental Consulting and Restoration, LLC that documented a lack of flow within the stream over four consecutive days. While that ORAD expired on April 22, 2022, the hydrology of the stream has not been modified since that time such that the flow regime would change from intermittent to perennial. Additionally, the Notice of Intent and subsequent Order of Conditions issued for SE18-1879 at 114 Alden Street similarly did not regulate the stream as perennial. Although a Certificate of Compliance was issued for the completion of work associated with this project, the Order of Conditions would have remained valid until February 10, 2024.

This prior record of decisions by the Commission clearly demonstrates that the Commission has not regulated the stream in the vicinity of the subject property as perennial over the past five years. Hydrologic conditions within the stream have not changed subsequent to the issuance or expiration of the decisions. Additionally, the recent decision issued by the Duxbury Zoning Board of Appeals did not regulate the

stream as perennial under the Bylaw which carries the same definition of a perennial stream as the Wetlands Protection Act regulations.

Use of StreamStats

The Commission dismissed the StreamStats information provided by the proponent as irrelevant. It is important to note that the information was not submitted to the Commission in an attempt to demonstrate that the stream in question is intermittent. The Commission had, in multiple instances, determined that the stream was, in fact, intermittent. If that determination was to be overcome, StreamStats would be used in accordance with 310 CMR 10.58(2)(a)(1c) to identify the watershed size (greater than 0.5 square mile) and flow duration (greater than or equal to 0.01 cubic feet per second at the 99% flow duration). The proponent provided the StreamStats data to demonstrate, based on the history of intermittent determinations by the Commission, that the stream could not be determined to be perennial since neither the watershed size nor the flow duration met the performance standard under 310 CMR 10.58(2)(a)(1c) and that the Commission's prior decisions were accurate based on the regulatory definition within the Wetlands Protection Act.

The Project Plan Does Not Show a Significant Stream Diversion

The Commission's peer review consultant stated during the public hearing for the RDA that there is a diversion along the stream and, that, in accordance with 310 CMR 10.58(2)(a)(1)(d), the consecutive observations documenting a lack of flow within the stream, is not applicable. The proponent does not dispute that there is a diversion in the east side of the stream channel, as the stream was part of an historic cranberry bog. The cranberry bog, a portion of which was filled for construction of the existing duplex within 50 Railroad Avenue, was abandoned over 50 years ago and has reverted to a forested wetland system. Topography within the 50 Railroad Avenue property to the stream pitches from west to east, and stormwater flows in a similar direction. The diversion channel as well as the intermittent stream adjacent to the parking lot to the rear of 50 Railroad Avenue both contribute water to the system such that the channel functions to contribute flow to the main stem of the stream as it passes through the property. Therefore, the stream in questions is not significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments or other human-made reductions or diversions per 310 CMR 10.58(2)(a)(1)(d), and the issuing authority (MassDEP) should find that the stream is intermittent based upon the documented field observations presented within the RDA that the stream is not flowing.

Request for Expedited Review

In accordance with MassDEP's Policy No. COM-00.002, the proponent respectfully requests that MassDEP conduct an expedited review of this Request for Departmental Action. As previously stated, the proponent is seeking to develop property at 50 Railroad Avenue in accordance with the Chapter 40B of the MA Affordable Housing Act. The Project would provide a significant public benefit to the residents of Duxbury by providing much needed affordable housing. Per the procedure for requesting expedited review within the policy:

- 1) The review of the Notice of Intent submitted by the proponent is being delayed by the Commission's Positive DOA and cannot proceed until a final determination on the stream status is issued. With the ZBA approval in hand, the review of the Project under the Wetlands Protection Act is the last remaining permit required prior to submittal of building permits to commence work on the affordable housing Project. Additional delay in the review of the Notice of Intent will adversely affect the public interest by delaying the completion of the Project and the associated affordable housing benefit. As such, the proponent is

requesting that the Superseding Determination of Applicability be issued within 30 calendar days of receipt of this Request for Departmental Action.

- 2) The proponent has received approval from the Town of Duxbury Zoning Board of Appeals for the Project. The Project represents the only affordable housing development to ever be approved within that portion of Duxbury and meets a significant public need for affordable housing in the region. The Comprehensive Permit review process identified the need for affordable housing within the Town of Duxbury as well as the public benefit that it would serve. This was verified by the Zoning Board of Appeals through the issuance of the approval. A copy of the approval has been attached to confirm the substantial public interest served by the Project.

For these reasons, the proponent believes that an expedited review of this Request for Departmental Action is warranted.

Conclusion

The information provided within the RDA application as well as this Request for Departmental Action clearly demonstrate that the Duxbury Conservation Commission erred in its issuance of a Positive Determination of Applicability regarding the intermittent stream within and adjacent to the property located at 50 Railroad Avenue in Duxbury. The Commission's prior precedent decisions that the stream is intermittent coupled with the documentation of no flow within the stream for four consecutive days and the lack of restricted flow from any historic stream diversions all support the determination that the stream should be defined as intermittent in accordance with 310 CMR 10.59(2)(a)(1).

On behalf of the Proponent, SRE appreciates MassDEP's prompt response to this Request for Departmental Action as well as Expedited Review. Should you have any questions or require additional information, please do not hesitate to contact me at 978-697-0854 or via email at southernriverenvironmental@gmail.com. Thank you for your consideration of this matter.

Sincerely,
South River Environmental



John Zimmer
Wetland Scientist / Wildlife Biologist

Cc: Town of Duxbury Conservation Commission
The Winsor at Millbrook Village, LLC
Environmental Consulting and Restoration, LLC

Attachment

ATTACHMENT A
REQUEST FOR DEPARTMENTAL ACTION
FEE TRANSMITTAL FORM



Request for Departmental Action Fee Transmittal Form

Provided by DEP

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. Request Information

1. Location of Project

<u>50 Railroad Avenue</u>	<u>Duxbury</u>
a. Street Address	b. City/Town, Zip
<u>679</u>	<u>\$120.00</u>
c. Check number	d. Fee amount

2. Person or party making request (if appropriate, name the citizen group's representative):

50 Railroad Ave Duxbury, LLC - Attn: Matthew Walsh

Name

272 St. George Street

Mailing Address

<u>Duxbury</u>	<u>MA</u>	<u>02050</u>
City/Town	State	Zip Code
<u>617-699-2811</u>		<u>mccarthywalsh@comcast.net</u>
Phone Number	Fax Number	Email Address

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Same as Above

Name

Mailing Address

City/Town	State	Zip Code
Phone Number	Fax Number	Email Address

4. DEP File Number:

None - Request for Determination of Applicability

B. Instructions

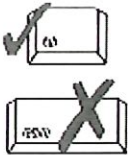
1. When the Departmental action request is for (check one):

- Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- Superseding Determination of Applicability – Fee: \$120
- Superseding Order of Resource Area Delineation – Fee: \$120

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



ATTACHMENT B

**TOWN OF DUXBURY ZONING BOARD OF APPEALS
COMPREHENSIVE PERMIT DECISION**

COMPREHENSIVE PERMIT DECISION

TOWN CLERK
2024 JAN 22 PM 6: 21
DUXBURY, MASS.

**TOWN OF DUXBURY
ZONING BOARD OF APPEALS**

Decision Number: 2023-09

Applicant: The Winsor at Millbrook Village LLC

Premises: 50 Railroad Avenue
Assessor's Map/Lot Number: 106-742-004

Request: Comprehensive Permit under G.L. c. 40B, §§ 20-23

Notice: Advertised in the *Duxbury Clipper* on April 26, 2023 and May 3, 2023

Public Hearing: May 11, 2023 and was continued:
o June 22, 2023
o July 13, 2023
o September 28, 2023
o October 12, 2023
o November 9, 2023
o November 27, 2023-No Testimony
o December 14, 2023 - hearing closed.

Decision: Granted, with conditions

Participating Members: Philip Thorn, Judith Barrett, Emmett Sheehan, Tanya Trevisan, and Borys Gojnycz.

Vote: 4-1-0 (Yes: Philip Thorn, Emmett Sheehan, Tanya Trevisan, and Borys Gojnycz. No: Judith Barrett)

Decision Date: January 22, 2024


Duxbury Assistant Town Clerk
A True Copy Attest

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

APPLICANT

The Winsor at Millbrook Village, LLC
272 St. George Street, Duxbury, Massachusetts 02332

LOCATION OF PROPERTY

50 Railroad Avenue, Duxbury, Massachusetts
Identification on Assessor's Map: 106-742-004

FOR TITLE SEE: BOOK 42470 PAGE 103

I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was submitted by The Winsor at Millbrook Village, LLC ("Applicant") to the Duxbury Zoning Board of Appeals (the "Board") on April 10, 2023. The Applicant is proposing to construct twelve (12) residential dwelling units (the "Project") on land at 50 Railroad Avenue, shown on the Duxbury Assessor's Map as Parcel Number 106-742-0004 (the "Site" and/or "Property").
2. The Property is located in the Neighborhood Business District II (NB2) Zoning District. The Property consists of a single parcel with 3.88 acres, a single 19,000 sq/ft one story commercial warehouse building. From that parcel, the Applicant intends to file an Approval Not Required ("ANR") plan cutting off 1.43 acres of land to be used for the Project.
3. The Board's hearing on this Comprehensive Permit application was opened on May 11, 2023 and was continued to June 22, 2023, July 13, 2023, September 28, 2023, October 12, 2023, November 9, 2023, November 27, 2023 (no testimony), and December 14, 2023. The public hearing was closed on December 14, 2023. The hearings were conducted in person and via remote access under the Governor's Emergency Orders due to the COVID-19 pandemic.
4. The Board deliberated on the application on Thursday, January 11, 2024. All submittals concerning the Project are on file in the office of the Board of Appeals and incorporated herein. All waivers requested and votes taken are listed on Exhibit A and incorporated herein.
5. The Applicant provided certain plans, materials, reports, and revised plans during the course of the public hearing on the Application. The Applicant was represented primarily by its attorney Matthew Walsh of McCarthy & Walsh and Robert Engler, Develop Consultant. The Applicant's engineering consultant is Robert Crowell, P.E, of Crowell Engineering and the applicant's architect is Julia Chuslo of Julia Chuslo Architect, LLC. Jeffrey S. Dirk, P.E., PTOE, FITE and Matthew P. Pelletier, Transportation Engineer, of Vanasse and Associates, Inc., provided traffic impact and assessment services on behalf of the Applicant.
6. The Board utilized the services of Patrick Brennan, P.E., of PGB Engineering, LLC for civil, stormwater, Title 5 and traffic peer review.

7. The Board requested and heard input from abutters and other interested persons, and their attorney and consultants, throughout the hearing process. The Board received comments from the Planning Board, Conservation Commission, Design Review Board, Board of Health, and other Town boards, commissions, and officers.
8. The following Board members were present for the entire public hearing process: Chairman Pro Tem Philip Thorn, Judi Barrett, Emmett Sheehan, Tanya Trevisan, and Borys Gojnycz.

II. GOVERNING LAW

9. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD"), 760 CMR 56.00 et seq. (the "Regulations").
10. The Act promotes regional distribution of low- or moderate-income housing by preventing individual cities and towns from using zoning to block construction of such housing. Toward these ends, the purposes of the Act are satisfied if (a) a town has low- or moderate-income housing in excess of 10 percent of the total number of year-round housing units reported in the latest decennial census; or (b) a town has low or moderate income housing which is on sites comprising 1.5 percent or more of the town's total land area zoned for residential, commercial, or industrial use; or (c) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3 percent of such total area or 10 acres, whichever is larger, in one year.
11. The Regulations expand the conditions for satisfying the statute to include various "safe harbor" opportunities, such as certification of progress under an approved Housing Production Plan (HPP), where "progress" means achieving a minimum annual low- or moderate-income housing production threshold established by DHCD (in Duxbury, at least 28 new low- or moderate-income units).
12. The Board's decision on a comprehensive permit must balance the regional need for low- or moderate-income housing against the Town's long-range planning goals and local requirements and regulations to the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the Town as a whole.

III. JURISDICTIONAL FINDINGS

13. The Town of Duxbury does not meet the statutory minima set forth in G.L. c. 40B § 20 or 760 CMR 56.03(3):
 - a. According to the Commonwealth's Department of Housing and Community Development (DHCD) Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of June 29, 2023, 7.35 percent of the Town's total housing stock comprised SHI eligible housing,

as defined in 760 CMR 56.02. Thus, the Town does not meet the 10 percent statutory minimum.

- b. The Board received no evidence that existing affordable housing units are on sites which comprise more than 1.5 percent of the total land area of the Town which is zoned for residential, commercial, or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof). Accordingly, the Board did not exercise the provisions of 760 CMR 56.03(8), which require the Board to provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, together with the grounds that have been met.
 - c. The granting of this comprehensive permit will not result in the commencement of construction of low- or moderate-income housing units on a site comprising more than three tenths of one percent of land area in the Town of Duxbury or ten acres, whichever is larger, zoned for residential, commercial, or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
 - d. At the time the application for the comprehensive permit was filed, the Town did not qualify for any of the “safe harbor” provisions under 760 CMR 56.03. However, the Town has a proven history of advancing affordable housing. Most specifically, the Town of Duxbury has a DHCD-approved Housing Production Plan, effective April 2, 2019, but not a sufficient number of affordable units have been added to the Duxbury Subsidized Housing Inventory since that time to qualify for any of such “safe harbor” provisions.
14. The Town promotes low- and moderate-income housing, principally through inclusionary zoning, conveyance of municipal property for affordable housing development, and funding for the Duxbury Affordable Housing Trust.
15. MassHousing has determined that the project submitted in the Project Eligibility Application was eligible for subsidy under Part V of the DHCD Chapter 40B Guidelines, and at least 25 percent of the 12 units would be available to households earning at or below 80 percent of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
16. The Applicant received a Project Eligibility Letter (“PEL”) from MassHousing dated March 28, 2023. According to the PEL:
- a. The Applicant has or will form a Limited Dividend Organization and agrees to comply with the Subsidizing Agency relative to a reasonable return under G.L. c. 40B., 760 CMR 56.00. As of the close of the public hearing, the Applicant had not

yet created the Applicant-entity – The Winsor at Millbrook Village, LLC.¹

- b. The Applicant provided sufficient documentation to demonstrate Site Control as required by the Chapter 40B Regulations. See, footnote 1.
- c. By virtue of receiving the PEL, the Applicant demonstrated that it had received approval to build low- or moderate-income housing under a recognized federal or state housing program, consistent with G.L c. 40B, § 20.

IV. FACTUAL FINDINGS

- 17. The Site is located in the Neighborhood Business 2 (NB2) District, which does not allow 12 residential units on a 1.43 acre lot. Access to the Site consists of the public way known as Railroad Avenue.
- 18. Patrick Brennan, Town Peer Review Consultant, determined that the relevant stream in the rear of the development is intermittent and determined that the drainage calculations as proposed regarding stormwater runoff will not have a negative impact on any down stream environment.
- 19. Jeffrey S. Dirk, P.E., PTOE, FITE and Matthew P. Pelletier, Transportation Engineer, of Vanasse and Associates, Inc., provided traffic impact and assessment services on behalf of the Applicant and concluded that the project would have a net zero impact.
- 20. The Board heard comments from Town staff, boards, and commissions.
- 21. The Board heard comments from neighborhood residents. The neighborhood's main concerns, expressed in testimony at the public hearing, were as follows:
 - a. Size and height of the proposed development and view from 114 Alden Street.
 - b. Storm water runoff into an adjacent intermittent stream.
 - c. Abutter located at 7 Cooper Hill Road view of artificial lighting emitting from third floor windows.
 - d. Generally high ground water and how that may affect the subject septic system.
- 22. The Board considered all comments on the proposed development and weighed them against local needs.

¹ While the "Project Data Summary" submitted by the Applicant states "The Winsor at Millbrook Village, LLC has been organized under the General Laws of the State of Massachusetts....", there is no such entity found in the Massachusetts Secretary of State database. [emphasis added] Further, despite the fact that Matthew T. Walsh signed a Purchase and Sale Agreement as the Manager of "The Winsor at Millbrook Village, LLC", it appears that at the time, that entity did not exist.

23. The Board determined that the Project, as conditioned in Section VI below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, and as required by G.L. c. 40B, § 20.
24. The Board finds that the conditions imposed in this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the project uneconomic. To the extent that such conditions may render the project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
25. The Board finds that granting certain waivers from local bylaws and regulations is acceptable even though the granting of some waivers may have an adverse impact on Local Concerns. Nevertheless, the Board finds that the Local Concerns affected thereby do not outweigh the regional need for affordable housing, especially given advice and recommendations received from the Board's peer review consultants and the statutory purpose of Chapter 40B, i.e., to facilitate construction of affordable housing that would otherwise be infeasible under strict compliance with local bylaws and regulations. Finally, the Board determined that the Applicant applied for Waivers that are not applicable and as such were denied.

V. DECISION

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, grants a Comprehensive Permit to the Applicant for the construction of a multifamily development subject to all the conditions in Part VI of this Decision.

VI. CONDITIONS

A. General

- A.1. The Project shall consist of not more than 12 units containing a total maximum of 34 bedrooms with a mix of two-bedroom and three-bedroom units housed in 3 townhouse style duplex (2 units each) buildings and one hexaplex (6 units) building.
- A.2. Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project ("Approved Plans"). The Approved Plans consist of the following:

Plan Set, Site Development Plan, The Winsor at Millbrook Village, June 15, 2023, last revised December 13, 2023 prepared by Crowell Engineering

Sheet 1 of 12, Cover/Index Plan

Sheet 2 of 12, Existing Conditions Plan

Sheet 3 of 12, Site Layout Plan 40 scale

Sheet 4 of 12, Site Layout Plan 20 scale

Sheet 5 of 12, Utility Plan

Sheet 6 of 12, Septic Plan 1

Sheet 7 of 12, Septic Plan 2

2023-09 Comprehensive Permit Decision
The Winsor at Millbrook Village, LLC
January 22, 2024

Sheet 8 of 12, Grading Plan
Sheet 9 of 12, Conservation and Landscape Plan
Sheet 10 of 12, Landscape/Lighting Plan
Sheet 11 of 12, Detail Plan
Sheet 12 of 12, Detail Plan

- A.3. The Applicant shall be a Limited Dividend Entity as required by Chapter 40B, and it and its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.
- A.4. Affordable units shall be interspersed evenly throughout the Project, as approved by the Subsidizing Agency during Final Approval.
- A.5. Pursuant to the Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, certain waivers from the Duxbury Zoning Bylaw and other local by-laws and regulations as specified therein. Those conditions are expressly incorporated by reference as conditions of approval to this Comprehensive Permit. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23, and no waivers of any requirements otherwise within the Board's jurisdiction under G.L. c.40B, §§20-23 have been granted except for those specifically granted by the Board as set forth in Exhibit A. To the extent the Approved Plans reflect a waiver not expressly granted in Exhibit A, the terms and conditions of Exhibit A shall govern. No waiver of building permit or inspection fees has been granted except as specifically stated and conditioned. Any subsequent revision to the Approved Plans, including but not limited to revisions that are apparent in the Final 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).
- A.6. The Project shall comply with all local regulations of the Town of Duxbury and its boards, commissions and departments unless specifically waived herein.
- A.7. The Applicant shall copy the Board, through the Board Administrative Assistant and Building Commissioner, on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project, other than plans filed with the Building Commissioner to comply with the Building Code.
- A.8. Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Building Commissioner or other Town Departments, the Building Commissioner or applicable Department Head will use reasonable efforts to review and provide a written response within 30 days following submission. For submissions that require assistance from an outside consultant, as determined by the Building Commissioner or applicable Department Head, the 30-day time period shall not begin until the consultant's fee has been paid by the Applicant. Applicant

will not unreasonably withhold consent for extra time due to any delay in reviews.

- A.9. The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant (including, without limitation, the Condominium Association upon its formation following recording of the Condominium Documents), and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.
- A.10. The sidewalks, driveways, utilities, drainage and stormwater systems, and all other infrastructure located on the Project site and shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town of Duxbury shall not have, now or in the future, any legal responsibility for the installation, inspection, operation, or maintenance of the infrastructure, including but not limited to snow removal and landscape maintenance. In this regard, the driveway within the Project shall not be dedicated to or accepted by the Town.
- A.11. Snow shall be stored within the areas of the site designated on the Final Plans and shall be not anywhere on the interior roadways or wetland resource areas. To the extent snowfall exceeds the capacity of the designated snow storage on the site, the Applicant shall truck the excess snow off-site. Final Plans shall include a snow management plan approved by the Building Commissioner or Third Party Reviewer.
- A.12. Unless otherwise indicated herein, the Board hereby designates Patrick Brennan, PE an agent to review and approve the Final Plans for consistency with this Decision and to monitor construction subsequent to this Decision. If Mr. Brennan is not available, after consulting with the Board, the Building Commissioner may designate an agent to review and approve the Final Plans for consistency with this Decision and to monitor construction subsequent to this Decision.

B. Affordability

- B.1. A minimum of 25 percent of the homeownership units shall be low- or moderate-income units, meaning that they shall be sold to households whose income is not more than 80 percent of the Area Median Income ("AMI"), as determined by the United States Department of Housing and Urban Development ("HUD") and DHCD ("Affordable Units"). Affordable Units shall be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency. The Applicant shall be responsible for maintaining records sufficient to comply with DHCD guidelines for the location of Affordable Units in the Project and occupancy of such Affordable Units by income-eligible households.
- B.2. Upon completion of the Project and in perpetuity or for the maximum period allowed by law, at least 25% of the homeownership units shall meet the criteria for inclusion in

DHCD's Subsidized Housing Inventory for the Town of Duxbury.

- B.3. The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan (AFHMP) prior to the sale of any units and shall ensure that the Project complies with the Subsidizing Agency's fair housing requirements.
- B.4. No later than two weeks prior to submitting the proposed AFHMP to the Subsidizing Agency, the Applicant shall provide a copy to the Building Commissioner and the Duxbury Affordable Housing Trust for review and comment; however, final terms and conditions of the AFHMP shall be solely determined by the Subsidizing Agency.

C. Submission Requirements

- C.1. Prior to any construction or site development activities (including site clearing, tree removal, fill, grading, etc.) on the Site, whether or not pursuant to a building permit, the Applicant shall:
 - a. Submit the following to the Building Department for review and comment:
 - i. Final Architectural Plans prepared, signed, and sealed by an architect with a valid registration in the Commonwealth of Massachusetts, if required by the Building Code and/or State law. At a regularly scheduled Board hearing, the Building Commissioner or Department Head may provide the Board with an update on the conformity of the Final Architectural Plans with this Comprehensive permit.
 - ii. Final landscaping and lighting plan prepared by a landscape architect with a valid registration in the Commonwealth of Massachusetts. The landscaping and lighting plan shall conform to applicable Town of Duxbury Bylaws
 - iii. A signage plan, which shall conform to applicable Town of Duxbury Bylaws.
 - iv. Final Engineering Drawings and Plans ("Final Plans") that conform to the requirements of this Comprehensive Permit and incorporate the conditions herein. The Final Plans shall also incorporate by reference all conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record or the Professional (Civil) Engineer of record, as applicable. The Final Plans shall be submitted to the Board at least 30 days prior to the anticipated submission of an application for building permits, whichever is earlier (the "Final Site Plan Submission Date"). Applicant will not unreasonably withhold consent for extra time due to any delay in reviews.

At a minimum, the Final Plans shall be in accordance with the comments from the engineering and traffic peer review consultants dated March 28, 2022.
The Final Plans shall indicate thereon the bedroom count for each unit and a notation as to which units will be the Affordable Units as approved by the

Subsidizing Agency.

The Final Plans shall be consistent with a Final Stormwater Report demonstrating the Project's compliance with applicable sections of the Massachusetts Stormwater Handbook, the Stormwater Management Standards and any un-waived sections of the Town of Duxbury Subdivision Regulations.

- b. Submit to the Building Commissioner or Department Head a construction management plan consistent with the requirements found in Subsection D below, and a construction schedule outlining the entire development of the Project.
- c. The Building Commissioner shall engage, at the Applicant's expense and upon prior agreement to scope of services, one or more agents to review the plan(s) for consistency with this decision. Pursuant to this condition, the Applicant shall deliver to the Town a check in the initial amount of \$10,000.00 to be used for the Town to retain outside experts for technical reviews and inspections required under these conditions and shall be required to supplement the amount if the balance drops below \$1,500.00. The funds shall be deposited by the Town in an account pursuant to G.L. c. 44, s. 53G and shall only be used for technical reviews and inspections associated with this project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the project. If at any time the Town reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Town in a reasonable amount as may be determined by the Town. The funds may be used by the Town to hire civil engineering, architect, traffic engineering, or other related professionals that the Town deems reasonably necessary to ensure compliance with the conditions hereof.
- d. Obtain a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA), if necessary. The Board shall also be provided a copy of the SWPPP submitted along with the NPDES filing.
- e. Submit recording information documenting that an Order of Conditions for the Project issued by the Duxbury Conservation Commission has been recorded with the Plymouth Registry of Deeds and that all appeals have been exhausted.
- f. Determine the volume of any cuts/fills needed for the Project and provide this information to the Board, signed by the Registered Civil Engineer of record. This information shall include the source of the material and certification by a Licensed Site Professional that it is clean fill and confirmed by the Town's consulting engineer. Permanent fencing, if any, shall comply with the plans and any Order of Conditions issued by the Conservation Commission.
- g. Submit to the Board a Site-Specific Safety Plan including but not limited to emergency contacts information for the job team, emergency response plan, and designated fueling area. All employees on site shall be responsible for

understanding the plan and at any point during the construction process and shall be checked by the Building Commissioner for compliance of all site personnel.

- h. Attend with the site general contractor a preconstruction conference with the Building Commissioner and other Town staff as may be determined by the Building Inspector.
- i. Provide the sum of \$25,000.00 in escrow for sediment control and site stabilization in the event that the Applicant fails and neglects after written notice and opportunity to cure any alleged issues.

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

- a. Record this Comprehensive Permit with the Plymouth Registry of Deeds, at the Applicant's expense, and provide proof of such recording with the Duxbury Building Commissioner.
- b. Submit to the Board and the Building Inspector or Department Head evidence of Final Approval from the Subsidizing Agency as required by the Project Eligibility letter and the Chapter 40B regulations.
- c. Submit to the Board and the Building Commissioner a certified copy of the Regulatory Agreement and Monitoring Services Agreement for the Project. Execution and recording of such Regulatory Agreement and subsidy funding commitment by MassHousing or an approved New England Fund lender shall be complete prior to the issuance of any building permit.
- d. Submit for a sign application to the Building Commissioner and include location and details of every sign to confirm its compliance with this Decision.
- e. Submit all final plans submitted to the Board for their review and comment.
- f. Provide the Board and Building Inspector with the approximate location of all utilities, including but not limited to electric, telephone, and cables.
- g. Obtain confirmation in writing from the Department of Public Works that the necessary domestic pressure and fire flow capacity is available for the Project.
- h. Obtain and file with the Building Commissioner a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.
- i. Obtain all necessary electrical, plumbing, and other permits required to begin construction on the building for which the building permit is sought.
- j. Comply with all other applicable conditions in Section H below.

C.3. Prior to issuance of a Certificate of Occupancy for any portion of the Project, the Applicant shall:

- a. Submit to the Board the proposed Condominium Master Deed, Condominium Declaration of Trust, and accompanying condominium floor plans (together, the "Condominium Documents") for the Project prior to the recording thereof to review and confirm that the Condominium Documents are consistent with the conditions of this Decision. The Condominium Documents shall incorporate by reference the conditions of this Decision. If no written response or comments have been given to the Applicant by the Board, the Town Counsel to the Board concerning the proposed Condominium Documents within 30 days after their submission to the Board, the proposed Condominium Documents, as delivered, will be deemed to have been approved.
- b. Submit engineer's interim certification of roadway infrastructure, water service, septic, and as-built foundation plans to the Duxbury Building Commissioner for approval by the Town's consulting engineer.
- c. Provide a letter to the Town, signed and stamped by the Applicant's civil engineer, certifying that the as-built Project or applicable portions thereof have been constructed in compliance with the Final Plans in all material respects, or noting where there are differences or remaining work.
- d. Obtain acceptance from the Duxbury Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units and that all fire hydrants are in place at proper grade and functioning.
- e. Complete all water improvements necessary to serve the Project and submit interim as-built plans to the Department of Public Works for the Department's approval.
- f. Submit an as-built plan of stormwater management system and certification by peer review engineer of compliance with the conditions of approval for the stormwater management system set forth in the Conservation Commission's Order of Conditions for the Project, the peer reviewer's comments and recommendations submitted during the course of the public hearings, and the approved stormwater management plans.
- g. Comply with all other applicable conditions in Section H below.

C.4. Prior to issuance of the Certificate of Occupancy for the last residential building or unit to be constructed, the Applicant shall:

- a. Submit to the Building Department, in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction.

The file format shall be in a form acceptable to the Building Department. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. The digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.

- b. Submit to the Building Commissioner as-built plans for all buildings in the Project.
- c. Submit to the Board all information relating to the condominium association rules and regulations and the management company being retained to act as the property manager that the Applicant submits to the Subsidizing Agency as part of the Final Approval process. Such property management agreement and condominium association rules and regulations shall, at a minimum, address building security, public access, pet policy, staffing, trash removal, smoking policies, snow and ice removal, and snow storage.
- d. Submit verification that all components of the stormwater management system have been inspected, cleaned and final approval by peer review engineer.
- e. Submit to the Board Certification of compliance with all terms and conditions of this Comprehensive Permit.
- f. Certification by the Town's consulting engineer that all off-site measures are complete.
- g. Certification or written approval from the Department of Public Works that all water systems have been installed, tested, and that all valve covers, and other related items are at grade and are in proper working condition.

D. Project Design and Construction

- D.1. Applicant shall submit to the Building Commissioner and implement a Construction Management Plan ("CMP") for the Project prior to any construction or site development activities. The CMP shall provide a 24-hour contact person for the Applicant who will be available to respond to local officials reporting issues or problems that may arise during construction. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the CMP. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project and shall employ water-based street sweeping so as to avoid clouds of dust in and around the public and private ways and surrounding neighborhood. The Applicant shall also include in its CMP

a plan for ensuring health and safety on site.

- D.2. All construction equipment must be off-loaded on the Property, and all construction-related vehicles and equipment shall be on site during construction. No construction equipment or vehicles of employees or agents of the Applicant or the Applicant's contractors shall be parked on Railroad Avenue or other public way.
- D.3. The Applicant shall implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from the Building Commissioner or other appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, vehicle fueling; vehicle access to and from site; delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and erection of new structures. All off-site utility work shall be coordinated and approved by the Building Department and shall not be subject to the timing restrictions set forth above.
- D.4. The Condominium Documents shall specifically prohibit wood burning fire pits anywhere on the Site.
- D.5. The Applicant shall permit, upon a 48-hour notice, subject to applicable safety standards, representatives of the Board to observe and inspect the Site and construction progress until such time as the Project has been completed.
- D.6. The Applicant shall conform to all local, State, and Federal laws regarding construction, noise, vibration, dust, and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- D.7. Any fill used in connection with the Project shall be clean fill. Clean fill shall be generally free from trash, debris, asphalt, brick, concrete, metal, wood, recycled construction materials, or other deleterious materials, and shall be tested prior to being deposited on the Site and certified by a Licensed Site Professional.
- D.8. Site Utilities, including but not limited to telephone, electric, and cable, shall be located underground from Railroad Avenue.
- D.9. Exterior construction activities shall be conducted between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday and 8:00 a.m and 5:00 p.m. on Saturdays. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, vehicle fueling; vehicle access to and from site; delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of

utilities both on and off the site; removal of stumps and debris; and erection of new structures. No work shall be conducted on Sunday or the following National holidays: New Year's Day, Memorial Day, Juneteenth, Fourth of July, Labor Day, Indigenous People Day, Veterans Day, Thanksgiving Day, and Christmas.

- D.10. No disturbed areas shall be left in an un-stabilized condition longer than 60 days without appropriate temporary stabilization. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by paving or established vegetated ground cover in exposed areas.
- D.11. The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal driveways providing access both to residents of the Project and emergency vehicles.
- D.12. Construction security fencing shall be utilized at least until the first occupancy permit is issued to ensure the safety and security of the site for the benefit of the surrounding neighborhood and the Applicant. A site superintendent shall be utilized to open and close the site daily and confirm/mandate the hours of operation for the site personnel.

E. Roadway and Traffic Safety Conditions

- E.1. Access and egress to the Project shall be consistent with the Approved Plans. There shall be curbing at the entrance to the development.
- E.2. Internal sidewalks with ADA/MAAB-compliant ramps shall be constructed as shown on the Plans.
- E.3. The internal roadways to each unit shall be designed and constructed to Town construction standards and in accordance with the Final Plans unless otherwise specifically waived by the Board.
- E.4. Appropriate directional and safety signage shall be installed and maintained on the internal roadways, subject to review and approval by the Duxbury Fire Department. All stop signs to be installed shall be consistent with the current Manual on Uniform Traffic Control Devices standards and guidelines.
- E.5. Applicant shall maintain the sight distance at the entrance by limiting/trimming vegetation. The sight distance shall be maintained under the Town Engineer's supervision.

F. Police, Fire, and Emergency Medical Conditions

- F.1. Pursuant to the Massachusetts Comprehensive Fire Safety Code, 527 CMR 1, 18.1.1.5, Applicant shall submit to the Duxbury Fire Department for approval a fire apparatus access plan signed and stamped by a registered professional engineer which shows to the Fire Chief and Deputy Chief's satisfaction that there is a turning radius in and out of the Project sufficient for fire truck access and clearance of the bucket portion of the aerial apparatus

of the truck.

- F.2. Posted “no parking” restrictions shall be provided on the internal Project roadway.
- F.3. Applicant shall confirm final layout and location of all fire safety equipment (hydrants, post indicator valves, panels, etc.) with the Duxbury Fire Department prior to the start of construction.
- F.4. All units in the Project shall be outfitted with a residential sprinkler system in accordance with NFPA Regulations. The Applicant shall submit final fire alarm/sprinkler plans to the Fire Chief for review and approval prior to construction.
- F.5. There shall be a 30 foot buffer between the wood line and the buildings.

G. Water, Stormwater, and Utilities

- G.1. The Applicant shall be responsible for the design and installation of all utilities servicing the Project.
- G.2. All water infrastructure shall be installed in conformance with Town of Duxbury requirements. The Applicant shall consult with the Department of Public Works prior to the commencement of construction.
- G.3. The service size for the domestic water service shall be verified by the Department of Public Works and information on the fire service size and requirements shall be verified by the Duxbury Fire Department. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Department of Public Works and the Fire Department respectively.
- G.4. Stormwater management facilities shall be constructed as shown on the Final Plans.
- G.5. The Applicant shall comply with all terms and conditions of the Order of Conditions for the Project issued by the Conservation Commission under G.L. c. 131, § 40. No work may proceed pursuant to this Comprehensive Permit until all appeals have been exhausted and the Order is recorded in the Plymouth County Registry of Deeds. All terms and conditions of an Order of Conditions issued for the Project are expressly incorporated as conditions to this Comprehensive Permit and shall remain enforceable conditions under the Comprehensive Permit notwithstanding the result of any appeal. Should appeal of the Order of Conditions result in elimination or modification of any condition of the Order of Conditions and the Applicant seeks to modify the Project based thereon, any such modification must be approved by the Board in accordance with 760 CMR 56.05(11).
- G.6. Unless otherwise required by the Conservation Commission, the Applicant shall install permanent bounds along 25 foot wetland buffer zone every 30 feet. Such bounds shall be

included in the final plans.

H. Completion of Infrastructure

H.1. 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, lighting, water and sewer systems, landscaping and utilities (collectively the "Infrastructure"), the Applicant shall provide security consistent with the provisions of G. L. 41, § 81U, and subject to the following:

- a. No Building Permits will be issued until (1) the entirety of the roadway shown on the Final Plans providing access to the subject buildings has been installed, excepting the final course of pavement (meaning the roadway will be complete to binder coat), site landscaping and sidewalks, and final curbing; and (2) the water system, including fire hydrants, is fully installed and operational to the satisfaction of the Water and Fire Departments.
- b. No Certificate of Occupancy for a dwelling unit shall be issued until all infrastructure necessary to serve the building, as approved by the Board's peer review engineer or the Building Commissioner, has been constructed and installed so as to adequately serve said building.
- c. The final infrastructure for the Project, including, but not limited to, final course of pavement shall be installed prior to the issuance of occupancy permits for the final dwelling unit. The final infrastructure shall include, but not be limited to intermediate and final course of pavement, remaining landscaping, and any "punch list" items identified by the Board's engineer or the Building Commissioner. Alternatively, if the Applicant desires to obtain such final occupancy permits for the final dwelling unit before the completion of said Final Infrastructure, it shall deposit monetary security with the Town securing the installation and construction of such Final Infrastructure. The amount of such security and any necessary contingency shall be determined by the Board, acting reasonably and upon the advice of its consulting engineer. The form of the security agreement binding such security shall be subject to review by Town Counsel.
- d. The Board's peer review engineer shall review the Project upon completion of all such Final Infrastructure as described above and shall notify the Duxbury Building Commissioner that occupancy permits may be issued.

I. Other General Conditions

I.1. In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled

in accordance with law.

- I.2. The Applicant shall comply with all local regulations of the Town of Duxbury and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
- I.3. This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction.
- I.4. The Applicant shall be responsible for sweeping, removal of snow, and sanding of the internal roadways permitting safe access to residents and emergency vehicles during construction and until the Condominium Association has been legal established and has assumed said responsibilities.
- I.5. The landscaping shall be maintained in perpetuity by the Condominium Association, which obligation shall be incorporated in the Condominium Association documents, as applicable, and the declaration of restrictive covenants to be executed by the Applicant. Dead or diseased plantings shall be replaced within six months in accordance with growing and weather conditions.
- I.6. The Condominium Documents will provide that the three (3) affordable units pay no more than seventy percent (70%) of what the condominium fee would be if the unit was market value. Each unit's square footage will be the basis for determining its condominium fee assessment. The following scenario is meant to show one possible determination method to achieve 70%. First, sum the aggregate square footage of all the units after reducing the square footage of each of the affordable units by thirty percent (30%) to produce a revised aggregate square footage. Divide the total assessment dollar value to be distributed by the revised aggregate square footage to produce an assessment per-square-foot. For each market value unit, multiply the assessment per-square-foot by the unit's actual square footage. In the case of the affordable units, multiply the assessment per-square-foot by seventy percent (70%) of its actual square footage. The more precise the figure for the applied assessment per-square-foot is; the more exacting the resulting distribution is. The assessment to the affordable units does not have to be exactly seventy percent (70%). It needs to be a maximum of seventy percent, but it can be less.
- I.7. The applicant will install a minimum of a three foot (3') asphalt sidewalk with granite curbing within the public way (Railroad Avenue) as laid out and accepted by the Town of Duxbury to the extent of where the proposed project abuts said way and shall end at the egress of the current business known as Duxplex; shown on the above stated final plan. The Town of Duxbury shall inspect and accept the sidewalk and then shall solely maintain said sidewalk at its expense. Maintenance shall include but is not limited to snow removal and normal repair as necessary.

- J.12 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (b) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions.

SIGNATURE PAGE TO FOLLOW

2023-09 Comprehensive Permit Decision
The Winsor at Millbrook Village, LLC
January 22, 2024

RECORD OF VOTE

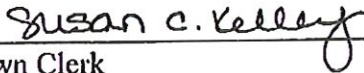
The Board of Appeals voted, at its public meeting on January 18, 2024, to grant a Comprehensive Permit subject to the above-stated Conditions and Waivers found on Exhibit A, with this decision as attested by the signature below.

For the Board:



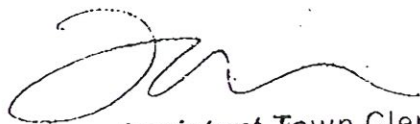
Emmett Sheehan
Board Member

Filed with the Town Clerk on Jan 22, 2024.



Town Clerk

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



Duxbury Assistant Town Clerk
A True Copy Attest

EXHIBIT A: WAIVERS

Town of Duxbury Massachusetts Zoning Bylaws (Revised through May 2023)

The Applicant shall comply with all bylaws, rules and regulations of the Town of Duxbury unless: (1) specifically waived hereunder; or (2) as set forth in the Conditions in the previous section; subject to the conditions of this approval. Nothing herein may be construed as a waiver of any applicable State or Federal law. The following specific waivers are granted as and to the extent set forth below:

Section	Requirement	Proposed/Justification	Board Action
Section 422.3(1)	All uses and structures permitted by special permit in Sections 421A.4, 421.3 and 421.4.	Project is proposed under M.G.L. 40B and allows the Board of Appeals to approve nonconforming uses.	Denied as not appropriate/not applicable.
Section 425.1(7)(f)	f) Bedrooms – Above ground floor apartments in all NB Districts shall be limited to no more than two (2) bedrooms.	Project is proposed under M.G.L. 40B and allows the Board of Appeals to approve waivers to density and dimensional regulations and any other pertinent requirements of this Bylaw	Denied as not appropriate/not applicable.

Town of Duxbury Chapter 9 Wetlands Protection Bylaw and Regulations by the Duxbury Conservation Commission

Waivers are requested from the following local bylaw and regulations:

Section	Requirement	Proposed/Justification	Board Action
Section 23.3 Landscaping	No lawns, patios, walkways, driveways, or similar structures may be constructed within 25 feet of any Resource Area, as defined in DWR 2.00 (1-5).	Waive Section in its entirety	Granted.

Town of Duxbury, Massachusetts

OFFICE OF THE TOWN CLERK



March 20, 2024

RE: 50 Railroad Avenue, Duxbury
Applicant: The Winsor at Millbrook Village LLC
ZBA Case #2023-09

I hereby certify that the Decision, Case # 2023-09 of the Duxbury Zoning Board of Appeals has been received and recorded at this office and no Notice of Appeal was received during the twenty days (20) next after such receipt and recording of said Notice.


Susan C. Kelley
Town Clerk