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DECISION UPON APPLICATION OF  
MARSHFIELD COMMERCE WAY LLC  
FOR A COMPREHENSIVE PERMIT UNDER  
MASSACHUSETTS GENERAL LAWS CHAPTER 40B, s.20-23

I. APPLICANT AND PUBLIC HEARING

A Public Hearing was opened on March 8, 2022 by the Marshfield Zoning Board of Appeals (the “ZBA”) at the Marshfield Town Hall, on the application of Marshfield Mews LLC (the “Applicant”) dated February 8, 2022 for a Comprehensive Permit under Massachusetts General Laws Chapter 40B, §§ 20-23 (“Chapter 40B” or the “Act”) and the Marshfield Zoning By-Laws to build a three hundred (300) apartment unit, low or moderate income housing community, including seventy-five (75) affordable housing units and two hundred twenty-five (225) market rate units and a clubhouse including amenities and a leasing office to be used in connection with the proposed development (the “Project”) on approximately 12.68 acres of land located off of Commerce Way in Marshfield, Massachusetts (the “Site”). Each of the voting ZBA members conducted a view of the Site during the public hearing process and held continued public hearings throughout the balance of the calendar year 2022 including on March 22, 2022, May 10, 2022, June 14, 2022, June 28, 2022, July 26, 2022 and August 30, 2022. The public hearing was finally closed by a vote of the ZBA on August 30, 2022.

During the progress of the public hearings, the Applicant submitted revisions to the site plan in response to comments of the ZBA, civil engineering, traffic and design review peer review consultants, and various Marshfield officials, boards, commissions and departments, and also hearing from the public including numerous abutters and interested parties.

At the July 26, 2022 continued public hearing, the Applicant, after listening to the concerns of all interested persons as well as the Board, further revised the proposed site plans in an effort to address the Board’s concerns over the density of the Project, traffic impacts, site design, water service and supply impacts, the amount of open space in a larger project on a smaller site than the abutting project, and matters of local concerns. The Applicant proposed 282 units, including 110 one-bedroom units, 116 two-bedroom units, 26 three bedroom units, and 30 three bedroom town house units with a total of 510 bedrooms. In addition, the Applicant proposed that all garden style apartment buildings be equipped with elevators, a secondary access roadway to Commerce Way, the elimination of two (2) townhome buildings, increased spacing between garden style apartment flats buildings, additional open space, additional landscaping plantings, a punch through access to the Town’s fire trail on the eastern side of the site suitable for the Town’s Fire Department’s vehicles, a trash management plan, a draft stormwater operations and maintenance plan, and a cut and fill analysis. At the August 30, 2022 continued public hearing, in a further effort to address the ZBA and others’ concerns, the Applicant offered to further reduce the density of the project by reducing the total amount of units from 282 to 270 units by eliminating a floor in Building D1 then resulting in a project



including 108 one-bedroom units, 108 two-bedroom units, 24 three bedroom units, and 30 three bedroom town house units with a total of not more than 486 bedrooms.

The revised and approved plans are listed below in Section V as the “Development Plans.”

No less than twenty-five (25%) percent of the total number of dwelling units approved for this Project shall be affordable to qualified renters in perpetuity as set forth in the Conditions below.

With respect to project density and mindful of the Department of Housing and Community Development’s recently adopted regulations (760 CMR 56.00 et seq.) governing appeals to the Housing Appeals Committee, the ZBA has focused its attention on the proposed layout, open space needs and impacts of the proposed project on the public health and safety of the residents of the abutting properties and the anticipated residents of the project.

The Minutes and Exhibits from the public hearing are available for public inspection in the office of the Town Clerk. A list of the exhibits and other materials, which constitute the record of proceedings, are appended hereto by reference.

## II. NATURE OF APPLICATION; PROCEDURE REQUIRED BY STATUTE

In conducting its hearings in this matter, the ZBA is guided by the decision of the Supreme Judicial Court in Dennis Housing Corp. v. Board of Appeals of Dennis, 439 Mass. 71, 76-77 (2003) (citations omitted), that a qualified developer proposing to build low or moderate income housing:

may submit to the zoning board of appeals “a single application to build such housing in lieu of separate applications to the applicable local boards.” The zoning board is then to notify those “local boards” for their “recommendations” on the proposal; the zoning board may “request the appearance” of representatives of those “local boards” at the public hearing as may be “necessary or helpful” to the decision on the proposal; and the zoning board may “take into consideration the recommendations of the local boards” when making its decision. .... The zoning board then has “the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application,” ... and, in some circumstances, has the power to override requirements or restrictions that would normally be imposed by those local boards. .... If the zoning board denies the application for Comprehensive Permit, or approves it only on conditions that make the project “uneconomic,” the Applicant may appeal to the housing appeals committee ... which also has the power to override local regulations and direct the issuance of a Comprehensive Permit.”

Any person aggrieved by the issuance of a Comprehensive Permit has a right of appeal to the Superior Court under Section 17 of the Zoning Act (Chapter 40A), as amended.



### III. GOVERNING LAW

The law governing this case is The Low and Moderate Income Housing Act, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the “Act”), and the regulations promulgated by the Department of Housing and Community Development (“DHCD”) Housing Appeals Committee, 760 CMR 56.00 et seq. (the “Regulations”).

The purported purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town’s total land area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year or any of the thresholds contained in 760 CMR 56.00 are met.

Marshfield does not presently meet these criteria. That being the case, Marshfield’s Zoning Bylaw and some of its other local bylaws and regulations that ordinarily govern development in the Town may be waived to a certain extent to make the construction of low or moderate income housing financially feasible. Under the Act and the Regulations, in deciding this application, the ZBA must balance the regional need for low and moderate income housing against any local objection to the proposed plan. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass 339 (1973). If a Comprehensive Permit is granted with conditions, those conditions must not render the project uneconomic. Notwithstanding the foregoing, the ZBA may not compromise federal or state environmental requirements, such as under the Massachusetts Wetlands Protection Act and the regulations promulgated thereunder, or safety and health requirements, including but not limited to those governing waste water treatment, water quality and water supply issues and, correlatively, the ZBA may include conditions that protect the environment, and preserve public safety and health and assure protection of the water supply.

With regard to issues of “uneconomic” the Housing Appeals Committee has been clear that where a condition imposed by a ZBA does not render a project “uneconomic”, the HAC is not to disturb the condition. “Equally obvious (though unstated), is that if the condition does not make the project uneconomic and it is consistent with local needs, it must be upheld...”. Thus, if the condition does not make the project uneconomic, it should be upheld even if the town cannot prove that it is consistent with local needs. (Once again, this is reflected in 760 CMR 31.06(3); the Committee need not actually inquire into consistency with local needs if the developer has not sustained its burden on the economic issues)”. Cooperative Alliance of Massachusetts v. Taunton Zoning Board of Appeals, (Mass. Housing Appeals Comm., No. 90-05, April 2, 1992), p.8.

“But even if the Board’s position is ill advised, the burdens of proof set out in the statute and our regulations are designed to ensure that we do not second guess the Board’s imposition of local standards unless their effect is to undermine the viability of affordable housing. The Board may insist upon a condition ... if that condition does not render the housing uneconomic.”



Drumlin Development, LLC v. Sudbury Board of Appeals, (Mass. Housing Appeals Comm., No. 01-03, September 27, 2001), p.3.

#### IV. JURISDICTIONAL ELEMENTS

Pursuant to the Act and the Regulations, an applicant for a Comprehensive Permit must fulfill three initial jurisdictional requirements:

1. The Applicant must be a public agency, a non-profit organization, or a limited dividend organization;
2. The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and
3. The Applicant must “control the site.”

The ZBA finds that the Applicant has provided sufficient information to establish that it is or will become a limited dividend organization, the proposed project is fundable under a low and moderate income housing subsidy program (under the Federal Home Loan Bank of Boston’s New England Fund), and that it has the legal right to acquire title to the Site. Notwithstanding this conclusion, this Permit is subject to revocation should, at any time hereinafter, the Applicant fails to conform with the three jurisdictional elements noted above.

#### V. SUMMARY OF DECISION

The ZBA hereby approves with the conditions set forth below a Comprehensive Permit for the Project depicted on the plans and materials identified in the record, specifically including Comprehensive Permit Plans dated February 4, 2022 with a last revision date of July 12, 2022 (exclusive of the floor removed from Building D1 on the July 12, 2022 Site Plan), and consisting of not more than two hundred seventy (270) units of rental housing including 108 one-bedroom units, 108 two-bedroom units, 24 three-bedroom units, and 30 townhome three-bedroom units with a total bedroom count of 486, 25% of which shall be low and moderate income affordable units, pursuant to the terms, conditions and obligations imposed by G.L. 40B, s.20-23. Among the relevant conditions set forth below are restrictions on the quantity of earth removal allowed. In approving this permit, the ZBA has concluded that with the conditions imposed, the proposed project is consistent with local needs and will not be rendered uneconomic.

**The Record before the Board of Appeals upon which this Decision is based.** The following Plans and related materials, all of which are part of the Record before the ZBA, are hereby designated as the “Development Plans” for the project approved by this decision:

1. Comprehensive Permit Application dated February 8, 2022 and Cover Letter
  - a. Existing Conditions Plan dated 8/13/2021 by Hancock Associates/HW Moore



- b. Architectural Plans by the Architectural Team, Inc. dated 2/4/22
- c. Locus deed and plan (Exhibit B)
- d. Purchase and Sale Agreement with VRT dated 5/14/21 (Exhibit C)
- e. Tabulation of Proposed Buildings
- f. NEF Regulatory Agreement Format (Ex. E)
- g. Project Eligibility Letter dated 1.25.22 (Exhibit A)
- h. List of requested waivers (Exhibit G)
- i. Certified abutters list (Exhibit H)
- j. Photos of Abutting Properties (Exhibit I)
- k. MCR PEL Application dated 9.24.21
- l. Existing Conditions Narrative (Exhibit K)
- m. Proposed Site Narrative (Exhibit L)
- n. Project Impacts Narrative (Exhibit M)
- o. Mill Creek Marshfield TIA (1/22)
- p. Phase I ESA – Embed
- q. NHESP Map (Exhibit Q)
- r. Confirmation of Mitigation Completion (Exhibit R)
- s. Conceptual Landscape Plans (Exhibit S)
- t. Project Rents (Exhibit T)
- u. Abutter Petitions (Exhibit U)
- v. Engineer Response (Exhibit V)
- w. ALTA Overlay (Exhibit W)
- x. Deed 21320-222 (Exhibit Y)
- y. Revised Layout Plan Planning Board (Exhibit Z)

2. Hancock Associates Inc. and The Architectural Team Plans

- a. Preliminary Site Plans dated February 4, 2022 (Exhibit D)
- b. Preliminary Grading and Drainage Plan February 4, 2022 (Exhibit D)
- c. Preliminary Utilities Plan February 4, 2022 (Exhibit D)
- d. Existing Conditions Plan dated 8/13/21 (Exhibit D)
- e. Floor Plans for Stacked Flat – Type A dated 2.4.22 (Ex. D)
- f. Floor Plans for Stacked Flat – Type B dated 2.4.22 (Ex. D)
- g. Floor Plans for Stacked Flat – Type C dated 2.4.22 (Ex. D)
- h. Floor Plans for Stacked Flat – Type D dated 2.4.22 (Ex. D)
- i. Floor Plans for Town Homes – Type E & F (Ex. D)
- j. Typical Unit Types
- k. Exterior Elevation – Stacked Flat – Type A dated 2.4.22 (Ex. D)
- l. Exterior Elevation – Stacked Flat – Type B dated 2.4.22 (Ex. D)
- m. Exterior Elevation – Stacked Flat – Type C dated 2.4.22 (Ex. D)
- n. Exterior Elevation – Stacked Flat – Type D dated 2.4.22 (Ex. D)
- o. Exterior Elevation – Townhome – Types E&F dated 2.4.22 (Ex. D)
- p. Site Section Plan dated 2/4/22



3. Traffic Impact Assessment for Mill Creek Marshfield by Vanasse & Associates, Inc. dated January 2022.
4. March 8, 2022 Mill Creek Marshfield ZBA Presentation (Powerpoint)
5. Peer Review Comment Letters and Correspondence
  - a. Pesce Engineering & Associates, Inc. Review Letter dated April 22, 2022
  - b. Amory Engineers, PC Review Letter dated April 15, 2022
  - c. Ron Muller & Associates, Traffic Review Letter dated April 21, 2022
  - d. Davis Square Architects, Architectural Peer Review, dated June 13, 2022
  - e. Ron Muller & Associates, 2<sup>nd</sup> Traffic Review Letter dated May 27, 2022
  - f. Pesce Engineering & Associates Email dated August 8, 2022 and August 18, 2022 (Planning Board Plan)
  - g. Email dated August 31, 2022 from E. Pesce to Town Planner (Traffic/Gatra)
6. Revised Plans & Comment Letters
  - a. Vanasse & Associates, Inc. Response Letter dated May 5, 2022
  - b. Vanasse & Associates, Inc. Response Letter dated June 9, 2022
7. Mill Creek Marshfield Project Update Letter dated July 18, 2022 including Response to Davis Square Review Letter, revised floor plans with elevators, revised architectural plans, revised civil engineering plans, revised landscape plans, a draft Trash Management Plan (with trash truck turning analysis), a draft Stormwater Operations and Maintenance Plan, and a cut and fill analysis and proposed truck routing.
8. Mill Creek Marshfield 7.26.22 Presentation (Powerpoint)
  - a. Proposed Site Plan Changes July 12, 2022
  - b. Unit Reduction Table
  - c. Secondary Access and Fire Road
  - d. Additional Open Space
  - e. Road Realignment Plan
  - f. Elevators
  - g. Landscape Plans
  - h. View from Commerce Way, Entry Drive, Flats Building
  - i. Email to Ed Pesce dated July 26, 2022 including Water Bills and Water Use Analysis for Modera Marshfield
9. Modera Marshfield Transportation Improvement Program Summary and Status dated 6.2.22
10. Town Comment Letters
  - a. Revised Mill Creek Site Plans by Town Planner
  - b. Planning Board Letter dated August 23, 2022
  - c. Select Board Comment Letter dated August 22, 2022
  - d. Conservation Commission Comment Letter dated August 15, 2022



- e. Town Engineer Comment Letter to DPW Chair dated July 18, 2022 (water capacity)
- f. Email dated August 9, 2022 from B. Grafton to ZBA
- g. Memo from Town Engineer, R. Procaccino to ZBA dated August 25, 2022
- h. Email from Police Chief, P. Tavares dated August 29, 2022
- i. Email from Fire Chief, Jeff Simpson dated August 29, 2022
- j. Memo from Deputy Chief Corbo to Planning Board dated July 28, 2022
- k. Recommended Conditions from E. Pesce dated September 22, 2022

11. Abutter Letter/Interested Parties

- a. Letter from Dennis Chateaufneuf, 43 Snowy Owl Lane, Marshfield
- b. Email dated August 9, 2022 from P. Valente to ZBA
- c. Email dated August 9, 2022 from Armand Kazarian, et ux. To Nanci Porreca
- d. Email dated August 10, 2022 from G. Bulmer to Nanci Porreca, et al.
- e. Email dated August 10, 2022 from D. Bongiolatti to Town Officials
- f. Emails dated August 13, 2022 from J. McCarthy to Town Officials (2)
- g. Email dated August 13, 2022 from L. Woodbury to M. Maresco, et al.
- h. Email dated August 13, 2022 from A. Scott to Town Officials
- i. Email dated August 15, 2022 from K. Gasper to Town Officials
- j. Email dated August 15, 2022 from P. Gasper to Town Officials
- k. Email letter from Kathleen Lewis to Town Admin, et al.
- l. Email dated August 18, 2022 from P. Ellsworth to Town Officials
- m. Email dated August 18, 2022 from M. Dexter to Town Officials
- n. Email dated August 22, 2022 from R. Kelesoglu to Town Officials
- o. Email dated August 22, 2022 from P. Burns to Nanci Porreca
- p. Email dated August 10, 2022 from D. Chateaufneuf to State Rep. Cutler
- q. Undated Presentation by Jack McCarthy
- r. Email from D. Kelleher to ZBA
- s. Email dated August 8, 2022 from M. Dupuis/B. Dupuis to State Rep. Cutler
- t. Email dated August 24, 2022 from P. Barkur to Town Officials
- u. Email dated August 30, 2022 from S. Fuerschbach to Town Planner
- v. Email dated August 30, 2022 from D. Chateaufneuf to N. Porreca including Diligence List and Who's Impacted

The Board also incorporates into its Record any other correspondence from its Peer Review/Consulting Engineers, other State and Town Boards, Committees, Departments and Officials, all correspondence and submissions by abutters and other interested parties and all meeting minutes of the Board.

VI. CONDITIONS OF APPROVAL

When any of the hereinafter stated conditions of this Decision require submission of plans or documents or materials by the Applicant to the Board or any other Town board,



department, agency, officer, or employee and/or to any consultants or attorneys retained by any of the foregoing, for review or approval, as the case may be, such submissions shall be deemed to be accepted and approved unless the Applicant receives written notice to the contrary within forty-five (45) days of such submission.

1. Prior to the commencement of any construction activities or any site development or clearing, the Applicant shall submit to the Building Inspector and the ZBA's designated peer review engineer, final Comprehensive Permit site plans, final Building Plans consistent with the approved plans, MA State Building Code suitable for construction and including final Fire Flow calculations for final approval by the Marshfield Fire Chief, a revised Cut and Fill analysis (including an estimate of duration of earth removal activities, truck trips and the truck route), final Architectural Plans, final Landscape Plans, final Lighting Plans, and final engineering calculations consistent with this Decision and the Development Plans identified above, and including but not limited to earth work and stormwater disposal and related best management practices, and all other plans and calculations needed for review for consistency with and conformity to this Decision and also all outstanding engineering peer review comments. Said plans shall be properly stamped by architectural, professional surveyors, landscape architects and civil engineers and comply with all federal, state and unwaived local laws and regulations. Upon such review and absent a finding that such consistency is absent, the plans and engineering calculations shall be considered the "Approved Plans". In the event there is a finding that such consistency is absent, the Applicant may submit the matter in question to the ZBA for its review for consistency; the ZBA shall render a decision within 45 days of the Applicant's submission.

2. This Decision shall be noted on the Approved Plans and both this Decision and the overall site plan sheet of the Approved Plans shall be recorded at the Plymouth County Registry of Deeds. Proof of recording shall be forwarded to the Building Inspector prior to the commencement of any work of any type on the Site and issuance of a building permit.

3. The Applicant shall comply with all local bylaws, rules and regulations of the Town of Marshfield and its boards and commissions in effect as of the date this Project was first submitted to the Board of Appeals unless expressly waived herein or as otherwise addressed in these conditions.

4. The Applicant shall pay all fees of the Town of Marshfield imposed generally with respect to construction projects and for the purposes of monitoring compliance of the construction and occupancy of the Project in accordance with this Comprehensive Permit unless otherwise waived in this Decision.

5. The Applicant shall copy the ZBA on all material submissions made by or on behalf of the Applicant for permits or approvals from any federal, state, county, or Town official, board or commission that concerns the design and/or conditions set forth in this Decision, including but not limited to all official filings and other permits issued for the Project.

6. The Applicant shall comply with the State Building Code and any generally applicable local published regulations or published schedule of fees of the Marshfield Building Department





in effect at the time of issuance of this Decision except as specifically waived herein. The Applicant shall pay all required fees for all such building permits including any fees customarily charged for inspections and permits unless otherwise waived in this Decision.

7. The Applicant shall maintain a copy of the Approved Plans and this Decision at the Site during construction.

8. Nothing in this Decision shall be interpreted as relieving the Applicant of its burden to obtain easements, licenses or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for access, construction or planting purposes. Notwithstanding the foregoing, for any work required to be performed by the Applicant hereunder on property owned or controlled by the Town of Marshfield, this Decision hereby grants the Applicant such rights as it may require in connection with that work. If any additional rights or consents are required from the Town of Marshfield for any such work, and those rights or consents are not granted, the applicable condition shall be deemed void and of no further force or effect.

9. 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 and the Applicant's successors and assigns.

10. This Decision permits the construction, use, and occupancy of not greater than 270 housing units on the Site. The construction and use of the Site shall be in conformity with the Plans as modified by the Approved Plans, and there shall be no creation of additional housing units or any other structures or infrastructure except that which is shown on the Approved Plan or is consistent with the Approved Plans (for example, mail kiosks, trash/recycling enclosures, maintenance sheds, and the like), without further approval of the ZBA in the form of an amendment to this Decision.

11. Prior to the commencement of any clearing of the Site or any construction on the Site whatsoever, including the commencement of any earth removal, or occupancy of the Project, as applicable pursuant to applicable law, the Applicant shall have obtained all necessary permits (federal, state and local) and approvals (federal, state and local), except as waived herein, for the construction or operation of the project approved herein and copies thereof shall be forthwith filed with the ZBA and Building Department. Prior to the close of the Public Hearings, the Marshfield DPW Board indicated there was sufficient water capacity to approve the connection of the Project to the Marshfield municipal water system and acknowledged there is sufficient capacity for the Project's use subject to the condition that municipal water is not used for landscaping in the Project, based on a recommendation for reduced density, the installation of booster pumps with bladder tanks acceptable to the DPW, water savings mitigation in the form of an irrigation well and pumps, an estimated water permit fees, and, further, town water is not used fill the pool in the Project.

12. Prior to the commencement of any clearing of the Site or any construction on the Site whatsoever, the Applicant shall make an initial deposit of \$25,000 in the ZBA's consultant escrow account to fund the Consulting Engineer's review of the Applicant's additional



submissions set forth in this Decision and Construction Monitoring. Any amounts not expended from the escrow account shall be returned to the Applicant.

## VII. AFFORDABLE HOUSING

1. Sixty-eight (68) apartment units, including a mixture of three (3), two (2) and one (1) bedroom units (the “Affordable Units”), being no less than twenty-five (25%) percent of the total number of dwelling units approved for this Project, shall be affordable to qualified renters. The Affordable Units shall be located initially as depicted on an affordable units location plan approved by the Subsidizing Agency. The Affordable Units shall remain affordable pursuant to the terms and conditions of this Decision, in perpetuity.
2. Phasing-in of Affordable Units – The Affordable Units in the Project shall be constructed generally at the same pace as the market rate units.
3. Rental Prices of Affordable Units. The Affordable Units shall be restricted in perpetuity, for rental to households whose maximum income does not exceed eighty percent (80%) of the Boston Area Median Income (AMI), adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD). The Affordable Units shall not be situated so as to be segregated from the Market Rate units and shall be dispersed among 1, 2 and 3 bedroom units and throughout the Site.
4. A Regulatory Agreement, in the form approved by the Subsidizing Agency, shall be recorded prior to the construction of any units, which shall contain a restriction requiring that the Affordable Units remain affordable. The Regulatory Agreement shall be recorded senior to any mortgage liens on the Property to protect the continued availability of and requirement for the Affordable Units in the event of any foreclosure, bankruptcy, refinancing or rental.
5. The Subsidizing Agency shall monitor (or cause to be monitored) all rentals and re-rentals of Affordable Units in accordance with the Regulatory Agreement. The Regulatory Agreement shall be fully executed prior to the issuance of a building permit for any of the dwelling units permitted by this Decision.
6. All Affordable Units shall be indistinguishable from the exterior from the Market Rate units. The construction specifications for the Affordable Units shall be identical to the construction specifications of the Market Rate Units.

## VIII. MARKETING/LOTTERY AFFORDABLE UNITS

The following conditions are imposed with respect to the issues of marketing, minority outreach, lottery, and perpetual affordability.



1. Prior to the rental of any unit, the owner or his/her agent shall submit to the Subsidizing Agency for its approval written rules for the selection of tenants of Affordable Units (the Tenant Selection Rules). The Applicant shall be responsible for all fees and expenses necessary to implement the Tenant Selection Rules, including all marketing and advertising costs. The selection of tenants for the Affordable Units, including the administration of a lottery for the initial selection of tenants for the Affordable Units, shall be administered by the Applicant or a consultant retained by the Applicant, subject to the Subsidizing Agency's approval. The lottery shall be implemented pursuant to a lottery plan developed by the applicant or lottery consultant and approved by the Subsidizing Agency.

2. To the extent permissible by law, the Project shall provide for residential preference for up to 70% of the Affordable Units for the following tenants: current Marshfield residents, Marshfield municipal employees, employees of businesses located in Marshfield and households with children attending Marshfield public schools. Providing such preference is conditioned on the Town of Marshfield providing DHCD and the Subsidizing Agency with justification for it as required by those agencies within four months of this Decision becoming final.

3. The provisions of this Section are intended to complement and not to override or supersede any applicable requirements of the Subsidizing Agency, fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

## IX. CONSTRUCTION AND SUBMISSION REQUIREMENTS

1. **Pre-Construction Submissions** – Before the Applicant commences any construction activities or clearing on the Site, including earth removal activities, or occupancy, as applicable, the Applicant shall have:

a. Submitted to the ZBA and obtained a written technical review from the ZBA's Consulting Engineer of the Applicant's fully-engineered site plans, stormwater management system design plans, landscaping plan, architectural floor plans for conformity with the conditions of this Decision;

b. Obtained any approvals from the DEP required for the disposal of wastewater generated by the Project;

c. Filed the notice required under the National Pollutant Discharge Elimination System ("NPDES") program, and provided a copy of that notice and the project Stormwater Pollution Prevention Plan to the ZBA;



d. Obtained any and all approvals required under the Massachusetts Environmental Policy Act from the Secretary of Environmental Affairs for the Project;

e. Delivered to the ZBA final architectural drawings for the buildings/Units to be constructed as shown in the Architectural Plans, providing a scaled depiction of the front, rear and side elevations, signed by a registered architect;

f. Delivered to the ZBA and the ZBA's Consulting Engineer copies to the Building Inspector, Planning Board, Board of Health, Conservation Commission, Superintendent of the DPW, Fire Chief, and Police Chief a complete final Construction Operation & Maintenance Plan (COMP), which shall address the following topics and items:

i. Construction Administration

Hours of construction

Hours of construction delivery

Truck routes

Trash and debris removal

Anticipated daily vehicle trips per phase

Anticipated hours of the day during which heavy equipment and construction vehicles are expected to enter and exit the Site

ii. Construction Phasing and Schedule (critical path)

Anticipated timing and phasing of construction including the anticipated start and end points for each significant phase of development (site grubbing, clearing, and fill; construction of roadways and related infrastructure, excavation for foundations, framing and interior construction, etc.)

iii. Communications

iv. Noise and Dust Control

Tree removal (chipping. etc.)

Public street cleaning and repair

Dust

Noise not to be excessive at the property line

Rock crushing (not allowed on site)

NOTE: Blasting operations are not permitted except as provided below

v. Earth Removal

Earth Removal Plan

Pre- and post-earth removal survey (scope and content)

Insurance coverage

Earth removal limits



Road closures (if necessary)  
Truck haul route map

vi. Erosion Control

Silt sacks, hay bales, silt fences, etc.  
Tree protection plan  
Drainage infrastructure

vii. Identification of existing underground utilities

viii. Construction Staging

Staging areas  
Site office trailers  
Storage trailers/containers  
Open storage areas  
Delivery truck holding areas  
A spill prevention plan for the refueling of equipment on site shall be included in the final COMP and maintained during the entire time any construction is ongoing.

ix. Traffic and Parking (during construction)

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

x. Fire and Emergency

Temporary emergency access driveway (Fire Dept. will access the site via the temporary construction entrances, and will be given a key or combination code for after-hours access if needed)

2. The scope of the ZBA's Consulting Engineer's review of the COMP shall be for completeness and for consistency with generally-accepted construction practices and for compliance with all the conditions of this Decision. The ZBA's Consulting Engineer shall issue its comments on the COMP within thirty (30) days after a complete submission from the Applicant.

## X. SITE DEVELOPMENT CONSTRUCTION CONDITIONS

1. Prior to the commencement of any construction activities or any site development or clearing, including earth removal operations, the Applicant shall meet with the Building Department, Police Chief or his representative, Fire Chief or his representative, the Department



of Public Works, the Conservation Commission, the Board of Health, the ZBA's Consulting Engineer, and the Chair of the ZBA or his representative at a mutually convenient time and place during normal business hours to review the COMP, and to coordinate the Building Department's periodic inspections of the Project (the "Pre-Construction Meeting"). This meeting shall be open to the public.

2. The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the Project including during the earth removal phase of the proposed Project. Municipal representatives shall be permitted access to the Site to observe and inspect the Site and earth removal and construction progress until such time as the Project has been completed subject to customary safety rules and conditions, including prior notice to the Applicant and checking in at the on-site construction trailer for appropriate safety information and accompaniment.

3. The ZBA's Consulting Engineer, and Building Department or its appointed agents may conduct periodic inspections during the construction of the Project, to ensure compliance with the terms of this Decision and the state building code, and for consistency with generally-accepted construction and engineering practices for the installation of roadways, stormwater management facilities, utilities, and other common development infrastructure. Inspections during the construction phase shall be conducted at the expense of the Applicant.

4. The Applicant shall forward final architectural plans to the Building Commissioner at the time of applying for building permits. All construction shall be inspected by the Building Commissioner or his designee and shall be in compliance with all Massachusetts State Building Code requirements.

5. The Applicant shall be responsible to ensure that nuisance conditions do not exist in and around the Site during the construction operations (DEP - . The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area in accordance with the COMP.

6. Dust – Measures shall be provided to control nuisance dust emissions during construction and earth removal operations. Water spraying or other methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.

7. Noise – The Applicant shall implement measures to ensure that noise from project construction activities does not create a nuisance at any property line.

8. Traffic – The Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the Site during construction. Any damage to roads that occurs as a result of site operations and construction shall be mitigated promptly, at the expense of the Applicant, in conformance with the COMP. All construction trucks accessing the Project site shall use Enterprise Drive and not Proprietor's Drive. Applicant shall instruct its contractors accordingly.



9. Roads – The Applicant is responsible for the periodic sweeping, removal of snow, and sanding of the internal roadways and driveways permitting access to residents, emergency vehicles, and others during construction and until the Project is completed. The final coat of pavement on the internal roadways shall be installed after the base course has endured a full winter season or as otherwise reasonably permitted by the ZBA’s Consulting Engineer. The Applicant shall promptly clean any debris or excessive dirt deposited on Marshfield or state controlled streets, ways and roads by its construction vehicles.

10. Imported soil material to be used as backfill for pipes, roads, and/or structures (i.e. detention basins) shall be tested at the expense of the Applicant or its designee, by a firm reasonably acceptable to the ZBA’s Consulting Engineer and Building Commissioner. Testing of said backfill shall be performed in conformance with generally applicable standards and frequencies reasonably established by the Building Department.

11. Utilities, including but not necessarily limited to electric, cable, and telephone, shall be located underground. A final utility plan shall be submitted to the ZBA’s Consulting Engineer and Building Commissioner prior to the issuance of any certificate of occupancy for any dwelling unit.

12. Stabilization Requirements – No disturbed areas shall be left in an open, unstabilized condition longer than thirty (30) days or as may be governed by the NPDES permit. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas in accordance with the landscaping plans reviewed by the ZBA’s Consulting Engineer.

13. Blasting is not anticipated to be necessary for construction of the Project. If, during the course of construction, it becomes necessary to perform some blasting, the Board’s Consulting Engineer and Building Inspector shall review and approve the Applicant’s proposed blasting to ensure it complies with applicable law.

14. Within 120 days after substantial completion of construction (or 180 days if substantial completion occurs in winter months), the Applicant shall submit to the ZBA an “As Built Plan” in paper and CAD format, showing all pavement, buildings, stormwater management structures, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The plans shall be signed by a registered land surveyor or civil engineer, certifying that the Project as built conforms and complies with the conditions of this Decision.

15. Trees – Prior to the commencement of any construction activities or any site clearing, the Applicant shall create a limit of work boundary and ensure that there is a protective radius within the drip line around trees that are to be preserved on site.

16. Roadway Design – The surface course and binder course of the roadways, and the attendant shoulder widths and side slopes, shall conform to the design shown on the Approved Plans.



17. With respect to drainage and erosion control, the Building Commissioner and the ZBA's Consulting Engineer shall review the plans to determine that they are substantially consistent with the preliminary plans and in substantial compliance with the conditions of this permit. The Applicant shall comply with the EPA's National Pollutant Discharge Elimination System II (NPDES II), and provide the ZBA a copy of the EPA Notice of Intent application (NPDES Form 3510-9) filed for this project. Said drainage shall be designed using Best Management Practices (BMP's) and shall conform to the Massachusetts Stormwater Management Regulations. This will include, but not be limited to, the use of pre-cast concentric concrete catch basins including oil/grit separators to remove sediments and hydrocarbons from the stormwater runoff. The groundwater elevation shall be verified, and a minimum separation of two (2) feet from the bottom of the drainage system and seasonal high groundwater shall be maintained. During construction, the access road entrance shall be stabilized with crushed stone to a depth of three to six (3-6) inches, for a width of twenty-six (26) feet, and a length of one hundred (100) feet (as shown on the approved plans), for removal of sediment from construction vehicle tires when leaving the site. Prior to issuance of any certificates of occupancy, the plans for the stormwater drainage system serving the land and buildings in which such certificates of occupancy are being sought shall be subject to inspection by Department of Public Works, the Building Commissioner and the ZBA's Consulting Engineer. Erosion control shall follow Best Management Practices and shall be maintained throughout the duration of the project. The Applicant shall establish an Operation & Maintenance (O&M) plan for the stormwater system, which shall include but not be limited to scheduled inspections, thresholds for removal of sediments, and an educational program for the property owner for the continuing maintenance and protection of the stormwater system. The stormwater O&M plan shall be reviewed for compliance with BMPs and approved by the ZBA's Consulting Engineer and the Building Commissioner prior to construction. The Applicant shall pay for the cost of an independent engineering review of the proposed stormwater management plan, if requested by the Town. No sands or gravels or other materials may be removed from the site except those required to be removed to accomplish the conditions shown on the final site plan to be approved by the ZBA.

Prior to the commencement of construction, the ZBA's Consulting Engineer shall confirm that he has reviewed the plans as required herein for compliance with the conditions of this permit.

18. Exterior construction shall not commence on any day Monday through Friday before 7:30AM or on Saturday before 8:30 AM. All exterior construction activities shall cease by 6:00 PM on all days. No exterior construction activity whatsoever shall take place on Sundays or legal holidays except for the limited purpose of providing emergency health or safety measures or if permitted on a case by case basis by the Building Inspector.

19. All project and roadway lighting shall be shielded or refracted as necessary in such a manner as to minimize light spill over to neighboring properties.

20. There shall be no on-site storage of hazardous materials or hazardous wastes, or on-site vehicle fueling, with the exception of earth power screening equipment fueling at which time fuel may be brought to the Site for refueling, as previously noted or as is typical in connection with the construction and operation of the Project (e.g., fuel in the tanks of





construction vehicles on site from time to time, cleaning materials, etc.) in compliance with applicable laws.

21. Covenants Re: Completion – To ensure completion of the infrastructure related to the Project substantially as shown on the Approved Plan, including, but not limited to, the binder coat of the roadway, sidewalks, parking areas and common areas, recreational areas, sewage disposal system, drainage facilities, utilities, landscaping, and any other specific infrastructure shown on the plan (the “Infrastructure”), the release of occupancy permits for housing units in the Project shall be subject to the following restrictions:

a. No occupancy permit for a unit in any building shall be issued, until: (1) the base and binder course for the driveway and parking areas shown on the Approved Plan associated with the applicable building has been installed; and (2) all infrastructure described herein and as shown on the Plan has been constructed or installed to the extent required so as to adequately serve said building.

b. If, in the Applicant’s reasonable judgment, weather circumstances preclude the installation of plantings to complete landscaping prior to the issuance of occupancy permits, the Applicant shall post a bond or a deposit with the ZBA in an amount equivalent to 1.05 times the reasonably expected cost of the plantings to ensure completion by the Applicant as soon as weather conditions allow, and in no event later than the first growing season following the issuance of the applicable certificate of occupancy permit.

22. The Applicant and its successors and assigns shall comply with the regulatory/affordable housing restrictions and all other conditions applicable to the Project required by the Subsidizing Agency under G.L. 40B. This Comprehensive Permit shall not be transferred or assigned except in compliance with the provisions of 760 CMR 56.05(12)(b).

23. Once construction has commenced, the Applicant will proceed through to completion of construction in a commercially reasonable manner without any undue delay or work stoppages other than in the ordinary course.

## XI. EARTH REMOVAL CONDITIONS

The Applicant is permitted to excavate and remove no more sand and gravel from the Site than is necessary to permit reasonable construction of the 270 unit apartment community pursuant to the Approved Plan and this Decision.

All authorized earth removal work performed shall be done in accordance with the required conditions set forth below:

1. All trees are to be cut, not bulldozed. Stumps may not be buried on the site except in accordance with a site assignment issued under G.L. c. 111, § 150A.
2. Excavation at or near the property line is permitted, as per the Approved Plans.



3. Earth must be removed to contours substantially as set forth in the approved Site Plan.

4. The regrading and seeding of each grid or disturbed area shall be completed substantially in accordance with the Approved Plans and Landscape Plan, and any requirements set forth in the final Conservation and Management Permit issued by the Mass. Division of Fisheries and Wildlife (Natural Heritage and Endangered Species Program).

5. Finished grades shall be substantially as indicated on the approved site plan.

6. All access roads leading to public ways shall be treated to minimize dust and mud for a distance of not less than fifty (50) feet back from the public way. Any spillage on public ways shall be cleaned by the Applicant on a daily basis.

7. A final report, prepared and certified by a registered civil engineer, licensed to practice in the Commonwealth of Massachusetts, shall be forwarded to the ZBA's Consulting Engineer at the completion of the earth removal project. The report shall state the estimated amount of earth removed from the site, and that such removal was in substantial compliance with the approved plans.

8. All truck traffic associated with the earth removal operation shall be routed to the site via Enterprise Drive to Commerce Way.

9. There shall be no trucking or hauling activities on Sundays or Holidays which shall include Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, New Years' Day, President's Day, Patriot's Day, Memorial Day, Independence Day, and Labor Day.

10. There shall be no on-site rental of materials, and the site may not be used to stockpile materials for rental.

## XII. ADDITIONAL CONDITIONS

1. The Applicant shall perform and/or pay the mitigation items set forth on the table attached to this Decision as Exhibit A.

2. If construction authorized by this Comprehensive Permit has not begun within three years of the date on which the permit becomes final, the permit shall lapse unless extended by the ZBA. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise finally disposed of.

3. If, between the date this Decision is filed in the office of the Marshfield Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or



to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by the applicable provisions of 760 CMR 50.00 et. seq. then in effect and the conditions of this Decision. The determination of whether any such change is “substantial” shall be made by the Board’s Consulting Engineer.

4. The Applicant shall submit documentation for the property outlining the general Operations and Maintenance Plan for all interior and exterior common areas, with details regarding: loading and unloading by moving trucks, vans, delivery vehicles, etc.; emergency vehicle access; snow management; trash/recycling management and removal; and landscaping, including the following:

a. Snow Management – Snow shall be stored in the areas identified on the plan and approved by the ZBA’s Consulting Engineer or shall be removed from the Site , and shall not impact pedestrian pathways, or on-site or off-site parking areas. If the accumulated snow exceeds the capacity of the snow storage areas or impedes pedestrian pathways or the parking lot, it shall be removed from the site as soon as practicable. Landscaped areas shall be preserved to the greatest extent possible during times of snow storage or snow removal. At all times, snow heights shall be limited so as not to impede sight lines for vehicles.

b. Trash/Recycling Management and Removal – The O&M Plan shall include details regarding the methods for trash removal. The Applicant is responsible for all trash collection and disposal, and for ensuring daily that exterior areas of the site remain clear of debris.

c. Landscaping – The landscaping as depicted on the Approved Plan shall be maintained in a healthy condition in perpetuity. In the event that landscaping is damaged during snow removal operations, or for any reason, the Applicant shall replace such landscaping during the next growing season.

d. The O&M Plan shall also include a description of how the management company intends to manage responses to resident issues on-site and shall provide contact information for after hour issues or situations.

5. The Board requires that a note be placed on said final site plan stating that the Plan is the subject of a Comprehensive Permit under Mass. Gen. L. ch.40B, sections 20-23.

6. The Town of Marshfield shall be free of any liability arising out of the Board's approval of the site layout plan, and for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project.

7. Profit Cap and Regulatory Agreement – To conform to the provisions of G.L. c. 40B, s.20-23 that profits from the Project be reasonable and limited, evidence of the recording of the Regulatory Agreement in conformance with the requirements of the Subsidizing Agency shall be provided to the Board prior to the issuance of any building permit.

### XIII. MISCELLANEOUS LEGAL REQUIREMENTS



1. The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit.

2. The driveways, utilities, drainage systems, water supply and distribution infrastructure, wastewater disposal system, and all other infrastructure shown on the Approved Plans as serving the Project, shall remain private and the Town of Marshfield shall not have, now or ever, any legal responsibility for the operation or maintenance of the roadways, driveways and infrastructure, including but not limited to snow removal, the stormwater management system, the wastewater disposal system, and landscape maintenance.

3. The Applicant shall comply with the transportation improvement mitigation requirements set forth on Exhibit A attached hereto in the timeframes specified in said Exhibit.

#### XIV. APPLICANT'S REQUESTED WAIVERS

The Applicant has requested waivers from the By-Laws of the Town of Marshfield, the Town of Marshfield Zoning Bylaws and other local rules and regulations. The Applicant's Waiver Request is dated February 8, 2022. The ZBA's grant of waivers shall be subject to the terms and conditions imposed by this Decision, and to the extent that any waiver is inconsistent with a term or condition set forth elsewhere in this Decision, such term or condition of the Decision shall govern. No grant of any waiver shall be construed as to be a waiver of compliance with any condition of this Decision. Any waiver granted below shall be construed as a waiver only to the extent necessary to construct the Approved Plans. Any waiver not granted below or otherwise included within this Decision shall be deemed denied.

The ZBA's decision with respect to each waiver request is as set forth on Exhibit B attached to this Decision.

**Decision of the ZBA:** In the exercise of the Board's discretionary authority pursuant to G. L. c. 40B secs 20-23, the Board consisting of members Brian Murphy, Chair, Heidi Conway, Stephen Feeney, Lawrence Keane and Grover Hensley, and voted 4 (Brian Murphy, Chair, Stephen Feeney, Lawrence Keane and Grover Hensley) to 1 (Heidi Conway) to grant a Comprehensive Permit subject to conditions set forth herein.

Ms. Conway's dissenting opinion as follows:

In the exercise of my discretionary authority as a member of the ZBA, I support the decision of the Board to find that the Town has not met its 10% requirement and is not entitled to any safe harbor protections and that the Applicant has obtained a site eligibility letter, has site control and will become, upon execution of a regulatory agreement, a limited dividend organization, and is therefore entitled to make application to the ZBA for a comprehensive permit. I decline to approve the project as conditioned by my colleagues for the reasons that I stated during the public hearings and during deliberations. It is my opinion that the Town of Marshfield's




approval of the original Modera project on a larger site with less units was the threshold amount of density that affordable housing should be approved at and this site is simply too small to reasonably accommodate the 270 units and that in order to locate this overly ambitious number of rental units there will be impacts to the residential neighborhoods to the east which will share access and egress with the proposed development and to the west where there is no sufficient buffer, will be adverse impacts to the proposed residential community that is proposed for the site, including overcrowding and a lack of meaningful open space, that there will be disparate impact on the town's water resources and water pressure in the area as attested to by numerous residents and the DPW and that the sums of money offered by the Applicant to construct a well elsewhere, will not materially reduce this impact. I believe that the Town's natural resources will suffer an adverse impact including the Town forest. I would support the project as conditioned were the project to be scaled back as suggested by almost every town official, board and commission as well as numerous residents who are opposed to the project and generally support conditions that would limit the project as recommended by the Town Planner For these reasons, I decline to approve the project as conditioned and wish for my dissenting opinion to be included with the decision of the ZBA.


THIS CONCLUDES THE DECISION OF THE MARSHFIELD BOARD OF APPEALS:  
SIGNATURE OF THE BOARD FOLLOWS

For the Board of Appeals of the Town of Marshfield pursuant to a vote taken on September 29, 2022, and filed with the Marshfield Town Clerk.

  
\_\_\_\_\_  
Brian Murphy, Chair

  
\_\_\_\_\_  
Lawrence Keane, Member

  
\_\_\_\_\_  
Stephen Feeney, Member

  
\_\_\_\_\_  
Heidi Conway, Vice Chair

  
\_\_\_\_\_  
Grover Hensley, Member

Filed with the Town Clerk on October 4, 2022

NOTE: Any appeal from this decision shall be made pursuant to Massachusetts General Laws Chapter 40B, Sections 20-23 within the time period allowed by said statute.

-END OF DOCUMENT-



## EXHIBIT A

### Specific Mitigation Conditions

1. Prior to the commencement of any clearing of the Site or any construction on the Site whatsoever, the Applicant shall tender to the Town Rt. 139 Traffic Mitigation Fund, a traffic impact mitigation payment of \$642.85 per weekday evening peak hour traffic trips generated by this project as approved for a total payment of \$86,784.75 for the 135 trips. These funds may be used by the Town of Marshfield for the design and construction of improvements at the Rt. 139/Enterprise Drive and Rt. 139/Proprietors Drive/Furnace Street intersections.
2. Prior to the issuance of any occupancy certificate for any rental unit, provide all traffic improvements recommended in the Traffic Impact Assessment, prepared by Vanasse & Associates, Inc., dated January 2022. These improvements include the design, permitting, and implementation of optimal traffic signal timing and phasing for traffic signal located at the Route 139/Enterprise Drive intersection.
3. During construction, update plans to show and construct and maintain two 18-foot wide (minimum) Fire Trail /ramp/driveway accesses (with locking gates) for access to the existing fire trails on both the east and south sides of the property (locations as directed by the Marshfield Fire Dept). The added southeasterly connection shall require removal of 3-4 parking spaces from the site plan, which removal shall be approved by the ZBA's consulting peer review engineer.
4. Prior to the commencement of any clearing of the Site or any construction on the Site whatsoever, as offered, the Applicant will contribute the sum of \$250,000 that may be used by the Town to install a well to serve the landscaping needs of the Town's ballfields across Commerce Way from the proposed development or for other water improvement/mitigation projects of the Town's election.
5. Prior to issuance of occupancy permit in first garden style apartment building, provide a location on the site to allow for a new Greater Attleboro-Taunton Regional Transit Authority (GATRA) bus stop, and provide a cash contribution for this new bus service for this project site. This cash contribution will be based on a "fair share" which currently amounts to \$40,000.00 annually" percentage of the estimated ridership due to this project, for the cost to provide this new bus route by GATRA. Fair share to be finally determined by the Board's peer review consultant. If GATRA declines to provide this service or stops providing it once started, this condition should automatically terminate with any sums paid being retained by the Town.
6. The Applicant shall comply with the mitigation recommendations made by the Town Engineer on behalf of the DPW in their August 25, 2022 Memo to the ZBA, install at their expense of booster pumps and bladder tanks approved by the DPW, comply with any additional fire flow testing, install at its expense a private irrigation well for landscaped areas, and pay the water connection fee as set forth in the Memo.



EXHIBIT B

Waiver List

[see attached]







**Mill Creek 2 Marshfield**

**Requested Waiver List**

**Marshfield Zoning By-Law**

Zoning Bylaw Section	Requirements <sup>1</sup>	Waiver Sought	Vote
§305-5.04 Table of Uses	<p>Multifamily Dwelling is prohibited in the “I-1” District and the “R-1” District.</p> <hr/> <p>“Accessory buildings] such as...private swimming pool[s] or similar accessory structure[s]” are permitted in the “R-1” District but permitted only by special permit in the “I-1” District.</p>	<p>Proponent seeks a waiver to permit multifamily apartment buildings, townhouses, and accessory building structures.</p>	<p>Granted as per Approved Plan.</p>
<p>§305-6.08(A) - Application of closest “R” dimensional and density regulations</p>	<p>Existing and permitted residential uses in the “I” District are subject to the dimensional and density</p>	<p>Proponent seeks a waiver of this requirement, to allow the “I” District requirements to be applied to the portion of the project site located therein.</p>	<p>Granted as per Approved Plan.</p>

<sup>1</sup> According to the Town of Marshfield Zoning Map approved April 27, 2015, the site is predominantly located within the “I-1” District and “PMUD” Overlay District, with a small portion located within the “R-1” District. As the Proponent is not seeking entitlements for the site through the “PMUD” Overlay District, no waivers are being sought therefrom. However, to the extent the “PMUD” Overlay District requirements are applied to the Project Site the Proponent seeks any and all additional waivers to allow the construction of the Project as shown on the plans.

	regulations of the nearest residential district as determined by the Building Inspector.	However, to the extent the “R-1” district regulations are applied to the entire site, Proponent seeks any and all additional waivers to allow the construction of the Project as shown on the plans.	
§305-6.02/6.10 Table of Dimensional and Density Regulations – Maximum Height (feet)	65 feet in “I-1” District, 35 feet in “R-1” District.	Proponent seeks a waiver to permit building height of up to 45 feet.	Granted as per Approved Plan.
§305-6.02/6.10 Table of Dimensional and Density Regulations – Maximum Height (stories)	2 in “I-1” District, 2.5 (which may be increased to 3 stories subject to heightened side-, rear- and front-yard requirements pursuant to §6.10, Note 1) in “R-1” District.	Proponent seeks a waiver to permit building height of up to 3 stories (without the need to comply with the additional setback requirements in §6.10).	Granted as per Approved Plan.
§305-6.02/6.10 Table of Dimensional and Density Regulations – Rear Yard Setback	40 feet minimum in both “I-1” and “R-1” Districts.	Proponent seeks a waiver to permit a rear yard setback of 27 feet.	Granted as per Approved Plan.
§305-6.02/6.10 Table of Dimensional and Density Regulations – Maximum Building Area	None in “I-1” District, 15% in “R-1” District.	Proponent seeks a waiver to permit a building area of approximately 26% for the entire project site.	Granted as per Approved Plan.
§305-6.02/6.10 Table of Dimensional and Density Regulations – Minimum Open Space Area	30% in “I-1” District, 50% in “R-1” District.	Proponent seeks a waiver to permit an open space area of 38% for the entire project site.	Granted as per Approved Plan.

§305-6.05 and §305-6.08(L) Screening and Buffers	In all residential areas where buildings other than single family dwellings are constructed, a buffer zone of thirty-five feet (35') must be provided as described in Section 6.05.	To the extent the site is determined to be a "residential area", Proponent requests a waiver of the requirement of a 35-foot buffer zone.	Partial waiver per Approved Plan. Applicant to install fence as a buffer as per Approved Plan.
§305.6.07 Accessory Buildings	In the "R" District a detached accessory building shall conform to the following provisions: it shall not occupy more than 25% of the required rear yard; it shall not be less than 20 feet from the front street line, or less than 10 feet from any other lot line or from any principal building; and it shall not exceed 20 feet in height.	To the extent any accessory buildings in the portion of the site located within the "R-1" District do not comply, Proponent seeks a waiver to allow for construction of the Project as shown on the plans.	Granted as per Approved Plan.
§305-6.08(B) Other General Dimensional Provisions	Except for planned developments <sup>2</sup> , community facilities, and public utilities, only one principal structure shall be permitted on a lot.	Proponent seeks a waiver to allow for multiple principal structures at the site.	Granted as per Approved Plan.

<sup>2</sup>Planned Development is defined in the Marshfield Zoning By-Law as "A development involving the construction of two or more principal buildings on the same lot for any permitted use." It is unclear whether this definition applies to the Project as the Project is only "permitted" pursuant to a comprehensive permit. If the Project is not deemed a "Planned Development", the Project will require a waiver from this requirement.

<p>§305-6.08(E) Projections into Required Yards</p>	<p>Projections into required yards or other required open spaces permitted as follows: (i) balcony/bay window: limited to 'A length of building, not to project more than 2 feet; (ii) decks/terraces/steps/stoops: less than 4' in height, may project up to 'A required setback; more than 4' in height, not to project more than 2 feet.</p>	<p>As the Project will require a waiver from the rear-yard setback, projections from buildings in this yard area will not satisfy §6.08(5). Proponent seeks a waiver from this requirement.</p>	<p>Granted as per Approved Plan.</p>
<p>Article VII of Chapter 305 Sign Regulations</p>	<p>General limitations on signage.</p>	<p>Waiver required to permit typical signage associated with multifamily development.</p>	<p>Partially granted. Applicant may propose signage similar in number and size to that approved in connection to that of the Modera Project.</p>
<p>§305-8.01 Minimum Off-Street Parking Requirement</p>	<p>Multifamily dwelling use not included in table, any use permitted by the ordinance but not included in table applies the closest similar use as determined by the Building Inspector.</p>	<p>Proponent seeks a waiver of applying similar use requirement as determined by Building Inspector. Proponent seeks a waiver to allow approximately 1.7 spaces per unit.</p>	<p>Partially granted. Applicant shall not have less than 1.7 spaces per unit.</p>
<p>§305-8.05 Combined Facilities</p>	<p>Parking required for two or more buildings or uses may be provided in combined facilities on the same or adjacent lots subject to</p>	<p>Proponent seeks waiver of the requirement that the Building Inspector approve parking for two or more buildings be provided in combined facilities.</p>	<p>Granted as per Approved Plan.</p>

	approval by the Building Inspector where it is evident that such facilities will continue to be available for the several buildings or uses.		
§305-8.08(A) Parking and Loading Space Standards	The area shall be effectively screened with suitable planting or fencing on each side which adjoins or faces the side or rear lot line of a lot situated in the "R" District.	A small portion of the Site is located within the "R-1" District and is adjacent to the Sprague Forest (which is also located within the "R-1" District). Proponent seeks a waiver from this requirement to allow construction of the improvements as shown on the plan.	Granted as per Approved Plan.
§305-8.08(L) Parking and Loading Space Standards	Any entrance or exit driveway shall not exceed 30 feet in width at the street line.	Proponent seeks a waiver to allow the construction of the Project as shown on the plans. Entrance with roundings is approximately 68 feet.	Granted as per Approved Plan.
§305-8.08(M) Parking and Loading Space Standards	The Board may, by way of special permit, permit the reduction of the parking space requirements to 80% of that required in the Table of Off-Street Parking Regulations where conditions unique to the use will reasonable justify such a reduction.	Proponent seeks a waiver to allow approximately 1.7 spaces per unit.	Partially Granted. Applicant shall not have less than 1.7 spaces per unit on final plans.
§305-8.08(O) Parking and Loading Space Standards	The Board may, by way of special permit, permit the reduction of the size of the parking space to no less than 9 feet in width and 18 feet in length, plus 100 square feet of access and maneuvering	Parking spaces are 9 feet wide and 18 feet long. Proponent seeks waiver of requirement for Special Permit and requirement that the property be located within the B-1 in order to reduce space size.	Granted as per Approved Plan.

	space, for properties located within the B-1 zoning district where such reduced size allows for increased landscaping.		
§305-8.09(F) General Exterior Lighting Design Standards	Requires a 1.0 minimum horizontal footcandle level (maintained) measured at the point of least illumination of grades.	Project will have a minimum horizontal footcandle level (maintained) measured at the point of least illumination of grades of less-than 1.0. Proponent seeks a waiver from this requirement.	Partially granted. Applicant shall submit a revised lighting plan to promote adequate safety.
§305-10.04 Certificate of Occupancy Required	No certificate of occupancy shall be issued unless the building and its accessory uses and the uses of all premises are in conformity with the provisions of this Bylaw and of the building code at the time of issuance. A certificate of occupancy shall be conditional of the provisions of adequate parking spaces and other facilities as required by the Bylaw.	Project may involve phased occupancy. Proponent seeks a waiver to allow for a certificate of occupancy prior to completion of all buildings on site.	Granted. N.B. Phased Occupancy shall not mean phased construction which shall not be permitted.
§305-10.06 Permit Time Limits	Any work for which a permit has been issued by the Building Inspector shall be actively prosecuted within 90 days and completed within one year of the date of the issuance of the permit. Any	Proponent seeks waiver of the requirement as Project may take longer to commence/complete.	Granted.

	permit issued for a project which is actively prosecuted for one year may be extended at the discretion of the Building Inspector.		
§305-11.11 – Curb Cut Permit	All driveway openings for special permit uses must be approved by the special permit granting authority.	Proponent seeks a waiver from this requirement.	Granted.

**General By-Law**

General Bylaw Section	Requirements	Waiver Sought	Vote
Chapter 70	General provisions of the Marshfield Earth Removal Bylaw	Proponent seeks a waiver of the provisions of the Marshfield Earth Removal By-Law.	Partially granted as per conditions of approval.
Chapter 285, Article II	General Provisions of Marshfield Water Conservation By-Law	Proponent seeks a waiver of the provisions of the Marshfield Water Conservation By-Law.	Partially granted as per conditions of approval.
Chapter 645	General Provisions of Marshfield Sanitary Sewage Disposal By-Law	The Proponent seeks a waiver from these requirements. The Project will comply with the Massachusetts Department of Environmental Protection guidelines.	Granted as the project will obtain Ground Water Discharge Permit from Mass DEP.

