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**BOARD OF APPEALS**  
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**Decision No. 2023-4 – Record, Decision, and Comprehensive Permit  
Trout Brook Road, Chickering Drive, and Edgewater Drive, Dover, MA**

**Applicant:** Robert W. Recchia

**Application For:** Comprehensive permit under G.L. chapter 40B, sections 20-23 for the construction of 3 market-rate 4-bedroom single-family ownership units, and 1 affordable 4-bedroom single-family ownership unit, on Troutbrook Road, Chickering Drive, and Edgewater Drive in Dover, MA.

**Subject Properties:** Dover Assessor's Map 5, Parcels 11, 12, 23 and 78.

**Name of Record Owner of Title to Subject Property:** Robert W. Recchia

**Dates of Hearing:** August 3, September 12, September 28, November 2, and November 29, 2023; January 3, January 25, and February 14, 2024. The Zoning Board of Appeals deliberated on February 29, 2024.

**Applicant Team:** **Owner/ Applicant:** Robert W. Recchia

**40B Consultant:** Lynne D. Sweet, LDS Consulting Group, LLC

**Architecture:** Erin Fullam, Principal, CME Architects, Inc.

**Civil Engineering:** Daniel J. Merrikin, P.E., Legacy Engineering LLC

**Project Manager:** Scott Goddard, M. Eng., PWS, CWS, Goddard Consulting, LLC

**Board of Appeals:** R. Alan Fryer, Chair

Members: LaVerne Lovell and Nadir Ahmed

Associate Members: Michael Donovan and Nancy Greene

**Voting:** Fryer, Lovell, and Ahmed

**Decision:** To DENY, by a vote of 3 in favor and 0 opposed, the application for a comprehensive permit, on the grounds that allowing the applicant to build on noncontiguous, unbuildable lots would violate the expectation that those lots would remain unbuildable, without providing any tangible

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public benefit from building on the three lots where the houses would not be affordable, but instead would be the type of market-rate houses that are otherwise prohibited, and contrary to the local need for affordable housing. Both associate members supported the decision.

In the alternative, should this decision be overturned on appeal, to **APPROVE** the application for a comprehensive permit and the requested waivers, based on the findings, and subject to the conditions, below. Both associate members supported the alternative decision.

**DECISION**

1. On August 17, 2022, Robert W. Recchia, (the “Applicant”) submitted a Project Eligibility Application (the “PE Application”) to MassHousing (the “Subsidizing Agency”) to construct four (4) single-family for-sale houses (the “Project”) on four (4) separate parcels on Trout Brook Road, Edgewater Drive, and Chickering Drive in Dover, MA (the “Scattered Sites” or the “Site”).

2. The PE Application called for one (1) of the four (4) units to be affordable to households earning eighty percent (80%) of the Area Median Income (“AMI”), adjusted for household size, as determined by the Subsidizing Agency.

3. The Scattered Sites consist of the parcels identified as Map 5, Parcels 11,12, 23, and 78 on the Dover Assessor’s Map. They are located in the R-1 zoning district under the Dover Zoning Bylaw.

4. The Applicant purchased the lots from Harvard College in 2004 for \$12,000. The lots, which are not buildable under the Dover Zoning Bylaw and which were vacant at the time of that purchase, have stayed vacant since the time of that purchase.

5. On February 15, 2023, the Applicant hosted a Site Walk with representatives from MassHousing and Dover Town Officials and Boards. The Town of Dover had 30 days to submit comments to MassHousing but did not do so.

6. On April 14, 2023, MassHousing issued a Project Eligibility Letter for the Project. The letter directs the Applicant to comply with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to wetlands protection, building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety, and to expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.

7. On July 10, 2023, the Applicant submitted a Comprehensive Permit Application (hereinafter referred to as the “Application”) to the Town of Dover Zoning Board of Appeals

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(the “Board”). The Application included preliminary architectural and civil/site plans for the Project, as well as a storm water management report. The Application also included a preliminary list of waivers from Dover’s Zoning and General Bylaws requested by the Applicant.

8. The Board opened a duly noticed public hearing on the Application on August 3, 2023, and continued the hearing several times. On February 14, 2024, the Board voted unanimously to close the public hearing.

9. The Site consists of two contiguous parcels and two non-contiguous parcels, all of which are unbuildable under the Dover Zoning Bylaws.

10. Because these parcels are each unbuildable under local bylaws, allowing development on these parcels would violate an expectation that the lots would remain unbuildable.

11. Approving such a project would set a precedent, with no clear limiting principle, of allowing developers to convert multiple noncontiguous, otherwise unbuildable lots into developable properties simply by assembling groups of such lots into a single project and building one or more market-rate houses while building only one affordable house pursuant to G.L. c. 40B. This would, in effect, circumvent the protections of the Dover Zoning and General Bylaws and defy the expectations of the citizens of Dover without providing the commensurate public benefit contemplated under chapter 40B.

12. Based on all the evidence, including the above findings, the Board unanimously finds that, because only one of the four non-contiguous, unbuildable properties contains an affordable housing unit, allowing the Applicant to build the three market-rate homes on three other completely separate lots would violate local expectations and zoning requirements without providing any benefit of affordable housing on those other lots.

13. Accordingly, pursuant to G.L. c. 40B, the Board unanimously DENIES the application for a Comprehensive Permit for the Project.

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

**ALTERNATIVE FINDINGS AND DECISION**

1. On August 17, 2022, Robert W. Recchia, (the “Applicant”) submitted a Project Eligibility Application (the “PE Application”) to MassHousing (the “Subsidizing Agency”) to develop 4 single-family for-sale units on Troutbrook Road, Edgewater Drive, and Chickering Drive in Dover, MA (the “Scattered Sites” or the “Site”).

2. The PE Application called for one of the four units to be affordable to households earning eighty percent (80%) of the Area Median Income (“AMI”), adjusted for household size, as determined by the Subsidizing Agency.

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3. The Scattered Sites consist of the parcels identified as Map 5, Parcels 11,12, 23, and 78 on the Dover Assessor's Map. They are located in the R-1 zoning district under the Dover Zoning Bylaw.

4. The Applicant purchased the lots from Harvard College in 2004 for \$12,000. The lots, which are not buildable under the Dover Zoning Bylaw and which were vacant at the time of that purchase, have stayed vacant since the time of that purchase.

5. On February 15, 2023, the Applicant hosted a Site Walk with representatives from MassHousing and Dover Town Officials and Boards. The Town of Dover had 30 days to submit comments to MassHousing but did not do so.

6. On April 14, 2023, MassHousing issued a Project Eligibility Letter for the Project. The letter directs the Applicant to comply with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to wetlands protection, building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety, and to expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.

7. On July 10, 2023, the Applicant submitted a Comprehensive Permit Application (hereinafter referred to as the "Application") to the Town of Dover Zoning Board of Appeals (the "Board"). The Application included preliminary architectural and civil/site plans for the Project, as well as a storm water management report. The Application also included a preliminary list of waivers from Dover's Zoning and General Bylaws requested by the Applicant.

8. The Board opened a duly noticed public hearing on the Application on August 3, 2023, and continued the hearing several times. On February 14, 2024, the Board voted unanimously to close the public hearing.

9. On February 14, 2024, the Board voted unanimously to close the public hearing.

10. The Applicant is qualified to submit the Application pursuant to 760 CMR 56.04 in that it has received a Project Eligibility Letter from MassHousing that contains the required findings, including: (a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7); (b) that the site of the proposed Project is generally appropriate for residential development; (c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns; (d) that the proposed Project appears financially feasible within the housing market in which it will be situated; (e) that an initial pro forma has been reviewed and the Project appears financially feasible; (f) that the Applicant is a Limited Dividend Organization under G.L. c. 40B, § 21 and 760 CMR 56.02 and it meets the general eligibility standards of the housing program; and (g) that the Applicant controls the site, under G.L. c. 40B, § 21 and 760 CMR § 56.02 by virtue of a deed between The Fellows of Harvard College and the Applicant,

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dated April 8, 2004 and registered with the Norfolk County Registry District of the Land Court, as Document No. 1022395.

11. At the time of the Application, the Town of Dover had not met any of the statutory minima under G.L. c. 40B, § 20 or regulatory safe harbors under 760 CMR 56.00.

12. Under G.L. c. 40, § 53G, the Board, at the Applicant's expense, engaged two consultants to conduct peer reviews of the Application: Sean Reardon, P.E. at Tetra Tech, Inc. ("Tetra Tech") reviewed civil engineering and stormwater reports; Cliff Boehmer, AIA at Davis Square Architects, Inc. ("Davis Square") reviewed the architecture reports.

13. The Board also accepted the assistance of Judi Barrett of Barrett Planning Group LLC as a consultant at the expense of the MassHousing Partnership.

14. The Board held duly noticed public hearing sessions on August 3, September 12, September 28, November 2, and November 29, 2023, and January 3, January 25, and February 14, 2024. The Board conducted a noticed site visit on December 11, 2023. The Board deliberated on February 29, 2024, and voted unanimously on that date to issue this Decision denying the permit but, in the alternative, granting the permit subject to the below-listed conditions. Associate members Mike Donovan and Nancy Greene would have voted to deny the permit and, in the alternative, to approve the permit subject to the conditions listed herein.

15. The documents submitted to the Board regarding the Project are listed in Exhibit A and constitute the Record for this decision.

16. The Board heard public comment at several of the hearing sessions and accepted public comment by mail, email, and hand-delivery during the hearing.

17. On November 11, 2023, Tetra Tech submitted a preliminary peer review report regarding civil and environmental engineering issues. Tetra Tech submitted further written comments on January 18, 2024.

18. On December 18, 2023, Davis Square submitted a preliminary peer review report regarding design and architectural issues. Davis Square submitted further written comments on January 23, 2024.

19. Neither of these peer reviewers ultimately recommended any Conditions.

20. However, the Board finds that the conditions in this alternative Decision address substantial Local Concerns that outweigh the regional need for affordable housing and are necessary for the preservation of public health, safety, and the environment.

21. The Applicant submitted final versions of the site layouts on December 5, 2023, and the final version of the architectural plans on November 15, 2023 (collectively, the "Final Plans").

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22. According to the Final Plans, the Project will include four single-family houses. Each house will contain four (4) bedrooms, for a total of sixteen (16) bedrooms.

23. The Applicant submitted an initial list of requested waivers with his Application. The Applicant submitted a final revised list of requested waivers on February 14, 2024, adding a request to dig two test pits for each septic system, in accordance with the Title V standard, rather than four test holes for each septic system as required under Dover Bylaw 217-3.C(4)(6). The Board's findings on the requested waivers follow below.

24. Based on all the evidence, the Board unanimously finds that, provided that the Project complies with the conditions below, the need for the affordable housing provided by the Project outweighs the Local Concerns identified during the public hearing.

25. Pursuant to G.L. c. 40B, the Board unanimously GRANTS a Comprehensive Permit to the Applicant for the Project based on the Waivers listed below and contingent on compliance with all the conditions stated below.

26. Unless otherwise stated, the Board may designate an agent or agents to take any actions or make any decisions described below.

### WAIVERS

27. The Board's findings and actions on the waivers in the Final Waiver List follow below. The Board makes no findings regarding, and does not grant, any waivers not requested in the Final Waiver List. The Board grants only those waivers described below in this section of the Decision.

28. **Waiver from Dover Zoning Bylaw §§ 185-5, Definitions:** Section 185-5 states that no lot shall be narrower than its minimum required frontage between a right-of-way line and the required perfect square. The Applicant requests a waiver from this provision. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby GRANTS this waiver.

29. **Waiver from Dover Zoning Bylaw § 185-17, Schedule of Dimensional Requirements:** This section of the Zoning Bylaw, including Attachment 1 thereto, the Schedule of Dimensional Requirements incorporated therein, sets forth dimensional parameters in each zoning district. The Board's findings and decisions about particular dimensional parameters follow below:

**Front Setback:** Required Front Setback – 40 feet; Required Side Setback – 30 feet; Requested Front Setback – 17.2 feet for Lot 1A, 32 feet for Lot 2A and Lot 4, 21.1 feet for Lot 45; Requested Side Setback – 11 feet for Lot 1A, 29.1 feet for Lot 2A, and greater than 30 feet for Lots 4 and 45.

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The minimum front setback required in an R-1 District is 40 feet. The Applicant's proposal calls for a front setback of 17.2 feet on Lot 1A, 32 feet on Lots 2A and 4, and 21.1 feet on Lot 45. The minimum side setback in an R-1 district is 30 feet. The Applicant's proposal calls for a side setback of 11 feet for Lot 1A, 29.1 feet for Lot 2A, and greater than thirty feet for Lots 4 and 45. The Board finds that the waiver request is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

**30. Waiver from Dover Zoning Bylaw § 185-19.A.1, Perfect Square:** This section of the Zoning Bylaw requires lots to be large enough to contain a perfect square in accordance with the Schedule of Dimensional Requirements. The Applicant requests a waiver from this provision. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

**31. Waiver from Dover Zoning Bylaw § 185-19.A.3, Site Access:** This section of the Zoning Bylaw requires that physical access to a lot shall be through the frontage or, if the Planning Board approves, through an alternative point of access from a way described in § 185-19A(2). A waiver is sought to allow site access to Lot 1A to be through Lot 2A and through the side lot line. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

**32. Waiver from Dover Wetlands Protection Bylaw § 181:** The applicant requests a general waiver from the entirety of the Dover Wetlands Protection Bylaw to the extent that it would apply additional local requirements to the project site or any portion thereof that differ from those state and federal requirements as may be applicable to the project. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

**33. Waiver from General Bylaw Chapter 263, Dover Wetlands Protection Bylaw and Regulations:** The Applicant requests waivers from portions of the Town of Dover Conservation Commission's Rules and Regulations (codified at Dover General Bylaws, Chapter 263) implementing the Dover Wetlands Protection Bylaw (Dover General Bylaws, Chapter 181). Sitting as the local permitting authority for these local regulations under G.L. c. 40B, the Board finds as follows:

**Section 263-3.C(2)(a)[3][f], Plan Contents:** The Dover Conservation Commission's Rules and Regulations require plans to include all trees that are located within the proposed work area and that have a diameter of four inches or greater at four feet above ground level. Applicant seeks a waiver from requiring tree locations to be shown on the plans for all lots. At the hearing on January 25, 2024, the Applicant agreed that the Conservation Commission would determine what

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trees have to be saved and to submit to the Conservation Commission a plan showing the trees to be removed. Accordingly, the Board conditions this waiver on the Applicant's submission to, and the approval by, the Conservation Commission of a tree removal plan (a "Removal Plan") as part of the Notice of Intent.

**Section 263-5.K(1) Tree Filter Zone – Prohibition on the removal of more than 50 percent of trees in any 100-foot section of Buffer Zone:** The Dover Conservation Commission's Rules and Regulations afford protection to vegetation in the buffer zone to promote soil stabilization, wildlife habitat, shading, and other benefits. Specifically, Section 263-5.K(1) states that "no more than 50% of the tree cover [can] be removed for any 100-foot section of Buffer Zone, except in cases of hardship where the applicant can demonstrate that no reasonable alternative exists," and the Regulation further defines covered trees as those four inches or greater in diameter four feet off the ground. At the hearing on January 25, 2024, the Applicant agreed that the Conservation Commission would determine what trees have to be saved and to submit to the Conservation Commission a Removal Plan. Accordingly, the Board conditions this waiver on the Applicant's submission to, and the approval by, the Conservation Commission of a Removal Plan as part of the Notice of Intent.

**Section 263-5.K(2) Setback requirements for work in the Buffer Zone:** The Dover Conservation Commission's Regulations afford more protection to wetlands than the State Wetlands Protection Act. In particular, the Regulations state that "any project proposing work in the Buffer Zone must maintain certain setbacks from the resource areas. These setbacks . . . include both structure setbacks and disturbance setbacks." The Board finds that, conditional on the Applicant's compliance with an Order of Conditions under the Wetlands Protection Act, this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

The Board's grant of waivers from these provisions of Chapter 263 does not relieve the Applicant of his duty to obtain a permit from the Conservation Commission under state law, namely G.L. c. 131, § 40 and 310 CMR § 10.00. Nor do these waivers relieve the Applicant of his duty to comply with other, unwaived provisions of Chapter 263. Pursuant to G.L. c. 40B and 760 CMR § 56.05(11), the Board will review any changes to this Comprehensive Permit that may be necessitated by the Conservation Commission's action.

**34. Waiver from General Bylaw Chapter 217, Dover Board of Health Sewage Disposal System Regulations:** The Town of Dover has recognized that there are conditions in the Town that warrant additional consideration above those set under Title V in order to protect the health of the residents of Dover. Therefore, the Board of Health adopted regulations containing requirements that are stricter than those contained in the State Code. The Board's regulations are contained in Dover General Bylaws, Chapter 217. Sitting as the local permitting authority for these local regulations under M.G.L. c. 40B, the Board finds as follows:

**Section 217-3.C(4)(6), Test Pits:** The Applicant requests a waiver from the requirement under Section 217-3.C(4)(6) that a person must drill four deep test pits within the limits of a proposed leaching area and integrated expansion area to conduct soil evaluations to determine high

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groundwater levels. The Applicant requests to drill only two test pits per septic system as required in Title V. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

**Section 217-3.C(6)(a), Setbacks:** Section 217-3.C(6)(a) requires that subsurface sewage disposal systems be located at least 100 feet from any open surface drain or watercourse, including streams, brooks, ponds, swamps or other wetlands. The Applicant instead requests that it be allowed to locate septic fields less than one hundred feet but more than fifty feet from wetlands for all lots. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

**Section 217-3.C(10)(b)(a), Soil Absorption Systems:** Section 217-3.C(10)(b)(a) requires that, for new construction on previously undeveloped lots, area requirements shall be increased by fifty percent (50%) in the event that garbage grinders are later installed against Board recommendations. The Applicant seeks a waiver to not require fifty percent (50%) increased infiltration area for all lots because garbage grinders will be prohibited by a deed restriction for each home. To the extent provided by this Decision and allowed by the other waivers and conditions in this Decision, the Board finds that this waiver is Consistent with Local Needs and is required to permit the construction and operation of the Project. Accordingly, the Board hereby **GRANTS** this waiver.

## CONDITIONS

### A. Regulatory Conditions

35. At least twenty-five percent (25%) of the units (*i.e.*, at least 1 unit) shall be and remain affordable in perpetuity. The affordable unit shall be marketed to eligible households whose annual income does not exceed eighty percent (80%) of AMI, adjusted for household size, as determined by the Subsidizing Agency (the “Affordable Units”). Subject to approval by MassHousing as the Project Administrator, the Affordable Unit shall be eligible to be included in the Town's Subsidized Housing Inventory (SHI) maintained by EOHLC.

36. The Applicant shall notify the Town Administrator, Land Use Director, and Town Counsel when building permits are issued so that the Town may prepare the request forms to add the unit to the SHI. The Applicant shall cooperate with the Town as needed to add the units to the SHI.

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

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38. The Applicant shall enter into a Local Regulatory Agreement with the Town, in a form and substance reasonably acceptable to the Subsidizing Agency, the Town, and Town Counsel (the “Local Regulatory Agreement”), which shall be recorded with the Norfolk County Registry of Deeds against the Property before issuance of any building permit for the Project. The Local Regulatory Agreement shall secure the affordability of the Affordable Unit and its monitoring after the expiration of the Regulatory Agreement. The Town shall send a draft of the Local Regulatory Agreement to the Applicant within sixty (60) days after the Dover Town Clerk issues a Certificate of No Appeal on the Comprehensive Permit Decision.

39. The Local Regulatory Agreement shall (a) become effective only if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires, or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency. If this Comprehensive Permit is modified, the Applicant and the Town shall modify the Local Regulatory Agreement as necessary to conform it to the modified Comprehensive Permit.

40. The Local Regulatory Agreement shall constitute a restrictive covenant, be recorded, be enforceable by the Town, and require that the Affordable Unit remain an affordable unit in perpetuity.

41. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant.

42. Nothing in this Decision shall be deemed to limit the Town's authority to enforce this Comprehensive Permit in the legal exercise of its zoning enforcement powers.

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

44. Before the issuance of a building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Department and the Town. At the discretion of Town departments and officials with jurisdiction, permits for demolition, excavation, foundations, site infrastructure/utilities, and other site preparation work may be approved prior to Final Approval.

## B. General Conditions

45. The Applicant shall apply to modify this permit pursuant to 760 CMR 56.05(11) as necessary following review of the Project by the Board of Health and the Conservation Commission.

46. If no modifications are necessary following review and approval of the project by the Board of Health and the Conservation Commission, the Applicant shall submit to the Board and the Building Department fully coordinated architectural, civil engineering/storm water,

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structural, and landscaping plans prior to the issuance of a building permit. Those plans shall be consistent with the Final Plans.

47. The Project shall be constructed in accordance with the Final Plans and the Conditions in this Decision. The Applicant shall comply with all local bylaws, rules, and regulations of the Town of Dover and its boards, officers, and commissions unless expressly waived in this Decision.

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

- a. Massachusetts State Building, Plumbing, and Electrical Codes; the Massachusetts Mechanical Code; and the Massachusetts Stretch Energy Code;
- b. EPA and DEP storm water management standards and industry best management practices (except where stricter standards are imposed in this Decision, including through the Local Storm Water Bylaw) for construction of the drainage infrastructure;
- c. Massachusetts Architectural Access Board regulations;
- d. The Massachusetts State Fire Code;
- e. The Massachusetts Wetlands Protection Act (G.L. c. 131 § 40) and the associated regulations (310 CMR 10.00 *et seq.*);
- f. The Massachusetts Endangered Species Program;
- g. The Massachusetts Environmental Policy Act; and
- h. Section 404 of the Clean Water Act.

49. The Applicant shall, at his own expense, retain a Registered Professional Engineer and Land Surveyor to set elevations for all appropriate work, conduct field inspections during construction, and prepare as-built plans. Site inspections by the Town or its departments or consultants shall not constitute acceptance of utilities by the Town or replace as-built approval or certification by the Applicant's engineer.

50. The Final Plans shall be reviewed by the Building Department for compliance with the State Building Code and this Decision.

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

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52. The General Contractor shall be duly licensed in Massachusetts and insured. All construction shall be performed in accordance with accepted engineering and construction standards.

53. Before the commencement of construction, in the event that the construction of the Project requires the Applicant to do so, the Applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) General Permit from the Environmental Protection Agency if necessary for construction of the Project. For the purposes of this Comprehensive Permit, “commencement of construction” shall include grubbing and clearing.

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

- a. Submit to the Building Department a final Storm Water Pollution and Prevention Plan (SWPPP) detailing specific sedimentation, erosion, and dust control measures; and
- b. Submit to the Building Department a description of the specific operation and maintenance (“O&M”) measures for all storm water/drainage facilities, including any temporary facilities required to minimize the threat of transmission of mosquito-borne diseases to the residents in and near the Project.

Any violations of the erosion, sedimentation, dust control, and storm water provisions of these provisions shall be subject to enforcement pursuant to Chapter 159 of the Dover General Bylaws.

55. Fertilizer, pesticide, and herbicide use shall be minimized to the extent practicable. Fertilizer shall be phosphorus-free. The use of fertilizers, pesticides, and herbicides within 100 feet of the bordering vegetated wetlands and the vernal pool is prohibited.

56. All grading shall be consistent with the Final Plans.

57. The Applicant shall not enter onto private property without obtaining, in advance, the necessary permission or legal right to do so.

**C. Construction and Bonding Conditions**

58. The Applicant shall authorize the Building Department, the Board, and their agents to enter the Site during construction of the Project in order to determine compliance with the provisions of this Decision. The Town’s agents shall provide at least 24 hours’ notice prior to entry, except in the case of exigent circumstances or emergency. The Town’s agents shall comply with applicable health and safety requirements such as hardhat, safety glasses, and work boot requirements.

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59. The Applicant shall comply with any duly issued enforcement orders by the Building Department regarding construction of the Project.

60. Before the issuance of a building permit, the Applicant shall include in its Final Plans a test pit summary plan, including test pit logs showing the performance date and the qualifications of the person performing the tests. All elevations on the test pit summary plan should refer to the same vertical datum.

61. Erosion controls shall be continuously maintained throughout the construction. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized using annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures.

62. The Applicant shall not authorize or perform any work or activity in any areas subject to the Dover Scenic Roads Bylaw (Chapter 245 of the Dover General Bylaws).

63. Before the issuance of a building permit, the Applicant shall submit to the Building Department a letter from the Project architect or his/her designee confirming that the Project complies with applicable Architectural Access Board Regulations.

64. Before the issuance of a building permit, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Department, Director, and Town Engineer (or any of their designees) to review this Comprehensive Permit and to establish a construction and inspection schedule. Prior to the issuance of a building permit, the Applicant shall submit a Construction Management Plan for review and approval by those officials. Although such a plan is not typically required for the construction of an individual single-family house, because this Comprehensive Permit authorizes the construction of four houses in somewhat close proximity, and on lots previously determined to be unbuildable, such a plan is necessary to mitigate the impact of this significant construction on neighbors. The Applicant shall be subject to the Town's construction bylaws.

65. The Construction Management Plan shall address the following matters:

i. Hours of construction

Construction shall only occur Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m., except that there shall be no construction activity on Federal holidays. Work outside these hours shall be permitted only if and as allowed by applicable local bylaws and/or with the express permission of the Building Department.

ii. Truck routes

- number of truck trips
- hours of operation for truck trips
- size of and specification of trucks

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- plans to mark trucks with identification placards

iii. Trash and debris removal

iv. Rodent and pest control

v. Communications, including the Contractor's representative(s) available 24/7 and emergency contacts

vi. Noise and Dust Control

- Control Plan
- Mitigation Measures
- Monitoring Reporting
- Tree removal (including chipping, etc.)
- Public street cleaning and repair

vii. Construction Staging

- Staging areas
- Site office trailers
- Storage trailers/containers
- Open storage areas
- Delivery truck holding areas
- Re-fueling areas

viii. Traffic and Parking (during construction)

- On-site locations
- Off-site locations
- Snow removal
- Warning signs

66. The Town may assess fines and other non-criminal penalties to enforce the Construction Management Plan.

67. The Applicant shall at all times use all feasible best efforts to minimize inconvenience to residents in the general area. During construction, all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent undue spillover or illumination onto adjacent properties and shall be turned off at the end of each workday. All construction activities are to be conducted in a workmanlike manner.

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68. Before starting any Authorized Activity, the Applicant shall provide to the Building Department:

- a. The name, address, company and business telephone number of the general contractor or its agent available 24/7 who shall have overall responsibility for construction activities on site;
- b. A copy of a municipal lien certificate showing that all taxes, assessments and charges due on the Property have been paid;
- c. Certification that all required federal, state and local licenses and permits for said Authorized Activity have been obtained;
- d. Evidence that Dig-Safe was notified at least 72 hours before commencing the work, if applicable;
- e. Proof that street signage is in place to ensure that emergency personnel can locate the Site to protect and secure the Site and construction personnel; and
- f. At least 48 hours' written notice if activity on the Site is to be resumed after it has ceased for longer than one month.

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

70. Covered dumpster(s) shall be used during construction to keep debris within the Site, and the Applicant shall be responsible for the prompt removal of any debris which escapes enclosure. Use of the dumpster(s) shall be limited to the duration of the active construction period.

71. All fill used in connection with this Project shall be clean fill, as approved by the applicable Town of Dover department or official with jurisdiction. No fill shall contain any trash, refuse, rubbish or debris, including, but not limited to: lumber, brick, asphalt, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, appliances, motor vehicles or any part of the foregoing. Any fill subject to specialized disposal in conformance with current environmental criteria shall not be used, and the Applicant shall bear the cost of removing any unclean fill.

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

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73. The Applicant shall use all means available to him to minimize inconvenience to residents in the vicinity of the Property during construction.

74. All construction vehicles shall park on the Site or at other locations approved in the Construction Management Plan. No construction vehicles, or any vehicles associated with the construction or inspection of the Project, shall park on Claybrook Road.

75. All on-Site catch basins, detention basins, infiltration systems, and other storm water management facilities shall be cleaned at the end of construction.

76. Within 45 days of the completion of construction, the Applicant's site engineer of record shall certify that the Project was constructed in substantial conformance with the Final Plans and this Decision.

77. Before the issuance of the certificate of occupancy, the Applicant shall submit to the Building Department for review and approval a set of draft As-Built Plans, with a .pdf copy, showing all improvements (including all water, wastewater, drainage, and other utilities) and evidence of substantial compliance with this Comprehensive Permit and any other permits required for the Project. All utilities must be in working order (pressure-tested, etc.) before the certificate will be issued. Before the issuance of the certificate of occupancy, the Applicant shall submit to the Town Engineer for review and approval a mylar of the final As-Built Plans stamped by a Registered Professional Engineer, a .pdf copy, and AutoCAD plans in a version approved by the Town Engineer, and shall submit a paper copy to the Building Department.

78. The Applicant must obtain a certificate of occupancy of the Affordable Unit before applying for a certificate of occupancy for any other unit.

#### **D. Special Conditions**

79. This Comprehensive Permit may be transferred only as provided by 760 CMR 56.05(12)(b).

80. Any changes to the Project after issuance of the Comprehensive Permit shall be reviewed by the Board in accordance with 760 CMR 56.05(11). Proposed adjustments to the Final Plans shall be submitted to the Building Department, which shall determine whether the adjustment constitutes a "minor adjustment" or a "change". Minor adjustments may be approved by the Building Department. Any proposed changes other than minor adjustments shall be submitted to the Board under applicable regulations. The Building Department shall assess whether a proposed adjustment is a "minor adjustment" or "change" with reference to the factors in 760 CMR 56.07(4)(c) and (d).

#### ***Wetlands Protection***

81. Prior to the issuance of a building permit, the Applicant shall obtain an Order of Conditions or other appropriate approval from the Dover Conservation Commission under the

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state Wetlands Protection Act, G.L. c. 131 § 40, 310 C.M.R. § 10.000, and the unwaived provisions of the Dover Wetlands Protection Bylaw, Chapter 263. Pursuant to G.L. c. 40B and 760 CMR § 56.05(11), the Board will review any changes to this Comprehensive Permit that may be necessitated by the Conservation Commission's action.

***Wastewater***

82. Prior to the issuance of a building permit, the Applicant shall obtain a permit for on-site sewage disposal from the Dover Board of Health reviewing the Project pursuant to Title 5 of the State Environmental Code, 310 C.M.R. 15.000. Pursuant to G.L. c. 40B and 760 CMR § 56.05(11), the Board will review any changes to this Comprehensive Permit that may be necessitated by the Board of Health's action.

***Storm Water Management***

83. The Applicant shall comply with all erosion and sediment control conditions set forth in any Order of Conditions issued by the Conservation Commission.

***Noise***

84. The Project shall comply with all applicable noise regulations, including, without limitation, G.L. c. 111 §§ 142A-M, 310 CMR 7.00, and the Department of Environmental Protection's Noise Policy.

***Design***

85. The Affordable Unit must not be distinguishable from the market-rate units from the exterior. To the extent that differing interior finishes between the Affordable Unit and the market-rate units would be visible from the exterior, the Applicant is responsible for ensuring that any differences are not visible from the exterior.

***Landscaping***

86. As agreed by the Applicant at the hearing on January 25, 2024, the Applicant shall submit to the Conservation Commission detailed landscaping plans for its review and approval, which plans shall include appropriate and adequate screening between the Project and all abutters.

87. The Applicant shall consult with a certified arborist as necessary and shall implement measures adequate to protect existing landscaping, including protections for the critical root zones of existing trees.

**E. Lapse**

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

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89. The Applicant may apply to the Board for extensions of these deadlines under 760 CMR 56.05(12) before any lapse occurs.

**F. Waivers**

90. The Applicant shall comply with the Dover Zoning Bylaw and all other Town bylaws, regulations, and rules in effect on the date the Application was filed with the Board except as expressly waived in this Decision.

**F. Validity, Modification, and Appeal**

91. In the event an authority of appropriate jurisdiction determines that any provision of this Decision is illegal and unenforceable, such provision may be severed and stricken from this Decision without affecting the validity of the remaining provisions of this Decision.

92. This Comprehensive Permit shall not be valid until the Town Clerk certifies that no appeal has been filed. The Applicant shall provide proof of recording with the Norfolk County Registry of Deeds to the Town Clerk and the Building Department.

93. Any modification of this Comprehensive Permit shall be subject to 760 CMR 56.00.

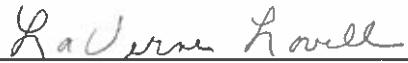
94. Any person aggrieved by this Decision may appeal within twenty (20) days as provided by G.L. c. 40B, §§ 20-23.

Dated this 25th day of March, 2024.

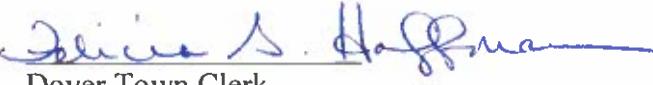
**Board of Appeals**

  
By: R. Alan Fryer  
Its: Duly-authorized Chair

A true record of the Board of Appeals

  
By: LaVerne Lovell  
Its: Duly-authorized Secretary

Received March 25, 2024

  
Dover Town Clerk

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### **EXHIBIT A – The Record**

*Record items are on file with the Town Clerk. Further information, including videos of ZBA hearings, are available on Town's website.*

1. **Town of Dover Scattered Site ZBA Submission Letter** (LDS Consulting Group, July 10, 2023)
2. **Dover Board of Appeals Hearing Application**
3. **Request for Findings of Fact Scattered Site 40B Dover** (Robert W. Recchia, July 2023)
4. **Project Eligibility Letter – Dover Homes** (Colin W. McNiece, General Counsel, Massachusetts Housing Financing Agency, April 14, 2023)
5. **Mutual One NEF Bank Letter of Interest** (Andrew E. Zleman, Senior Vice President, Mutual One Bank)
6. **Deed** (County of Norfolk Registry of Deeds, Document No. 1,022,395, dated April 26, 2004)
7. **Preliminary Site Plans Dated 6.07.2023** (stamped 6/16/23 by Daniel J. Merrikin, P.E.)
8. **Stormwater Report Summary 06.07.2023** (stamped 6/16/23 by (Daniel J. Merrikin, P.E.))
9. **Architectural Plans 10.03.2022**
10. **Draft Waiver List 6.07.2023**
11. **Development Team Resumes**
12. **Initial Presentation – Dover Scattered Site 8.03.2023** (LDS Consulting)
13. **Architectural Plans Set 08.02.2023** (LDS Consulting and CME Architects)
14. **Average Grade Calculations 11.15.2023**

15. Legacy Engineering Letter 11.15.2023 (Daniel J. Merrikin, P.E., President of Legacy Engineering, LLC)
  - a. Revised Site Plans 11.15.2023 (stamped 11/15/2023 by Daniel J. Merrikin, P.E.)
  - b. Revised Stormwater Report 11.15.2023 (stamped 11/15/2023 by Daniel J. Merrikin, P.E.)
  - c. Revised Architectural Plans 11.13.2023 (LDS Consulting and CME Architects)
16. Cover Letter CME Architects 11.15.2023 (Erin Fullam, CME Architects, Inc.)
17. Tetra Tech Peer Review Letter 11.28.2023 (Sean Reardon, P.E., Vice President, Tetra Tech)
18. Davis Square Architects Peer Review Letter 12.18.2023 (Cliff Boehmer, AIA, Principal, Davis Square Architects Inc.)
19. Soil Logs
  - a. Lot 1 Soil Logs
  - b. Lot 2 Soil Logs
  - c. Lot 4 Soil Logs
  - d. Lot 45 Soil Logs
20. Revised Site Plan 12.05.2023 (stamped 12/05/2023 by Daniel J. Merrikin, P.E.)
21. Revised Presentation 12.05.2023 (LDS Consulting and CME Architects)
22. Presentation Dover Scattered Site 12.21.2023 (LDS Consulting)
23. Legacy Engineering Letter 01.08.2024 (Daniel J. Merrikin, P.E., President of Legacy Engineering, LLC)
  - a. Revised Site Plan 01.08.2024
  - b. Revised Stormwater Report 01.08.2024
  - c. Revised Presentation 01.08.2024
24. Tetra Tech Peer Review Letter 1.18.2024 (Sean Reardon, P.E., Vice President, Tetra Tech)
25. Davis Square Architects Peer Review Letter 1.23.2024 (Cliff Boehmer, AIA, Principal, Davis Square Architects Inc.)
26. Final Summary Letter from Attorney Jonathan Silverstein 01.25.2024 (Jonathan M. Silverstein, Esquire, attorney for the Applicant)

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**27. Updated Waiver List 2.14.2024**

**28. Updated Renderings of Lot Views**

- a. View of Lot 1
- b. View of Septic Areas
- c. View from Claybrook Road near Trout Brook Road
- d. View from Across Lot 2

**29. Emails between MassHousing and the Applicant**

**30. Draft Decisions** (Various dates from March 2024)

**31. Videos of ZBA Meetings** (available at <https://www.doverma.gov/644/Proposed-40b-Trout-BrookEdgewater>)

**32. Meeting Minutes**

**33. Miscellaneous Comments and Correspondence from Abutters and the Public**