

# **TOWN OF HAMILTON ZONING BOARD OF APPEALS MEETING**

**June 7, 2023 – WEDNESDAY - 7:00 P.M.**

**In person at 577 Bay Road in the 1<sup>st</sup> floor Memorial Room or via Zoom**

**Join Zoom Webinar:**

**<https://us02web.zoom.us/j/82722688157>**

**Webinar ID:** 827 2268 8157

**One tap mobile:** US: +13052241968, 88550685593# **Or Telephone:** US: +1 305 224 1968

Find your local number: <https://us02web.zoom.us/j/kbjXL8KhNw>

**PUBLIC HEARING:** For the property located at 39 Tally Ho Drive, Assessor's Map 56, Lot 44, Zoning District R1A, owner Patrick Norton. Applicant is seeking a Variance from the front yard setback, under Zoning Bylaw 4.0: Dimensional and Density Regulations, in order to construct a 316 +/- sq ft front porch.

**CONTINUED PUBLIC HEARING:** The Application is for a Special Permit under Zoning Bylaw 3.6 in order to have an Accessory Apartment in a lower level of the existing house. The property located at 21 Blueberry Lane, Assessor's Map 42, Lot 20, Zoning District R1B, the owner is Nathan Smith.

**CONTINUED PUBLIC HEARING:** Special Permit Application for the property owned by Paul Thober, located at 438 Asbury Street, Assessor's Map 37, lot 43. Applicant is seeking approval to construct an apartment - Zoning Bylaw 3.6: Accessory Apartment.

**CONTINUED BOARD DISCUSSION:** The Board will discuss and consider the Appeal as submitted by the applicants Harborlight Community Partners, 283 Elliot Street, Beverly MA, to the Dept. of Housing and Community Development Housing Appeals Committee, on April 10, 2023. The Appeal was directed upon the Decision as approved and signed by the Hamilton Zoning Board of Appeals which was filed with the Hamilton Town Clerk on March 21, 2023. The Comprehensive Permit Decision, pursuant to MGL Ch. 40B, was to construct a 45-unit, affordable housing complex to be located at 466 Highland Street, Assessor's Map 28-8, Lot 1, Zoning District RA.

**CONTINUED BOARD DISCUSSION:** Board Reorganization with Board Members to vote for Chair and Vice Chair

**REGULAR BUSINESS:** Meeting Minutes

**Items may be heard out of the listed order.** The agenda items listed are those items which were reasonably anticipated by the Chair to be discussed at the meeting. Not all items listed on the agenda may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Meeting dates, time, and location are subject to change as allowed by the Open Meeting Law. Please refer to the Town web page: [hamiltonma.gov](http://hamiltonma.gov) for details regarding a specific agenda. The Zoning Board of Appeals typically meets the first Wednesday of the month.

39 TALLY HO DRIVE

NOTICE OF PUBLIC HEARING

TOWN OF HAMILTON – ZONING BOARD OF APPEALS

The Town of Hamilton Zoning Board of Appeals will hold a Public Hearing on Wednesday, June 7, 2023, at 7:00 pm, at Town Hall, 577 Bay Road, Memorial Room, and via Zoom, for the property located at 39 Tally Ho Drive, Assessor's Map 56, Lot 44, Zoning District R1A, owner Patrick Norton. Applicant is seeking a Variance from the front yard setback, under Zoning Bylaw 4.0: Dimensional and Density Regulations, in order to construct a 316 +/- sq ft front porch. A copy of the application is available for review by contacting the Building Department.

William Bowler, Chair

Paid \$ 75  
check # 260  
Rec. 4-18-23

APPLICATION CHECK SHEET  
HAMILTON ZONING BOARD OF APPEALS

VARIANCE

8 copies of all Materials. Refer to Instruction Sheet.  
Section of the Zoning By-Law covering desired Board action(s)

**Variance Requested. Check all that apply.**

- ☐ Lot coverage
- ☐ Side yard setback
- ☒ Front yard setback
- ☐ Rear yard setback
- ☐ Frontage
- ☐ Parking
- ☐ Other. Specify. \_\_\_\_\_

**State hardship for which relief is sought:**

- ☐ Soil conditions
- ☒ Shape of the land
- ☐ Topography of the land

**Visual Materials Required - Scaled drawings showing at a minimum the following**

1. Site Plan: Include at a minimum:
  - ☐ Plan showing total parcel of land
  - ☐ Title block with Date
  - ☐ Scale
  - ☐ North Arrow
  - ☐ All property lot lines with dimensions
  - ☐ Area of parcel of land
  - ☐ All building locations with dimensions of structures and dimensions to lot lines
  - ☐ Location and use of all adjacent structures with dimensions to lot lines if applicant is seeking relief to construct within 20 feet of another building
  - ☐ Zoning District including Watershed Protection areas and Historic District areas. If property falls within more than one district, plan shall show all district lines.
  - ☐ Location of wetlands protected areas.
2. Exterior Elevations of the Building
3. Scaled floor plan of both new and existing structure



**TOWN OF HAMILTON  
ZONING BOARD OF APPEALS**

**APPLICATION FOR ZONING BOARD OF APPEALS HEARING**  
*To be completed by all Applicants*

Date Submitted: 28 APR 2023

Applicant Name: Patrick Norton Phone: 978-471-2042

Applicant Address: 39 Tally Ho Dr, South Hamilton MA 01982

Applicant respectfully petitions the Board of Appeal for the following:

That he/she is seeking (check all that apply):

- ☒ Variance: (State Type)
- ☐ Extension or Alteration of a Non-Conforming Use, Structure, or Lot
- ☐ Site Plan Review
- ☐ Abbreviated Site Plan Review
- ☐ Special Permit: (State Type)
- ☐ Appeal of Decision of the Building Inspector
- ☐ Conversion for Temporary Living Area
- ☐ Comprehensive Permit
- ☐ Other:

Address of Property if different from Applicant Address above: N/A

Owner of property if different from Applicant noted above: N/A

Note: If not the owner of the property, applicant must provide proof they are either the holder of a written option to purchase the property (or) verification they have authority to act on behalf of the owner of the property.

Zoning District: R1A

Existing Lot Size: 20,000 SF

State Briefly what structures are on the property:

Dwelling unit and garage.

State in detail what the petitioner desires to do at said subject property:

The proposed renovation includes a front porch, master suite above garage, and back sun room.

State whether any petition as to the said premises has been submitted to this Board within the last five years. If so, give details:

None.

State if any Building Permit has been granted to said premises within the past two years. If yes, give details:

None.

Signed: \_\_\_\_\_



Address: 39 Tally Ho Dr

South Hamilton MA 01982

Phone: 978-471-2042



**TOWN OF HAMILTON  
ZONING BOARD OF APPEALS**

**REQUEST FOR FINDINGS OF FACT  
VARIANCE**

Date Submitted: 18 APR 2023

Applicant Name: Patrick Norton

Property Located at: 39 Tally Ho Dr, South Hamilton MA 01982

That literal enforcement of the Zoning By-Law would impose a substantial hardship on the petitioner due to circumstances relating to the soil conditions, shape or topography of the land or structures especially affecting the subject property but not affecting generally the area in which it is located, for the following reasons:

The existing home is not square to the front lot line, causing the proposed porch in one corner to be +/- 2 ft within the 25 ft setback requirement of the front lot line.

That no substantial detriment to the public good would exist were the variance granted, for the following reasons:

Most of the front section of the proposed porch is within the front setback requirements. The front lot includes a sidewalk, and the proposed porch is well within the setback requirements of the street.

That no nullification or substantial derogation from the intent or purpose of the Zoning By-Law would exist were the variance granted, for the following reasons:

The existing dwelling is well within the setback requirements from not only the street, but also the front property line. The majority of the proposed porch is well within the front setback requirements.

Signed: \_\_\_\_\_

Address: 39 Tally Ho Dr

South Hamilton MA 01982

Phone: 978-471-2042

# ZONING

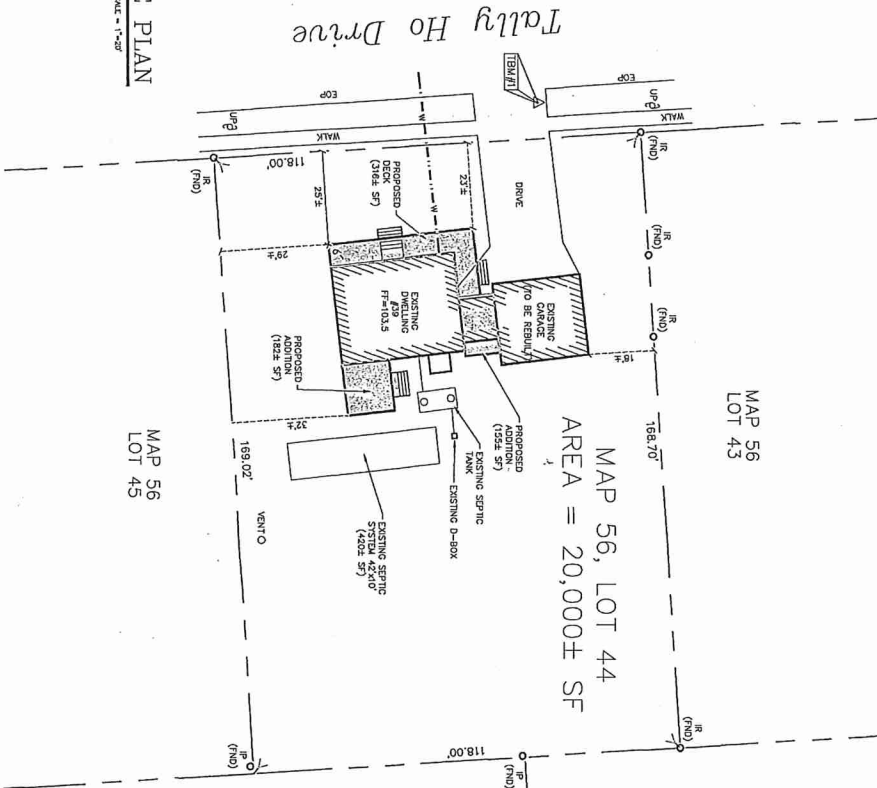
SITE IS LOCATED WITHIN THE R1A - RESIDENTIAL DISTRICT  
BUILDING SETBACKS:

LOT AREA: 20,000 SQ. FT.  
LOT FRONTAGE: 125 FT.  
MIN. LOT DEPTH AT BLD.: 125 FT.  
FRONT YARD: 25 FT.  
SIDE YARD: 15 FT.  
REAR YARD: 15 FT.  
MAX. BUILDING HEIGHT: 35 FT.  
MAX. ALLOWABLE LOT COVERAGE: 25%



## SITE PLAN

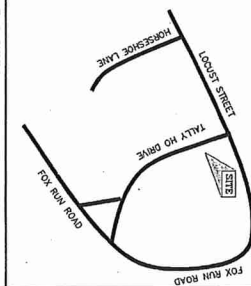
SITE SCALE = 1"=50'



## NOTES

- 1) PROPERTY LINE INFORMATION TAKEN FROM PLAT BOOK, 84, PLAT 71.
- 2) DEED REFERENCES: BOOK 3748, PAGE 108.
- 3) BUILDING SETBACKS: 25' FRONT, 15' SIDE, 15' REAR. MIN. LOT DEPTH AT BLD.: 125 FT.
- 4) LOCATION AND SIZE OF SHOWN UTILITIES IS APPROXIMATE ONLY. CONTRACTOR TO VERIFY LOCATION AND SIZE OF UTILITIES PRIOR TO CONSTRUCTION.
- 5) TO ANY EXCAVATION (1-888-344-7223).
- 6) TO ANY EXCAVATION (1-888-344-7223).
- 7) TO ANY EXCAVATION (1-888-344-7223).
- 8) TO ANY EXCAVATION (1-888-344-7223).
- 9) TO ANY EXCAVATION (1-888-344-7223).
- 10) TO ANY EXCAVATION (1-888-344-7223).
- 11) TO ANY EXCAVATION (1-888-344-7223).
- 12) TO ANY EXCAVATION (1-888-344-7223).
- 13) TO ANY EXCAVATION (1-888-344-7223).
- 14) TO ANY EXCAVATION (1-888-344-7223).
- 15) TO ANY EXCAVATION (1-888-344-7223).
- 16) TO ANY EXCAVATION (1-888-344-7223).
- 17) TO ANY EXCAVATION (1-888-344-7223).
- 18) TO ANY EXCAVATION (1-888-344-7223).
- 19) TO ANY EXCAVATION (1-888-344-7223).
- 20) TO ANY EXCAVATION (1-888-344-7223).

## LOCUS



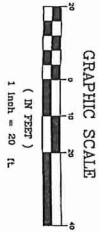
MARK W. BENSON, PLS  
PLS #40038  
3-8-23

THIS PLAN IS BASED ON THE REFERENCED PLANS, DEEDS AND THE RESULTS OF A FIELD SURVEY AS OF THIS DATE. NO CERTIFICATION IS INTENDED AS TO PROPERTY TITLE OR AS TO THE EXISTENCE OF UNWRITTEN OR UNRECORDED EASEMENTS.  
I HEREBY CERTIFY THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTRARS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

## Site Plan

39 Tally Ho Drive  
Hamilton, Massachusetts  
Property of Patrick Norton & Male Business  
39 Tally Ho Drive, Hamilton MA 01982  
Assessor's Map 56, Lot 44  
Date: March 3, 2023 Scale: 1" = 20'

EPS Associates, LLC  
Engineers - Planners - Surveyors  
8 Greenbrook Road - Hamilton, MA 01982  
Tel: (978) 488-2233



EPS/23-09

Sheet 1 of 1







Project No:	21033	
Drawn By:	AC	
Checked By:	JR	
Issue Date:	2 Feb 2022	
Revisions		
No.	Date	Description

Drawing Title:

EXISTING  
ELEVATIONS

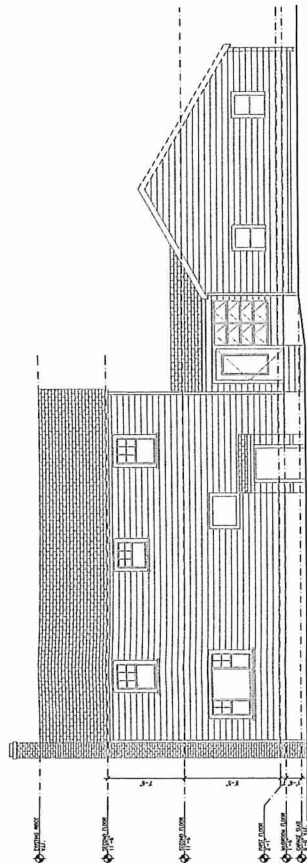
Drawing Number

A-1.02

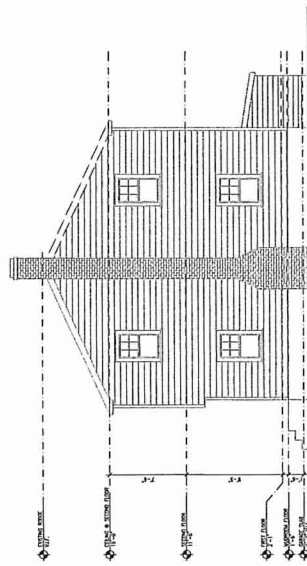
**GENERAL NOTES:**

[illegible]

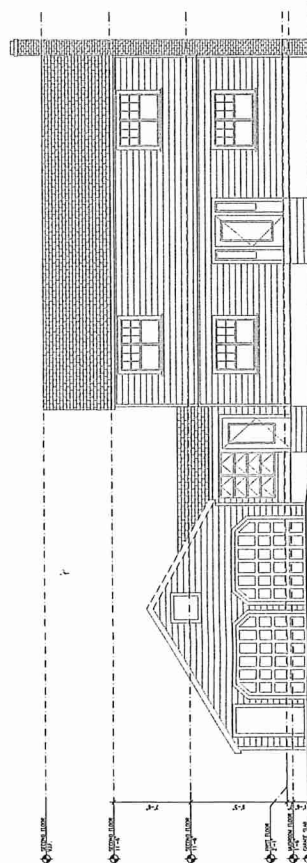
EXISTING EAST ELEVATION



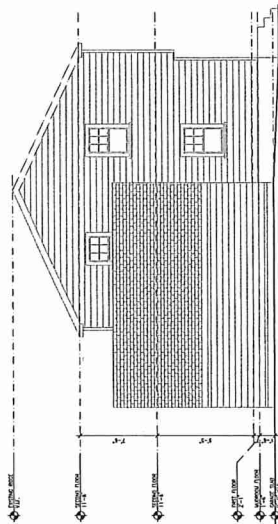
EXISTING SOUTH ELEVATION



EXISTING WEST ELEVATION



EXISTING NORTH ELEVATION



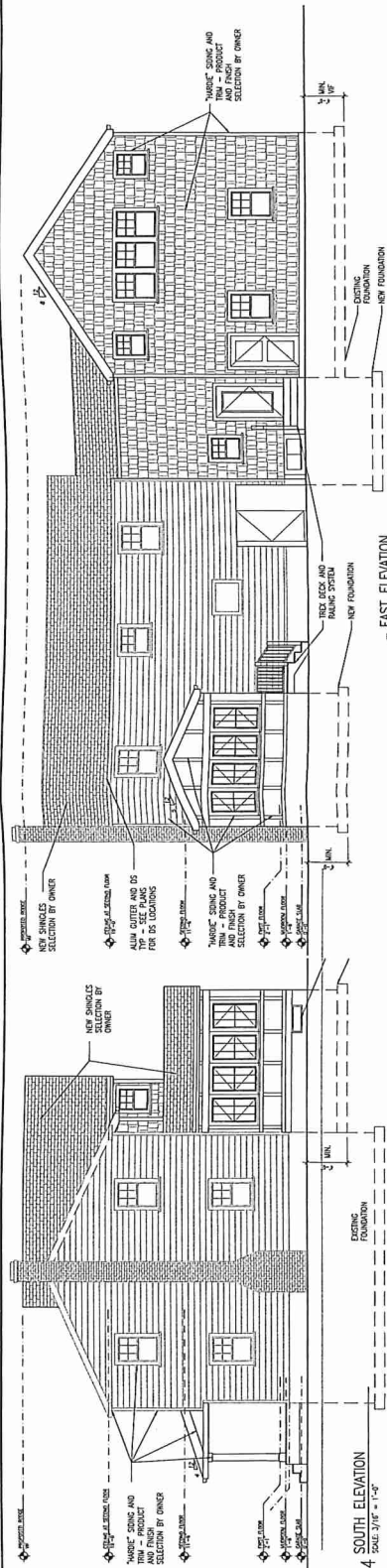
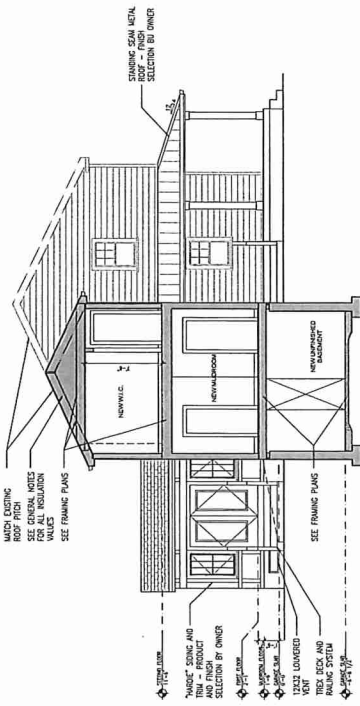
### Notice of Public Hearing -Town of Hamilton Zoning Board of Appeals

A Public Hearing will be held on Wednesday, April 5, 2023, at 577 Bay Road, Hamilton, MA, Town Hall, Memorial Room, and via Zoom, to commence at 7:00 p.m., for the Special Permit Application for the property owned by Paul Thober, located at 438 Asbury Street, Assessor's Map 37, lot 43. Applicant is seeking approval to construct an apartment - Zoning Bylaw 3.6: Accessory Apartment. A copy of the complete application is available for review in the Building Department during the regular hours of operation of the Town Hall.

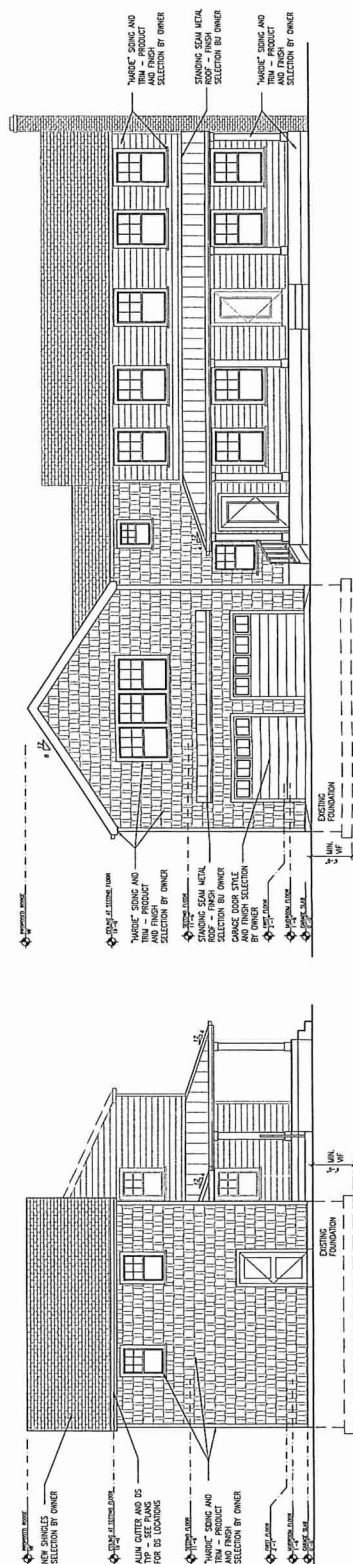
William Bowler, Chair



438 Asbury Street – Continued Public Hearing

[illegible]

3 SECTION / ELEVATION AT MUDROOM  
SCALE: 3/16" = 1'-0"



WEST ELEVATION  
SCALE: 3/16" = 1'-0"

2 NORTH ELEVATION

**TOWN OF HAMILTON  
ZONING BOARD OF APPEALS**

**APPLICATION FOR ZONING BOARD OF APPEALS HEARING**  
*To be completed by all Applicants*

Date Submitted:

Applicant Name: Paul Thober

Phone: 978-238-5200

Applicant Address: 438 Asbury Street, Hamilton, MA 01982

Applicant respectfully petitions the Board of Appeal for the following:

That he/she is seeking (check all that apply):

- ☐ Variance: (State Type)
- ☐ Extension or Alteration of a Non-Conforming Use, Structure, or Lot
- ☐ Site Plan Review
- ☐ Abbreviated Site Plan Review
- ☒ Special Permit: (State Type) Accessory Apartment
- ☐ Appeal of Decision of the Building Inspector
- ☐ Conversion for Temporary Living Area
- ☐ Comprehensive Permit
- ☐ Other:

Address of Property if different from Applicant Address above:

Owner of property if different from Applicant noted above:

**Note:** If not the owner of the property, applicant must provide proof they are either the holder of a written option to purchase the property (or) verification they have authority to act on behalf of the owner of the property.

Zoning District: R1A

Existing Lot Size:  $\pm 88,800$

State Briefly what structures are on the property:

Existing 1.5 Story Cottage

State in detail what the petitioner desires to do at said subject property:

Convert basement into accessory apartment to provide a rental unit to the housing stock for small households.

State whether any petition as to the said premises has been submitted to this Board within the last five years. If so, give details:

No

State if any Building Permit has been granted to said premises within the past two years. If yes, give details:

Yes, a Building Permit was granted for interior renovations.

Signed: \_\_\_\_\_

Address: 438 Asbury Street

Hamilton, MA 01982

Phone: 978-328-5200





Rec. 3.3.23  
paid \$ 75  
# 2617

APPLICATION CHECK SHEET  
HAMILTON ZONING BOARD OF APPEALS

SPECIAL PERMIT

8 copies of all Materials. Refer to Instruction Sheet.

Section of the Zoning By-Law covering desired Board action(s) 3.6

**Special Permit Requested. Check all that apply.**

District:	Type Use:
<input checked="" type="checkbox"/> Residential District	<input type="checkbox"/> Residential - Single Family w/
<input type="checkbox"/> Business District	<input type="checkbox"/> Proposed Accessory Apartment
<input type="checkbox"/> Conservancy District	<input type="checkbox"/> _____
<input type="checkbox"/> Elder Housing District	<input type="checkbox"/> _____
<input type="checkbox"/> Groundwater Protection Overlay	<input type="checkbox"/> _____
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> _____
<input type="checkbox"/> Other. Specify. _____	<input type="checkbox"/> _____

**Time Period Granted for Permit:**

- ☐ Temporary Additional Living Area: 4 years
- ☐ Adult Entertainment Uses: 1 year
- ☐ Special permit will lapse after 1 year if substantial use or construction has not commenced except for good cause.

**Visual Materials Required:**

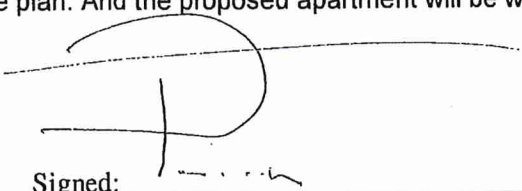
- ☒ Submit at a minimum materials required for Site Plan Review
- ☐ Refer to Specific Sections of the By-Law for additional information regarding each district

**Board Reviews Required other than ZBA:**

- ☐ Elder Housing District: Requires Planning Board approval
- ☐ Residential District – Golf, tennis, swimming, riding, polo, skiing, skating, all other athletic and recreational activities/special events – where charges or admission fees are required: Requires Board of Selectmen approval

State how and what adequate and appropriate facilities will be provided for the proposed use:

The proposal will add a parking to the rear of the home to provide direct access to the apartment, which can be seen in the site plan. And the proposed apartment will be within the guidelines specified in Section 3.6.4.



Signed: \_\_\_\_\_

Address: 438 Asbury Street

Hamilton, MA 01982

Phone: 978-328-5200





**TOWN OF HAMILTON  
ZONING BOARD OF APPEALS**

**REQUEST FOR FINDINGS OF FACT  
PERMIT OR SPECIAL PERMIT**

Date Submitted: \_\_\_\_\_

Applicant Name: Paul Thober

Applicant Address: 438 Asbury Street, Hamilton, MA 01982

State nature of and location for which Permit or Special Permit is sought:

Owner seeks to create a 1 bedroom accessory apartment in the basement of this home.

State how or why the proposed use would be in harmony with the general purpose and intent of the Zoning By-Law:

The proposed apartment will provide a rental unit to the housing stock of the area to meet the needs of small households, without expanding the footprint of the existing structure.

State how or why the specific site is an appropriate location for such use:

The site has an area of 88,000 SF exceeding the required minimum 10,000 SF lot size for an accessory apartment. The siting of the home will allow for a discrete entrance at the rear of the home on the basement level and parking for the apartment will be at the rear.

State whether the specific site has adequate public sewerage and water facilities or suitable soil for an on lot sewerage and water systems:

The Title 5 Inspection of the site notes that the lot has a three-bedroom septic system, which will be sufficient to accommodate both the two-bedroom residence and accessory one-bedroom apartment.

State how or why the use as developed will not adversely affect the neighborhood:

The use will remain residential. The proposal will not modify the exterior and the apartment entrance will be at the rear of the home, such that the appearance of the home will remain unchanged as a single family residence.

State why there will not be a nuisance or serious hazard to vehicles or pedestrians using the following streets for the purpose of this permit:

Streets: Asbury Street - The proposal will not change the road for neither pedestrians nor vehicles, offstreet parking will be provided off the access road on the Southern end of the lot.



Commonwealth of Massachusetts

# Title 5 Official Inspection Form

Subsurface Sewage Disposal System Form - Not for Voluntary Assessments

Owner  
information is  
required for every  
page.

438 ASBURY STREET

Property Address

DAVID AHERN

Owner's Name

HAMILTON

City/Town

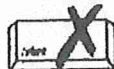
MA  
State

01982  
Zip Code

11/23/21  
Date of Inspection

Inspection results must be submitted on this form. Inspection forms may not be altered in any way. Please see completeness checklist at the end of the form.

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



## A. Inspector Information

JAMES H. CURRIER II

Name of Inspector

J'S SEPTIC & DRAIN

Company Name

131 FOREST STREET

Company Address

MIDDLETON

City/Town

978-774-6685

Telephone Number

MA  
State

01949  
Zip Code

S12327  
License Number

## B. Certification

I certify that: I am a DEP approved system inspector in full compliance with Section 15.340 of Title 5 (310 CMR 15.000); I have personally inspected the sewage disposal system at the property address listed above; the information reported below is true, accurate and complete as of the time of my inspection; and the inspection was performed based on my training and experience in the proper function and maintenance of on-site sewage disposal systems. After conducting this inspection I have determined that the system:

- ☒ Passes
- ☐ Conditionally Passes
- ☐ Needs Further Evaluation by the Local Approving Authority
- ☐ Fails

  
Inspector's Signature

11/23/21  
Date

The system inspector shall submit a copy of this inspection report to the Approving Authority (Board of Health or DEP) within 30 days of completing this inspection. If the system has a design flow of 10,000 gpd or greater, the inspector and the system owner shall submit the report to the appropriate regional office of the DEP. The original form should be sent to the system owner and copies sent to the buyer, if applicable, and the approving authority.

Please note: This report only describes conditions at the time of inspection and under the conditions of use at that time. This inspection does not address how the system will perform in the future under the same or different conditions of use.



Commonwealth of Massachusetts

# Title 5 Official Inspection Form

Subsurface Sewage Disposal System Form - Not for Voluntary Assessments

Owner  
Information is  
required for every  
page.

438 ASBURY STREET

Property Address

DAVID AHERN

Owner's Name

HAMILTON

City/Town

MA  
State

01982  
Zip Code

11/23/21  
Date of Inspection

## D. System Information

### 1. Residential Flow Conditions:

Number of bedrooms (design): 3 Number of bedrooms (actual): 3  
DESIGN flow based on 310 CMR 15.203 (for example: 110 gpd x # of bedrooms): 330 GPD  
Description:  
\_\_\_\_\_  
\_\_\_\_\_

Number of current residents: 0

Does residence have a garbage grinder?

☐ Yes ☒ No

Does residence have a water treatment unit?

☐ Yes ☒ No

If yes, discharges to: \_\_\_\_\_

Is laundry on a separate sewage system? (Include laundry system inspection information in this report.)

☐ Yes ☒ No

Laundry system inspected?

☐ Yes ☒ No

Seasonal use?

☐ Yes ☒ No

Water meter readings, if available (last 2 years usage (gpd)):

23.62 GPD

Detail:

NO WATER USED FOR 2021, SEE REPORT

Sump pump?

☐ Yes ☒ No

Last date of occupancy.

APPROX 1  
YEAR AGO



Return Document to:



SO.ESSEX #391 Bk:40921 Pg:467  
05/09/2022 03:24 PM DEED Pg 1/2  
eRecorded

MASSACHUSETTS EXCISE TAX  
Southern Essex District ROD  
Date: 05/09/2022 03:24 PM  
ID: 1527054 Doc# 20220509003910  
Fee: \$2,508.00 Cons: \$550,000.00

-----[Space Above This Line For Recording Data]-----

### QUITCLAIM DEED

We, Nancy P. Ahern and David Ahern, Trustees of the  
PHILIP C. MARCORELLE IRREVOCABLE TRUST 2020 u/d/t dated May 19, 2020  
as evidenced by Certificate of Trust pursuant to  
M.G.L. c. 184, § 35 recorded herewith ("*Grantor*")

for consideration paid, and in full consideration of  
FIVE HUNDRED FIFTY and 00/100 DOLLARS (\$550,000.00)

grant to

**Paul A. Thober and Kristen H. Thober**, husband and wife, as tenants by the entirety, of  
438 Asbury Street, Hamilton, Massachusetts

with ***QUITCLAIM COVENANTS***,

the land in Hamilton, Massachusetts, with the buildings and improvements thereon,  
situated at and known as 438 Asbury Street, Hamilton, Essex County, Massachusetts,  
being shown as Lot 1 on a plan entitled "Plan of Land for 434-438 Asbury Street, South  
Hamilton, Massachusetts prepared for Philip C. Marcocelle. Scale 1" = 40', dated  
February 27, 2014" prepared by The Morin-Cameron Group, Inc. and recorded in the  
Essex South District Registry of Deeds in Plan Book 443, Plan 27. Being a subdivision of  
the land recorded in Plan Book 83, Plan 10 and the land recorded in Plan Number 256 of  
1957.

Being a portion of the same property conveyed to Grantor from Philip C. Marcocelle by  
deed dated May 19, 2020 and recorded in said registry in Book 38539, Page 255.

Being a portion of the same property conveyed to Grantor from Philip C. Marcocelle by  
deed dated May 19, 2020 and recorded in said registry in Book 38538, Page 365.

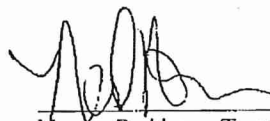
Locus: 438 Asbury Street, Hamilton, MA

The premises are conveyed together with the right to use the Un-Named Way as shown on the said plan recorded in Plan Book 443, Plan 27 for all purposes for which streets and ways are used in the Town of Hamilton, in common with others entitled thereto.

Said premises are conveyed subject to all rights and easements of record, if any there be.

The Grantor in the execution of this deed, hereby voluntarily releases all rights of Homestead as set forth in M.G.L. Chapter 188 and affirms under the pains and penalties of perjury that there are no other person or persons, beneficiary or entity entitled to any homestead rights, in the premises conveyed by this Deed, whether created by Declaration of Homestead or by operation of law.

EXECUTED as a sealed instrument this 5<sup>th</sup> day of May, 2022.

 5/5/2022

Nancy P. Ahern, Trustee

PHILIP C. MARCORELLE IRREVOCABLE TRUST 2020

 5-5-2022

David Ahern, Trustee

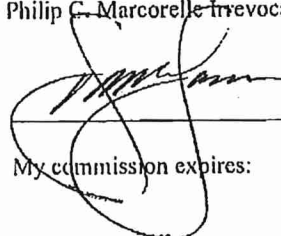
PHILIP C. MARCORELLE IRREVOCABLE TRUST 2020

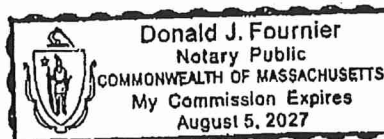
COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 5<sup>th</sup> day of May, 2022, before me, the undersigned notary public, Nancy P. Ahern and David Ahern, personally known to me or proved to me on the basis of satisfactory evidence, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as Trustees of the Philip C. Marcorelle Irrevocable Trust 2020, a trust.

[affix or imprint official seal]

  
My commission expires: \_\_\_\_\_, Notary Public



**ARCHITECTS LLC**  
100 State Street - 19th Fl. MA 02108 - 617-638-7790




**1**  
Site Plan  
 Scale 1/32" = 1' 0"

1  
Site Plan  
Scale 1/32" =

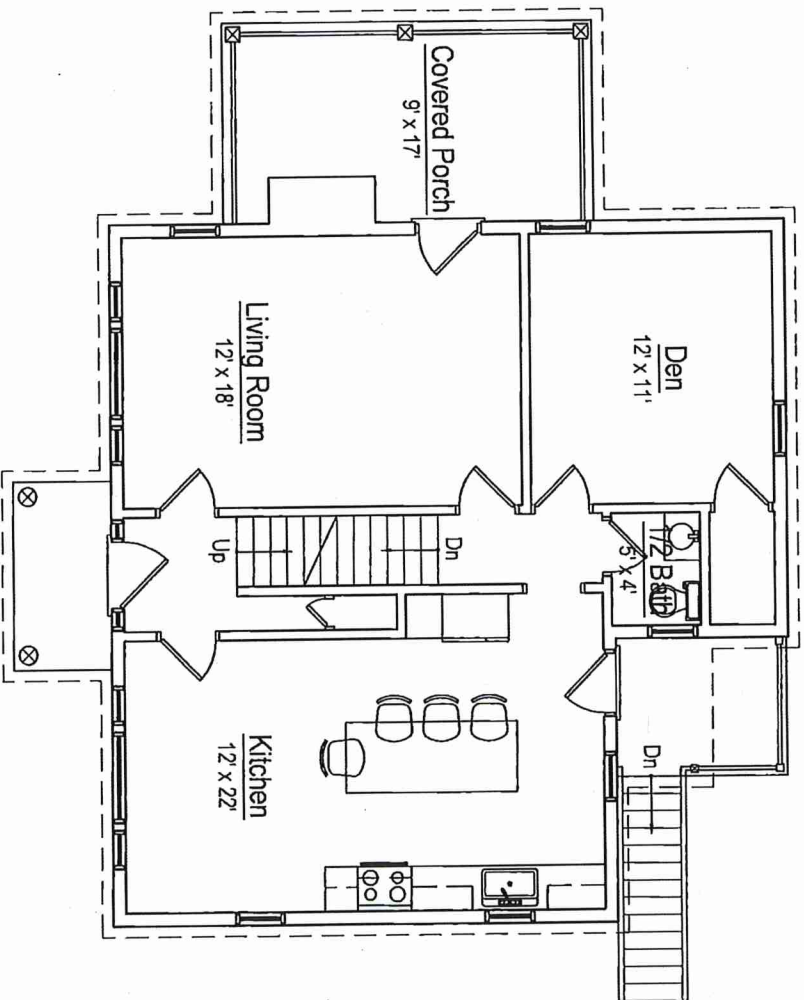
Scale  $1/32'' = 1'-0''$

**SONY Apartment**  
438 Asbury Street, Hamillon, VA

February 21, 2023

© 2021 by Savage Nolan Architects LLC





**3** Existing First Floor Plan  
Scale: 1/8" = 1'-0"



savoie nolan

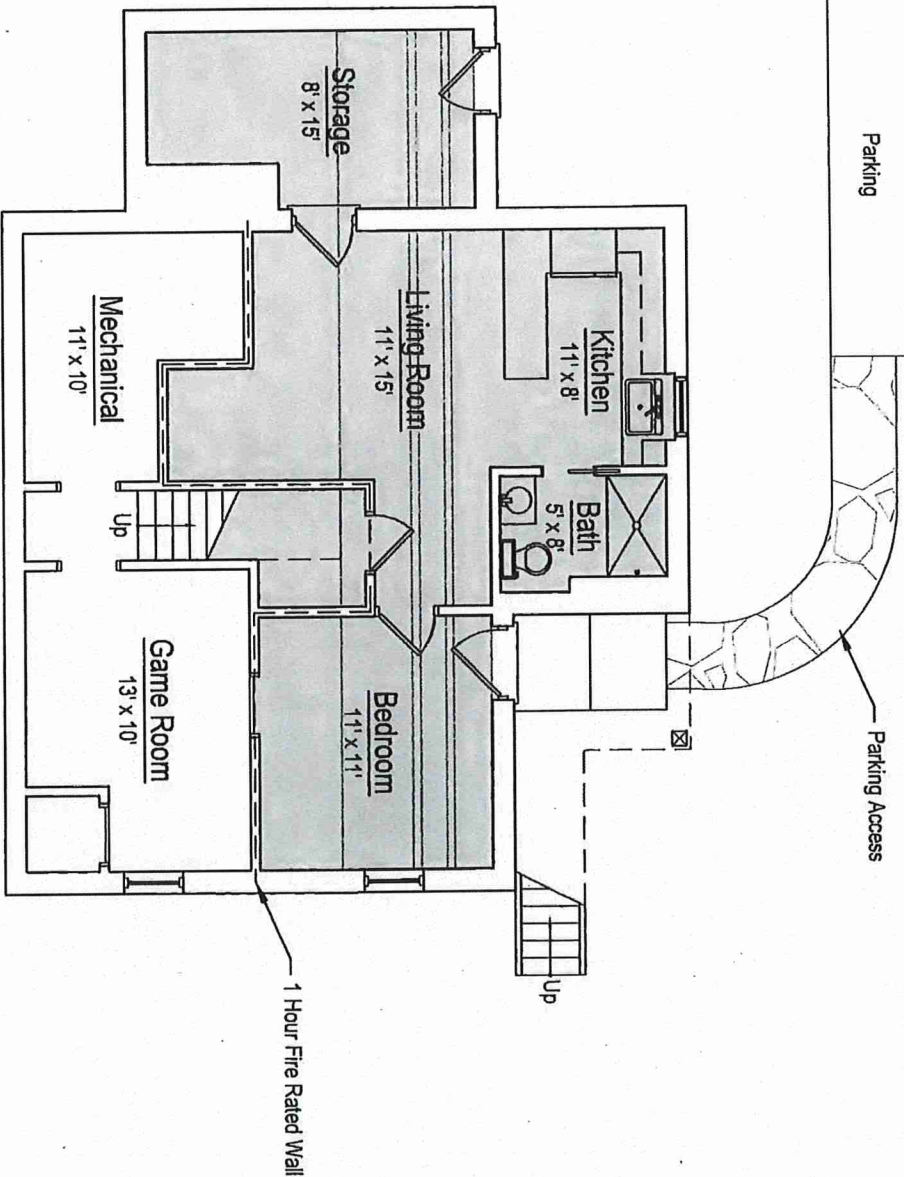
438 Asbury Street Residence & Proposed Accessory Apartment

ARCHITECTS LLC  
130 Liberty Street - Danvers, MA 01923 - 978-356-7786

438 Asbury Street, Hamilton, Ma  
February 21, 2023

© 2022 by Savoie Nolan Architects LLC

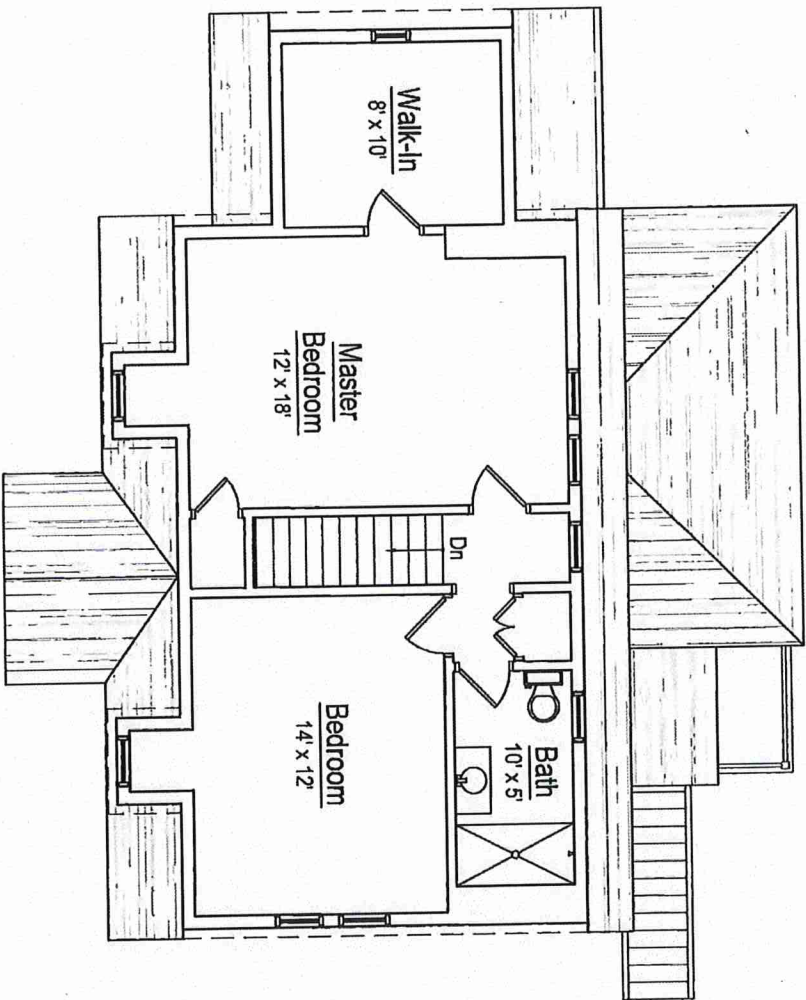
Accessory Apartment Area	
Maximum Area	900 S.F.
Proposed Area	723 S.F.



**2** Proposed Basement Plan  
Scale: 1/8" = 1'-0"

savoie nolan

438 Asbury Street Residence & Proposed Accessory Apartment



4 Existing Second Floor Plan  
Scale: 1/8" = 1'-0"

savoie nolan

438 Asbury Street Residence & Proposed Accessory Apartment

ARCHITECTS LLC  
130 Liberty Street - Danvers, MA 01923 - 978-356-7786

438 Asbury Street, Hamilton, Ma  
February 21, 2023  
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## 21 Blueberry Lane – Public Hearing

NOTICE OF PUBLIC HEARING

TOWN OF HAMILTON – ZONING BOARD OF APPEALS

The Town of Hamilton Zoning Board of Appeals will hold a Public Hearing on Wednesday, May 3, 2023, at 7:00 pm, at Town Hall, 577 Bay Road, Memorial Room, and via Zoom, for the property located at 21 Blueberry Lane, Assessor's Map 42, Lot 20, owner Nathan Smith. The Application is for a Special Permit under Zoning Bylaw 3.6 in order to have an Accessory Apartment in a lower level of the existing house. A copy of the application is available for review by contacting the Building Department. Zoom details will be available when agenda is posted.

William Bowler, Chair

APPLICATION CHECK SHEET  
HAMILTON ZONING BOARD OF APPEALS

SPECIAL PERMIT

8 copies of all Materials. Refer to Instruction Sheet.

Section of the Zoning By-Law covering desired Board action(s) 3.6

Special Permit Requested. Check all that apply.

District:	Type Use:
<input checked="" type="checkbox"/> Residential District	<input type="checkbox"/> _____
<input type="checkbox"/> Business District	<input type="checkbox"/> _____
<input type="checkbox"/> Conservancy District	<input type="checkbox"/> _____
<input type="checkbox"/> Elder Housing District	<input type="checkbox"/> _____
<input type="checkbox"/> Groundwater Protection Overlay	<input type="checkbox"/> _____
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> _____
<input type="checkbox"/> Other. Specify. _____	<input type="checkbox"/> _____

Time Period Granted for Permit:

- N/A
- ☐ Temporary Additional Living Area: 4 years.
  - ☒ Adult Entertainment Uses: 1 year
  - ☐ Special permit will lapse after 1 year if substantial use or construction has not commenced except for good cause.

Visual Materials Required:

- ☐ Submit at a minimum materials required for Site Plan Review
- ☐ Refer to Specific Sections of the By-Law for additional information regarding each district

Board Reviews Required other than ZBA:

- N/A
- ☐ Elder Housing District: Requires Planning Board approval
  - ☒ Residential District – Golf, tennis, swimming, riding, polo, skiing, skating, all other athletic and recreational activities/special events – where charges or admission fees are required: Requires Board of Selectmen approval



Rec. 3-23-23  
paid \$75

**TOWN OF HAMILTON  
ZONING BOARD OF APPEALS**

**APPLICATION FOR ZONING BOARD OF APPEALS HEARING**  
*To be completed by all Applicants*

Date Submitted:

Applicant Name: **Nathan Smith** Phone: **857-300-0588**

Applicant Address: **21 Blueberry Lane Hamilton, MA 01982**

Applicant respectfully petitions the Board of Appeal for the following:

That he/she is seeking (check all that apply):

- ☒ **Variance: (State Type)**  
☒ **Extension or Alteration of a Non-Conforming Use, Structure, or Lot**  
☒ **Site Plan Review**  
☒ **Abbreviated Site Plan Review**  
☒ **Special Permit: (State Type)**  
☒ **Appeal of Decision of the Building Inspector**  
☒ **Conversion for Temporary Living Area**  
☒ **Comprehensive Permit**  
☐ **Other:**

**SPECIAL PERMIT  
ACCESSORY APARTMENT - SECTION 3.6**

Address of Property if different from Applicant Address above:

Owner of property if different from Applicant noted above:

Note: If not the owner of the property, applicant must provide proof they are either the holder of a written option to purchase the property (or) verification they have authority to act on behalf of the owner of the property.

Zoning District:

**R-1B**

Existing Lot Size:

**40,205 sq. ft.**

State Briefly what structures are on the property:

**The only structure on the property is the main dwelling.**

State in detail what the petitioner desires to do at said subject property:

**ACCESSORY**  
**We plan to convert our basement space into a legal in-law apartment. The space already has a bedroom, living room, and bathroom. We only plan to add a kitchen to complete the space into it's own apartment.**

**800 sq ft**

State whether any petition as to the said premises has been submitted to this Board within the last five years. If so, give details:

**We are new owners of the property as of 8/30/2022 so we do not have any knowledge of any petitions that have been submitted in the last 5 years.**

State if any Building Permit has been granted to said premises within the past two years. If yes, give details:

**We are new owners of the property as of 8/30/2022 so we do not have any knowledge of any permits that have been granted in the past 2 years.**

Signed: 

Address: **21 Blueberry Lane**

**Hamilton, MA 01982**

Phone: **857-300-0588**

**email natesmith @  
gmail.com**



**TOWN OF HAMILTON  
ZONING BOARD OF APPEALS**

**REQUEST FOR FINDINGS OF FACT  
PERMIT OR SPECIAL PERMIT**

Date Submitted: 3/12/2023

Applicant Name: Nathan Smith

Applicant Address: 21 Blueberry Lane Hamilton, MA 01982

State nature of and location for which Permit or Special Permit is sought:

The special permit would be used to put in a kitchen in our basement. The basement already has a bedroom, living room, bathroom, and separate entrance. The only work that would be completed would be installing a kitchen that includes a sink, stove, and cabinets.

State how or why the proposed use would be in harmony with the general purpose and intent of the Zoning By-Law:

Our plans work in harmony with the zoning by law and will follow all the guidelines. The proposed basement in-law apartment will have its own entrance and parking spot in the driveway. All the work that will be completed will be within the interior of the dwelling and no exterior work will be done.

State how or why the specific site is an appropriate location for such use:

The site is an appropriate location for an in-law apartment because the home has excess space that would otherwise be unused. By creating a space for our family to use, we are using the space as efficiently as possible.

State whether the specific site has adequate public sewerage and water facilities or suitable soil for an on lot sewerage and water systems:

The property has a 5 bedroom septic tank. Currently 2 of the 5 existing bedrooms are not used as bedrooms so the septic is not being used at capacity. The basement has its own bathroom that uses its own sump pump.

State how or why the use as developed will not adversely affect the neighborhood:

There are no alterations being completed to the exterior so there is no affect to our neighbors. We also live in a neighborhood that houses many multi-generation families so adding a legal in-law is in line with the culture that already existshere.

State why there will not be a nuisance or serious hazard to vehicles or pedestrians using the following streets for the purpose of this permit:

Streets: 21 Blueberry Lane Hamilton, MA 01982

The property has a driveway that can accomadate 10 cars including a 3 car garage. Since there is an abundance of space for cars, we will not need to use the street for parking thus there will be no nuisance or hazards to other vehicles or pedestrians.

State how and what adequate and appropriate facilities will be provided for the proposed use:

The basement space is an adequate size to be converted into a legal in-law apartment. The basement already has a bedroom, closet, bathroom, living room, and empty space that will be converted into a kitchen. The apartment already has its own entrance and parking space. The only work that needs to be completed is the addition of the kitchen which is simplified by the existence of the bathroom and sump pump.

Signed: \_\_\_\_\_



Address: 21 Blueberry Lane

Hamilton, MA 01982

Phone: 857-300-0588



# American Land Survey Assoc., Inc.

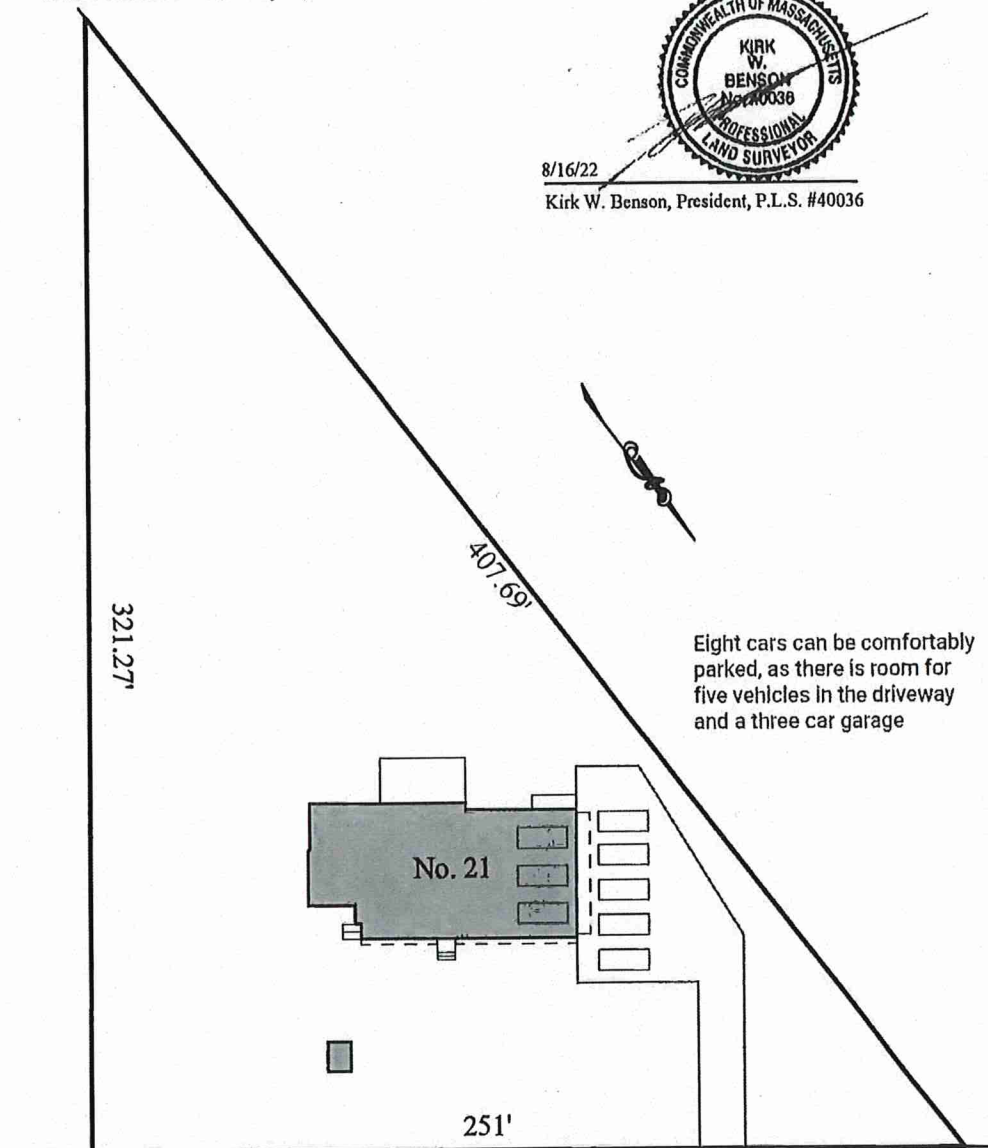
42 CHERRY STREET GLOUCESTER, MA 01930 benson62@comcast.net 978-281-7878

I, Kirk W. Benson, a Registered Land Surveyor, do hereby certify that the above Mortgage Inpsection Plot Plan was prepared for CROSS COUNTRY MORTGAGE, LLC ISAOA/ATIMA in connection with a new mortgage and is not intended or represented to be a land or property line survey. No corners were set. It can not be used for establishing fence, hedge or building lines. No responsibility is extended herein to the land owner or occupant. This plan shall not be accepted for recording. The location of the structures as shown hereon is in compliance with the local applicable zoning by laws in effect when constructed, with respect to horizontal dimensional requirements or Capter 481 of 1987, except as noted hereon (\*). This plan has been prepared for conveyancing purposes only for the above party and is not to be used for boundary measurements. Subject property is located in X zones on a Federal Insurance Administration Designated Flood Hazard Area, 250084 Panel 289 G dated July 16, 2014



8/16/22

Kirk W. Benson, President, P.L.S. #40036



**BLUEBERRY LANE**

**CERTIFIED PLOT PLAN**

Located In  
**HAMILTON, MA**

Prepared By

American Land Survey Associates, Inc.

Kirk W. Benson, President, PLS

42 Cherry Street Gloucester, MA 01930

978-281-7878

SCALE 1" = 40' AUGUST 16, 2022

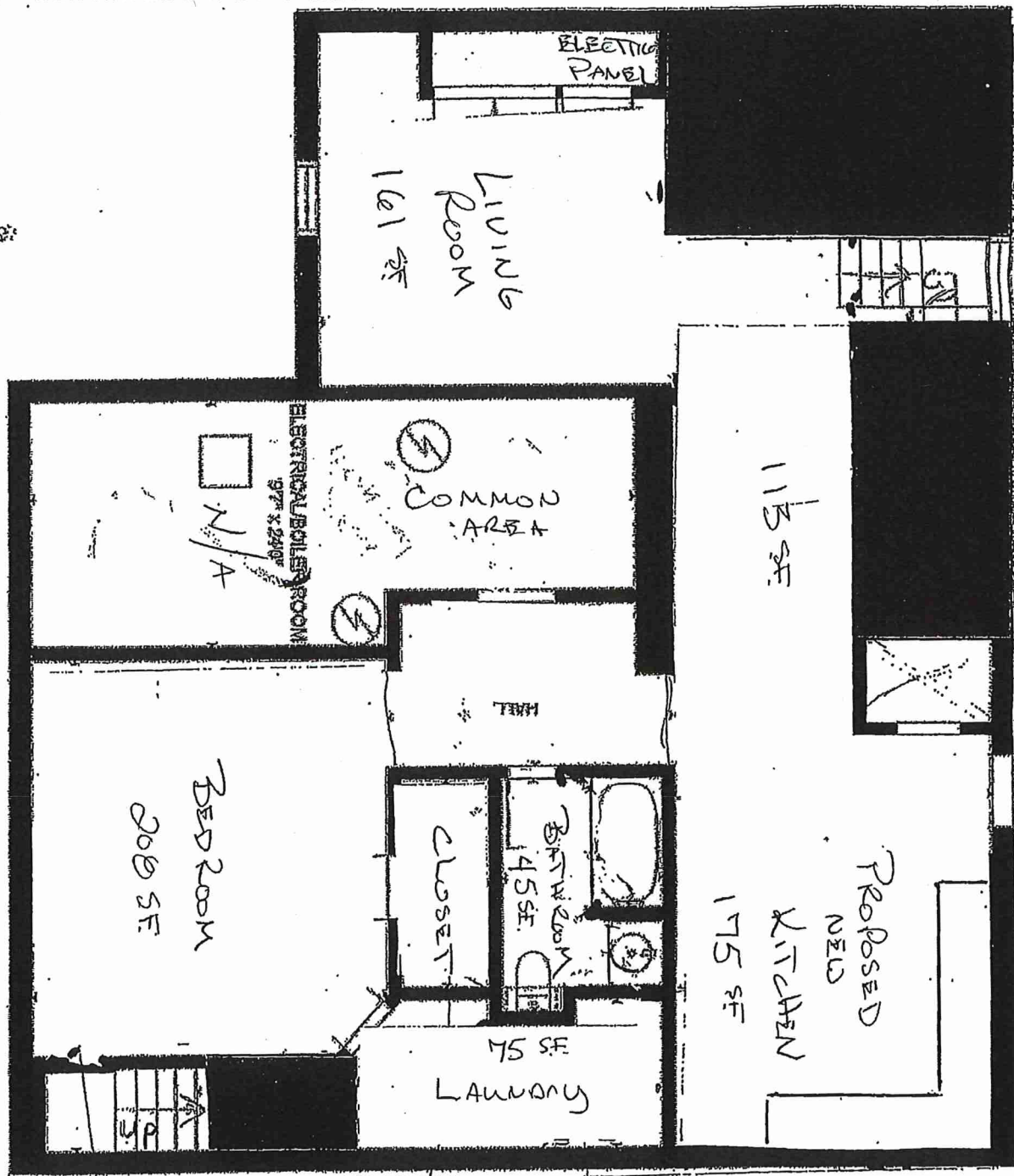
NOTES: EDITED COPY - DRIVEWAY ADDED BY THE HOME OWNER

ADDRESS : 21 BLUEBERRY LANE  
HAMILTON, MA

DEED REFERENCE: BOOK 36594 PAGE 339

J-3008





21 BLUE BERRY LAUR - LOWER LEVEL

AREA = 800 SF

ME  
(P)

### QUITCLAIM DEED

I, Sherie Dale Parr, as Trustee of the DALE REALTY TRUST, under a Declaration of Trust dated June 6, 1995 and subsequently amended on February 14, 2018, and recorded with the Essex South Registry of Deeds in Book 13183, Page 19 and Book 36594, Page 335 respectively, for the consideration paid in the amount of One Million Dollars and 00/100 (\$1,000,000.00), grant to Nathan Smith and Sophia Smith as husband and wife tenants by the entirety of 21 Blueberry Lane, South Hamilton, Massachusetts,

with QUITCLAIM COVENANTS,

the land with the buildings and improvements thereon, situated in said Hamilton on Blueberry Lane, being shown as lot #9 on a plan recorded in Essex South District Registry of Deeds, Plan Book 97, Plan 11, bounded and described as follows:

NORTHEASTERLY by said Blueberry Lane, Two hundred fifty-one (251) feet;  
SOUTHEASTERLY by lot #11, on said plan, Three hundred twenty-one and 27/100 (321.27) feet;  
WESTERLY by lot #5, 4, and 3A on said plan, Four hundred seven and 69/100 (407.69) feet.

MASSACHUSETTS EXCISE TAX  
Southern Essex District ROD  
Date: 08/30/2022 12:31 PM  
ID: 1544361 Doc# 20220830002170  
Fee: \$4,560.00  
Cons: \$1,000,000.00

Together with the right to pass and repass over said Blueberry Lane.

Grantor hereby releases any and all rights of homestead and certifies under the pains and penalties of perjury that no spouse or other persons are entitled to claim the benefit of an existing estate of homestead in the premises.

For title see deed dated February 14, 2018, and recorded with said Essex South Registry of Deeds in Book 36594, Page 339.

WITNESS my hand and seal this 25<sup>th</sup> day of August, 2022.

Sherie Dale Parr, Trustee  
Sherie Dale Parr, Trustee

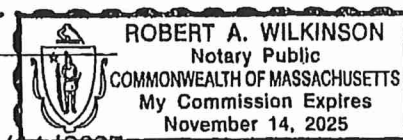
Commonwealth of Massachusetts

Middlesex, ss

August 25, 2022

On this 25<sup>th</sup> day of August, 2022, before me, the undersigned notary public, personally appeared Sherie Dale Parr, as Trustee as aforesaid, proved to me through satisfactory evidence of identification, being a MA Driver License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Trustee of the Dale Realty Trust.

Robert A. Wilkinson  
Robert A. Wilkinson  
Notary Public  
My commission expires: 11/14/2025



466 Highland Street – Comprehensive Permit

# INITIAL PLEADING COVER SHEET

# HOUSING APPEALS COMMITTEE

(PER 760 CMR 56.00)

Developer/Applicant (Name/Address): Harborlight Community Partners 283 Elliot Street Beverly, MA 01915	Chairman/Zoning Board (Name/Address): William Bowler, Chair Hamilton Zoning Board of Appeals 577 Bay Road Hamilton, MA 01936
Developer/Applicant's Attorney (Name/Address/Phone/Fax/Email): Benjamin B. Tymann, Esq. Tymann, Davis & Duffy LLP One Boston Place, Suite 2600 Boston, MA 02108 btymann@tddlegal.com (617) 933-9490	Zoning Board's Attorney (Name/Address/Phone/Fax/Email): George Pucci, Esq. KP Law, P.C. 101 Arch Street Boston, MA 02110 GPucci@k-plaw.com 617.654.1718

Project Name: Asbury Commons

Address: 466 Highland Street, Hamilton, MA 01982  
Assessor's Map 20, Lot 11

Type of Development: Rental ☒ Ownership ☐ Mixed ☐

Funding Agency/Program: Department of Housing and Community Development

Site Approval/Project Eligibility: Yes ☒ No ☐ Date: December 1, 2021

Total No. Units Appealed to H.A.C.: 45 No. Affordable (subsidized) Units: 45

ZBA Decision: Denial ☐ Grant ☐ Grant With Conditions ☒ Constructive Grant ☐  
 Constructive Denial ☐ Other ☐

Date ZBA Decision Filed With Municipal Clerk: March 21, 2023

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Benjamin B. Tymann*

April 10, 2023

Developer's Attorney's Signature and Date

## FOR DOCKET CLERK USE ONLY

Standard Fee Amount: \$ \_\_\_\_\_

Full Standard Fee enclosed with Initial Pleading? ☐ Yes ☐ No

Motion on Fee enclosed with Initial Pleading? ☐ Yes ☐ No

Minimum Fee of \$1,500 enclosed with Initial Pleading? ☐ Yes ☐ No

Docket #: \_\_\_\_\_

Case #: \_\_\_\_\_

Motion on Fee: ☐ Granted ☐ Denied

on (date) \_\_\_\_\_

Additional Fee beyond \$1,500 Minimum Fee paid as per Ruling on Motion on Fee:

amount: \$ \_\_\_\_\_

on (date): \_\_\_\_\_

HAC Appeal Date: \_\_\_\_\_



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT  
HOUSING APPEALS COMMITTEE

HARBORLIGHT COMMUNITY  
PARTNERS, INC.

Applicant/Petitioner,

v.

TOWN OF HAMILTON  
ZONING BOARD OF APPEALS,

Respondents.

No. 2023-\_\_\_\_\_

**INITIAL PLEADING OF HARBORLIGHT COMMUNITY PARTNERS**

Pursuant to M.G. L. c. 40B § 22 and 760 CMR § 56.06, applicant/petitioner Harborlight Community Partners, Inc. ("Harborlight") appeals from the decision (the "Decision") of the Town of Hamilton Zoning Board of Appeals (the "Board") dated March 13, 2023, and filed with the Hamilton Town Clerk on March 21, 2023, in which the Board approved with conditions a comprehensive permit (the "Comprehensive Permit") for a 45-unit multifamily rental housing development (the "Project").

The Board approved the Project subject to 54 conditions, including several conditions with multiple sub-conditions (the "Conditions"). Harborlight submits that certain of the Conditions, if strictly enforced, would render the Project uneconomic and that certain of the Conditions require clarification in order to make them reasonable, legally tenable, and/or enforceable. Accordingly, the Conditions identified below are not consistent with local needs and should be stricken from the Decision or modified. In further support of this appeal, Harborlight states as follows:

## **PARTIES**

1. Harborlight is a non-profit organization organized under the laws of the Commonwealth of Massachusetts. Harborlight maintains a place of business at 283 Elliot Street, Beverly, Massachusetts.

2. William Bowler, David Perinchief, and Bruce Gingrich were, at all relevant times, the presiding members of the Board designated to hear and act on Harborlight's Comprehensive Permit application. The Board has an address of 577 Bay Road, Hamilton, MA.

## **STATEMENT OF PRIOR PROCEEDINGS**

3. By application to the Board dated March 9, 2022 (the "Application") Harborlight sought a Comprehensive Permit pursuant to M.G.L. c. 40B, § 20-23 ("Chapter 40B") in connection with the Project entailing the construction and development of 45 units of multifamily affordable housing and related amenities on approximately 23 acres of land located at 466 Highland Street/421 Asbury Street, in Hamilton, Massachusetts, at Assessor's Map 20, Lot 11 (the "Property"). The Property is currently undeveloped and used for agricultural purposes. The Project proposes a 68-space parking lot with landscaping. All units will be affordable, reserved for households with incomes of less than 60% of the area median income.

4. Following due notice under the Open Meeting Law, M.G.L. c. 39 §§ 23A-23B, and M. G.L. c. 40A, § 11, the public hearing regarding the Application was opened on April 6, 2022, and conducted further public hearing sessions on May 4, 2022, June 1, 2022, July 6, 2022, August 3, 2022, September 7, 2022, October 5, 2022, November 2, 2022, and January 4, 2023. The Board closed the public hearing on January 4, 2023. It held a public deliberative session on March 1, 2023.

5. The Board voted 3-0 at its deliberative session on March 1, 2023 to grant a Comprehensive Permit in accordance with the terms and conditions later memorialized in its Decision.

6. The Decision to approve the Application subject to the Conditions was submitted to the Hamilton Town Clerk's Office on March 21, 2023. A certified copy of the Decision is attached hereto as *Exhibit A*.

### **JURISDICTION AND STANDING**

7. Harborlight satisfies the jurisdictional requirements for this appeal as set forth in 760 CMR 56.05(9)(b) in that it contends it has been granted a Comprehensive Permit by the Board containing Conditions and requirements that, if strictly enforced, would render the Project uneconomic, and/or that are otherwise unacceptable, unreasonable, or legally untenable.

8. Harborlight also satisfies applicable jurisdictional requirements in that it has obtained a Project Eligibility Letter ("PEL") from the Department of Housing and Community Development ("DHCD") which provides *prima facie* evidence that it has satisfied the requirements of 760 CMR 56.04(1). Moreover, each constituent jurisdictional element is met: (1) Harborlight is a nonprofit organization; (2) the Project is fundable by a subsidizing agency under a low- or moderate-income housing subsidy program; and (3) Harborlight controls the Property site.

9. The Town of Hamilton has not met any of the statutory minima or other criteria set forth in G. L. c. 40B, §20 or 760 CMR 56.03 for low and moderate income housing, including the statutory minima of 10% affordable housing. As of December 1, 2020, Hamilton had an affordable housing percentage of 3.1% as determined by the Subsidized Housing Inventory maintained by DHCD.

## OBJECTIONS TO THE DECISION

10. Harborlight challenged certain of the Conditions as follows:

i. Harborlight objects to Condition A.2 insofar as it will render the Project uneconomic. While Harborlight intends to comply with the subsidy program's requirement for affordability at 60% of area median income ("AMI"), the Comprehensive Permit should only set a minimum AMI requirement of 80%.

ii. Harborlight objects to Condition A.7 because the condition is inconsistent with law in that it purports to require affirmative marketing of local preference, which marketing is inconsistent with applicable federal and state law. Moreover, the condition addresses a subject matter which is within the authority of the subsidizing agency. Harborlight seeks modification of the condition to state that Harborlight will pursue local preference in occupancy through the subsidizing agency, DHCD.

iii. Harborlight objects to Condition B.6 insofar as prohibiting a for-profit successor owner will render the project uneconomic. Further, Condition B.6 is inconsistent with law, in that it addresses a subject matter that is within the authority of the subsidizing agency.

iv. Harborlight objects to Condition B.13 insofar as prohibiting a Town of Hamilton municipal entity from potentially placing antennas or other telecommunications equipment on buildings in the Project will render it uneconomic.

v. Harborlight objects to Condition B.18 and B.19 as unreasonable and rendering the Project uneconomic to the extent that the conditions' erosion and sedimentation control requirements conflict with the requirements of the Project's Stormwater Pollution and Prevention Plan ("SWPPP"). Harborlight intends to follow the applicable NPDES requirements in the SWPPP.



vi. Harborlight objects to condition B.29's unconditional prohibition against blasting as unreasonable and potentially rendering the Project uneconomic. While Harborlight anticipates no blasting will be required, should further engineering analysis during site development determine otherwise, this condition would pose a serious obstacle to the construction of the Project. Harborlight seeks clarifying language in this condition that would allow blasting subject to all local and state laws and regulations governing noise, vibration, and other abutter and worker protection standards.

vii. Harborlight objects to condition C.1.c as unreasonable and rendering the Project uneconomic to the extent that no building permit can issue until the Regulatory Agreement is signed and recorded. The Regulatory Agreement will be signed at the closing on the Property, and a building permit is required to close. Harborlight requests clarifying language that allows the building permit to issue subject to the subsequent execution and recording of the Regulatory Agreement.

viii. Harborlight objects to Condition D.2 because requiring the Applicant to complete all landscaping prior to the issuance of the Certificate of Occupancy will render the project uneconomic, and is unreasonable as a condition.

ix. Harborlight objects to Condition D.4 because it renders the Project uneconomic, absent clarification that the Town will accept a General Contractor Bond or a covenant pursuant to G.L. c. 41 §§ 81U to satisfy the requirements of this condition, and that the Town will not require Harborlight to post a cash bond so long as the afore-mentioned types of security are satisfied.

x. Harborlight objects to Condition D.6.b because requiring an as-built plan prior to any Certificate of Occupancy issuing will render the project uneconomic, and is unreasonable as a condition.

xi. Harborlight objects to Condition E.2 because requiring trash pick-up to be limited to just once per week, rather than more frequently as needed (e.g., when residents move in or out), renders the Project uneconomic, and is unreasonable as a condition.

xii. Harborlight objects to Condition E.3 insofar as requiring Harborlight to pay the amount specified without clarifying that the condition is contingent on the full sidewalk project budget being available in advance, and on the Town and Canterbrook Village also agreeing to fund their respective portions, is unreasonable as a condition and renders the Project uneconomic.

#### **RELIEF SOUGHT**

11. Pursuant to 760 CMR 56.07(5)(a)(1), Harborlight hereby requests that the Committee find that:

a. The identified Conditions of the Decision render the Project uneconomic; are not consistent with local needs; are unacceptable, unreasonable, or legally untenable; have not been applied as equally as possible to the Project as compared with market-rate housing; and/or are disproportionate to the actual impacts of the Project; and

b. That those Conditions which render the Project uneconomic and are not consistent with local needs and that those Conditions which are unacceptable, unreasonable, legally untenable, have not been applied as equally as possible to the Project as compared with unsubsidized housing, or are disproportionate to the actual impacts of the Project must be stricken from the Decision, or modified as detailed herein.

**NAME AND ADDRESS OF APPLICANT/PETITIONER**

12. The name and address of Applicant/Appellant is as follows:

Harborlight Community Partners, Inc.  
283 Eliot Street  
Beverly, MA 01915

**NAME AND ADDRESS OF APPLICANT/PETITIONER'S COUNSEL**

13. The Applicant's attorneys, upon whom service of any papers in connection with this appeal may be made, is as follows:

Benjamin B. Tymann, Esq.  
Tymann, Davis & Duffy LLP  
One Boston Place, Suite 2600  
Boston, MA 02108  
(617) 933-9490

**APPLICATION AND DECISION OF THE BOARD**

14. A copy of the Application is being provided to the Committee with this initial pleading and a certified copy of the Decision is attached hereto as *Exhibit A*.

Respectfully submitted,

**HARBORLIGHT COMMUNITY PARTNERS, INC.**

By its attorney,

*Benjamin B. Tymann*

Benjamin B. Tymann, (BBO# 652011)  
btymann@tddlegal.com  
Tymann, Davis & Duffy LLP  
One Boston Place, Suite 2600  
Boston, MA 02108  
Tel. 617.933.9490

Dated: April 10, 2023

## **EXHIBIT A**

RECEIVED  
TOWN CLERK  
HAMILTON, MA

2023 MAR 21 PM 1:37

**TOWN OF HAMILTON  
Zoning Board of Appeals  
577 Bay Road  
Hamilton, MA 01936**

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

**APPLICANT:** Harborlight Community Partners  
283 Eliot Street  
Beverly, MA 01915

**SUBJECT PROPERTY:** 466 Highland Street, Hamilton, MA 01982  
Assessor's Map 20, Lot 11

---

**I. PROCEDURAL HISTORY**

1. The Applicant, Harborlight Community Partners ("Applicant"), filed an application for a Comprehensive Permit on or about March 8, 2022 with the Zoning Board of Appeals ("Board"). The Application proposes construction of a 45-unit multi-family residential building with accompanying infrastructure, a 68-space parking lot, and associated landscaping ("Project").

2. The Project is located at 466 Highland Street, which is a 104-acre parcel located in the R-1B zoning district. The Applicant has an option to purchase 4.89 acres of the 104-acre parcel with the owner of the parcel, Britton Family, LLC, which has consented to the filing of the Applicant's Chapter 40B application. The Applicant proposes that the 4.89 acres be subdivided from the 104-acre parcel for the Project. The Applicant has also obtained agreement for an easement on an additional 19 acres for total aggregated land area of 23 acres to meet performance standards for an on-site septic system.

3. The Board opened the public hearing on the Application on April 6, 2022, and conducted further public hearing sessions on May 4, 2022, June 1, 2022, July 6, 2022, August 3, 2022, September 7, 2022, October 5, 2022, November 2, 2022, and January 4, 2023. The Board, after opening the public hearing, voted to declare and notify the Massachusetts Department of Housing and Community Development ("DHCD") of entitlement to certification of compliance with an approved Housing Production Plan. DHCD denied this request by notice dated April 11, 2022. The Board voted not to appeal the DHCD decision and proceeded with the public hearing on the dates referenced above. The Board closed the public hearing on January 4, 2023, and



Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 2 of 16

conducted deliberations on March 1, 2023, at which time it voted to grant the Project with conditions as set forth in this decision.

4. The Applicant was represented during the public hearing by Andrew DeFranza of Harborlight Community Partners, and Attorney Benjamin Tyman. The Applicant's development team consists of Hancock Associates, Danvers, MA, on engineering, SV Design, LLC, Beverly, MA on architecture, BSC Group, Boston, MA on landscape architecture, and Greenman-Pedersen, Inc., Wilmington, MA, on traffic.

5. The Board's peer review consultant was GM2, Inc., with offices throughout New England, which provided comments and recommendations concerning site plan review and engineering, including septic system design, groundwater protection, stormwater management, and traffic.

6. The Board also received public comment on the Project during the course of the public hearing, including comment from Attorney Dan Hill who represents abutter, Village at Center Brook Farm.

## **II. FINDINGS ON JURISDICTIONAL ISSUES**

7. The Applicant is a qualified non-profit and eligible to apply for a Chapter 40B permit under a Project Eligibility Letter issued by DHCD dated December 1, 2021, approving the Project under the Low-Income Housing Tax Credit program.

8. In accordance with the Project Eligibility Letter, the Project shall consist of 45 units of rental housing which shall be affordable at no more than 60% of area median income, and which shall count on the DHCD's Subsidized Housing Inventory ("SHI") for the Town of Hamilton. The Project shall consist of 10 one-bedroom units, 25 two-bedroom units, and 10 three-bedroom units.

9. Approval of this Project with conditions is consistent with local needs, as defined under the Massachusetts Comprehensive Permit Law, G.L. c. 40B, §§ 20-23, and 760 CMR 56.00, et seq.

## **III. FINDINGS OF FACT**

10. The Project is to be located on 421 Asbury Street. The building site currently consists of farmland. Access and egress are proposed via one new full-access driveway via curb cut on the northeast side of Asbury Street, approximately 1,000 feet west of Canter Brook Lane.

11. The Project consists of a new 45-unit multi-family building with appurtenant parking and utilities as shown on the Concept Site Plan, 466 Highland Street prepared by Hancock Associates dated 1/26/22. The Project provides parking for 68 vehicles, including 6 handicap accessible pursuant to Massachusetts Architectural Access Board guidelines. Site access/egress shall include a 20-foot wide fire access lane looping around the rear of the building to provide egress for emergency vehicles. A 4-foot-wide stone dust walking trail shall also be furnished around the building and parking lot.

12. The Project is bounded by Asbury Street to the southwest, a 20-foot wide right of way and residential development to the southeast and maintained agricultural land around the remainder of the Project location. Frontage for the Project is located along Asbury Street. The Project site is bounded by a 25-foot to 50-foot-wide swath of trees from the western sideline of Asbury Street up to the eastern corner of the site location at the 20-foot right of way.

13. The Project will generate 9900 gallons of sewage per day which will be treated and discharged on site, requiring Board of Health approval. The on-site septic system shall consist of a subsurface stone and pipe leaching field where effluent is discharged to groundwater. The Project site is located within a Zone II Drinking Water Supply District limiting the amount of nitrogen that can be discharged to groundwater, among other public health requirements.

14. The Applicant shall comply with any conditions or requirements imposed by the Board of Health and/or its agent.

15. The 4.89-acre Project site is located on the north side of Asbury Street currently in agricultural use as a hayfield. Stormwater flows to the northeast of the site onto abutting agricultural land which is also currently a hayfield. Stormwater management must meet MassDEP Stormwater Regulations requiring that stormwater be properly treated, and increased flows mitigated to maintain the quality and quantity of stormwater after completion of the Project.

16. Approximately one-third of the building site will become impervious area consisting of the building and parking area. Stormwater from these impervious areas will be collected in a storm drain system on the northeast border of the site. The infiltration system will maintain water quality and mitigate for increases in flow as further described in the Stormwater Management Report prepared by Hancock Associates, dated 2/18/22, as revised through 10/21/22, which has been reviewed and commented on by the Town's Health Agent and the Board's peer reviewer resulting in the final amended design referenced below which meets the requirements of Title V and the MassDEP Stormwater Management Standards, and the requirements of the Town of Hamilton Stormwater Management Permit Rules & Regulations.



17. Drinking water and water for fire suppression shall be via connection to the Hamilton Water Supply System in Asbury Street. Gas, electric, telephone and cable will be coordinated with private utility providers but shall be depicted on the Final Plans defined below.

18. Design and construction of the infrastructure needed for the water connection shall be at the Applicant's sole expense. The Applicant shall comply with all local requirements and specifications concerning municipal water supply, including connection and user fees, other local charges or local data or testing requirements.

19. The Project is located in Single Residential District (R1-B) and requires zoning waivers to allow for multi-family use, and reduced lot area per dwelling units. The Project meets all other zoning requirements including setback and height requirements.

20. The Project was amended to eliminate the need for a waiver of the special permit requirement of the Town's Groundwater Protection Overlay District, to allow impervious surfaces covering 60,525 square feet, or 28.4% of the lot. The Applicant's land aggregation plan has lessened the impervious surface area to 5.8% of the total lot area, which is less than the 15% that would require a special permit.

21. Based on review and comments from the Board's peer review consultants, as well as comments from other local boards and officials, the Project, as conditioned below, is consistent with local needs as required under the Comprehensive Permit Law.

#### **IV. DECISION**

1. Based on the foregoing findings, the Board grants the Comprehensive Permit subject to the following conditions:

#### **V. CONDITIONS**

##### **A. REGULATORY CONDITIONS**

1. The total number of dwelling units that may be constructed is 45 units with a mix of 10 one-bedroom units, 25 two-bedroom units, and 10 three-bedroom units as shown on the Approved Plans referenced in Condition V.B.1. below.

2. The 45 units shall consist of rental housing. All of the units shall be affordable at no more than 60% area median income and shall comply with all DHCD qualified subsidy requirements and shall be eligible for inclusion in the Town of Hamilton's Subsidized Housing Inventory ("SHI") with DHCD.

Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 5 of 16

3. The 45 affordable units shall remain affordable and eligible for inclusion in the Town's SHI in perpetuity or for so long as the Project is not in compliance with the Town of Hamilton Zoning Bylaws so that the units continue to serve the public purpose for which this permit was granted under the Massachusetts Comprehensive Permit Law.

4. The Applicant shall execute a Regulatory Agreement with the subsidizing agency as required by the Comprehensive Permit Law and submit annual reports to the subsidizing agency in accordance with the Regulatory Agreement.

5. The Applicant shall comply with all requirements of the Regulatory Agreement for ensuring that the affordability requirements remain in place, and shall provide the Town with any and all information necessary to maintain and enforce affordability restrictions in accordance with paragraph V.A.3.

6. The Applicant shall develop a marketing plan for the Project for review and approval by the subsidizing agency and shall comply with all affirmative action or other requirements imposed by state or federal regulation.

7. The Applicant shall market the initial rent-up of the Project under a local preference approved by the subsidizing agency, and shall assist the Town in submitting evidence necessary to support the local preference requirement.

8. The Town, by and through the Board or its designee, shall have continuing jurisdiction to ensure compliance with the terms and conditions of this decision.

9. The Applicant shall obtain Final Approval from the subsidizing agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Commissioner and the Board prior to receiving any building permit for the Project.

B. GENERAL CONDITIONS

1. The Project shall be constructed substantially in compliance with the following plans which shall be considered the Approved Plans ("Approved Plans") for the Project:

- a. Architectural Plans prepared by SV Design dated 2/18/22;
- b. Landscaping Plan prepared by SV Design and BSC Group dated 2/25/22;



Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 6 of 16

- c. Septic System Design Plan prepared by Hancock Associates dated 10/26/22, and revised Septic System Design Plan dated 12/9/22;
- d. Preliminary Site and Utility Plan prepared by Hancock Associates dated 2/18/22, as revised through 10/25/22;
- d. Mounding Analysis dated 9/27/22;
- e. Conceptional Subdivision Plan by Hancock Associates dated 10/25/22.

2. Minor changes to the Approved Plans may be submitted to the Building Commissioner who shall have authority to approve such changes as immaterial to the terms and conditions of this decision. If the Building Commissioner determines the proposed changes do not comply with the terms and conditions of this decision, the Applicant may seek modification with the Board pursuant to 760 CMR 56.05(11).

3. The Applicant has requested, and the Board has granted, certain specified waivers from the Hamilton Zoning Bylaw, as reflected in Exhibit A. No other waivers are granted. If the Approved Plans or Final Plans (defined below) show the need for a waiver not set forth in Exhibit A, the Applicant must seek approval from the Board pursuant to the provisions of 760 CMR 56.05(11). No waiver of building permit or inspection fees, water connection fees, or other fees or charges of any kind have been granted.

4. But for the two waivers granted in Exhibit A, the Applicant shall comply with the Hamilton Zoning Bylaws, and any and all local bylaws, codes, rules, or regulations of the Town of Hamilton.

5. In addition to the terms and conditions of this decision, the Project shall comply with all state and federal laws, codes, regulations and standards applicable to the Project.

6. The terms and conditions of this decision shall be binding on any successors or assigns of the Applicant, and the terms and conditions shall run with the land. The non-profit and affordability requirements shall apply to any successor in interest regardless of the sale, transfer or assignment of the Project.

7. The access/egress roadway, stormwater management and drainage systems, septic and water infrastructure, and any and all other Project related infrastructure or improvements shall remain private. The Town of Hamilton shall have no obligations or

Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 7 of 16

legal responsibility for the maintenance of the foregoing, including but not limited to snow and trash removal and landscape maintenance.

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

9. All utility work and roadwork within any public right of way shall be performed and conducted in conformance with the regulations of the Town and MassDOT, if applicable, including requirements for street opening permits, curb cuts, or trench permits. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with the Approved Plans.

10. The Applicant shall provide professional management of the Project, including 24/7 monitoring of the Project, either by on-site management or by an off-site management entity that is available by phone 24/7. The Applicant shall post the name and telephone number of the manager in a prominent place within the building and shall provide the Board and Town with details concerning property management in writing.

11. The Project shall be sprinklered in accordance with applicable state and NFPA standards, including attics and storage spaces. The Applicant shall submit final fire alarm/sprinkler plans in compliance with applicable codes to the Fire Chief for review and approval.

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

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

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

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

16. Prior to starting any activity authorized under this decision ("Authorized Activity"), including but not limited to clearing, excavation, or other land disturbing activities precedent to construction of the Project, irrespective of whether the work requires a building permit, the Applicant and the general contractor shall hold a preconstruction meeting chaired by the Building Inspector, with municipal staff and officials of his choice,

Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 8 of 16

to review this decision, the Approved Plans, and proposed implementation. In conjunction with this meeting, the Applicant shall provide the Building Inspector with the following:

a. A lighting plan which conforms with all state, federal or local regulations which shall adequately ensure against light trespass issues or nuisance conditions.

b. Final engineering drawings and plans ("Final Plans") that conform to all terms and conditions of this comprehensive permit and all conditions and requirements of other permitting agencies or officials having jurisdiction.

c. Peer review fees reasonable and necessary to assist the Building Inspector in confirming compliance with the terms and conditions of this decision in the Final Plans.

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

a. the company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on the Property;

b. a copy of a municipal lien certificate showing that all taxes, assessments and charges due on the Project site have been paid;

c. certification that all required federal, state and local licenses and permits have been obtained;

d. proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work;

e. proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services; and

f. written notice of at least 48 hours. If activity on site ceases for longer than one month, 48 hour written notice shall be given prior to restarting work.

18. Erosion and sedimentation control measures shall include the following:

a. The contractor shall have a stockpile of materials required to control erosion on-site to supplement or repair erosion control devices, including but not limited to straw wattles, catch basin filter bags and crushed stone;



Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 9 of 16

b. The contractor is responsible for erosion control on site and shall utilize erosion control measures where needed, regardless of whether the measures are specified on the Approved Plan or in this decision;

c. Materials such as gravel to be removed shall be stockpiled, separating the topsoil for future use on the site;

d. Erosion controls shall be utilized on the stockpiles if they are to remain on site for more than three weeks;

e. If intense rainfall is anticipated, the installation of supplemental straw bale dikes, silt fences, or armored dikes shall be implemented.

19. During construction, the Applicant or its agent shall conduct and document inspections of all erosion control measures no less than weekly, and prior to and following anticipated storm events, the purpose of which is to determine the overall effectiveness of the erosion and sedimentation control measures and for implementation of additional control measures as needed. Upon completion of all work on Property and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations, and the Board shall be notified in writing of the final disposition of the materials.

20. The Applicant shall ensure implementation of the following requirements concerning landscaping/seeding in connection with Authorized Activity:

a. Landscaping/seeding shall be performed as soon as possible to provide permanent stabilization of disturbed surfaces;

b. If the season or adverse weather conditions do not allow the establishment of vegetation, temporary mulching with straw, wood chips weighted with snow fence of branches or other methods shall be provided;

c. A minimum of 4 inches of topsoil shall be placed and its surface smoothed to the specified grades;

d. The use of herbicides is prohibited;

e. Hydroseeding is required for steep slopes;

f. Application rates on slopes greater than 3:1 shall have a minimum seeding rate of 5 lbs/1000 square feet;



Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 10 of 16

g. A latex or fiber trackifier shall be used on these slopes at a minimum rate of 50 lbs. of trackifier per 500 gallons of water used.

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

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

23. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant shall be responsible for maintaining the site's stormwater management system in accordance with generally accepted best management practices, and in accordance with a long-term Stormwater Operation and Maintenance Plan which shall be provided in form and substance as set forth in the Stormwater Management Report of Hancock Associates dated 2/18/22, as amended through 10/21/22, pursuant to Standard 9 of the MassDEP Stormwater Management Standards.

24. The Applicant shall also execute and provide the Building Inspector with the Illicit Discharge Compliance Statement set forth in the Hancock Stormwater Management Report, as amended through 10/21/22, pursuant to Standard 10 of the MassDEP Stormwater Management Standards.

25. The Applicant shall be permanently responsible for the following aspects of the Project:

a. all plowing, sanding, and snow removal. Snow shall be piled in designated locations as shown on the Approved Plans or alternate locations acceptable to the Fire Chief. If snow impairs roadways such that the travel area is less than eighteen feet wide, and all designated snow removal locations have been

exhausted, the Applicant, at the direction of the Fire Chief, shall cause snow to be transported from the Project to an off-site location for legal disposal;

- b. maintaining the site and establishing a regular schedule for site maintenance;
- c. repairing and maintaining all on-site roadways, including drainage structures and utilities therein, and the infrastructure within the Project;
- d. maintaining all easements shown on the Plans; and
- e. site lighting.

26. Prior to commencing Authorized Activity, the Applicant's Final Plans shall provide that the construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust, sedimentation control and blocking of Town roads. The Applicant shall comply with all such laws and regulations in the construction of the Project. It shall install aprons at entry points and provide for dust control in the form of sweeping and spraying of water whenever necessary.

27. No stumps or construction debris shall be buried or disposed of at the Property.

28. The Applicant shall use all reasonable means to minimize inconvenience to residents in the general area during construction.

29. No blasting is permitted.

30. This Comprehensive Permit and any permit granted hereunder is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b).

31. Any changes to the Project after issuance of the Comprehensive Permit shall be reviewed and approved by the Board in accordance with 760 CMR 56.05 (11).

32. Building construction may begin simultaneously with the commencement of construction of the infrastructure, but no occupancy permit shall issue until compliance with the State Building Code has been achieved.

33. This Comprehensive Permit shall lapse three years from the date that it takes final effect (i.e., the date that it is filed with the Town Clerk, subject to tolling in the

Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 12 of 16

event of any appeal and as provided in 760 CMR 56.05(12)(c)), unless both it is duly recorded and construction on the Project has commenced within such period.

C. CONDITIONS PRIOR TO ISSUANCE OF BUILDING PERMIT

1. Prior to issuance of any Building Permit, the Applicant shall:

a. Record this Comprehensive Permit decision with the Essex Registry of Deeds and provide proof of recording to the Building Inspector.

b. Submit to the Board and Building Inspector evidence of Final Approval by the Subsidizing Agency.

c. Submit to the Board and Building Inspector a certified copy of the Regulatory Agreement and Monitoring Services Agreement for the Project. Execution and recording of the Regulatory Agreement and subsidized funding commitment shall be complete before issuance of a building permit.

d. Submit all Final Plans for review and approval, including the stormwater management plan.

e. Obtain all necessary electrical, plumbing or other permits required to begin construction of the Project.

f. Provide to the Building Commissioner a final Stormwater Pollution and Prevention Plan (SWPPP) to address specific sedimentation, erosion and dust control, which illustrates, at a minimum, locations of measures such as hay socks, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each detention system.

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

2. Prior to the issuance of any building permit, the Approved Plans, finalized as provided in this decision, shall be signed and sealed by a Massachusetts Professional Engineer and a Massachusetts Registered Landscape Architect and filed with the Board and the Building Inspector, and shall include the following:



Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 13 of 16

- a. Grading Drainage and Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes;
- b. Stormwater Pollution and Prevention Plan (SWPPP) notes that address mitigation of sedimentation and erosion, including details relating to any temporary drainage basins;
- c. A Final Landscape Plan (which shall include among other features consistent with the Approved Plans, details concerning tree plantings to enhance the buffer zone and privacy between the project and the existing neighboring residential development), and Final Lighting Plan.

D. CONDITIONS PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY

1. With respect to the work to be done by Applicant on private ways within the Property, no certificates of occupancy shall be issued by the Town until the Applicant has (i) substantially completed all site drainage and utility work appurtenant to any parts of the Project for which an occupancy permit is to be issued; (ii) installed a binder course of pavement on driveways and parking areas within those parts of the Property; and (iii) has provided a performance guarantee consistent with Condition D.4.

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

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

4. No Certificate of Occupancy shall be issued until the infrastructure, common facilities, and common improvements specified in this decision and set forth on the Approved and Final Plans are constructed and installed so as to adequately serve said phase, or adequate security has been provided, reasonably acceptable to the Building Inspector and approved as to form by the Board's legal counsel, to ensure the completion of such improvements. No such performance guarantee shall be requested until all drainage facilities and the base course of the pavement have been installed. The choice of performance guarantee shall be governed by G.L. c. 41, § 81U (excluding the statutory covenant which shall not apply in this matter) and shall be approved as to form by the



Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 14 of 16

Board's legal counsel. The Applicant shall have all statutory choices of performance guarantees available under G.L. c. 41, § 81U (as limited above) at all stages of construction up until request for the final certificate of occupancy. The Applicant acknowledges that a letter of credit is not a suitable form of surety under G.L. c. 41, § 81U, ¶7.

5. Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of any location to be used for mail boxes and parcel delivery.

6. Prior to issuance of a certificate of occupancy, the Applicant shall:

a. Submit engineer's interim certification of compliance with utilities plan and profiles (as applicable) to the Building Inspector.

b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the as-built Project has been constructed in compliance with the Final Plans in all material respects, or noting where there are differences, along with an as-built plan of the stormwater management system by the Applicant's engineer showing compliance with the design intent, which, following approval, shall be appended to the "Long-Term Stormwater Operation and Maintenance Plan" for ease of reference by the property owner.

c. Obtain acceptance from the Hamilton Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units and that all fire hydrants are in place at proper grade and functioning.

7. Prior to issuance of the certificate of occupancy, the Applicant shall:

a. Submit to the Building Department, in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in a form acceptable to the Building Department. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plan Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.

Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 15 of 16

b. Submit to the Building Inspector as-built plans for all buildings in the Project, verification that the stormwater management system has been inspected and cleaned, and Certificate of Compliance to the Board with all terms and conditions of this Permit.

E. SPECIAL CONDITIONS

1. Final Plans shall include the following:

a. All internal roadways within the site shall be verified to accommodate turning and maneuvering requirements of the largest anticipated fire/emergency vehicle, as defined by the Hamilton Fire Dept.;

b. Vehicles exiting the project site to Asbury Street shall be placed under STOP-sign control, with a marked STOP-line;

c. A sight line plan from the Applicant's traffic engineer, including required tree removal, to depict clear zones necessary to meet AASHTO's minimum and desirable Stopping Site Distance and Intersection Site Distance Standards.

d. An additional twenty (20) shade-tolerant evergreen trees, a minimum of eight (8) feet in height, based on availability, to be added to the voids along the southerly side of the Project site.

2. The dumpster for the Project shall be located at the opposite (northwest) corner of Canter Brook Lane. Dumpster pick up shall be on a once per week basis on a Monday to Friday, not before 7 a.m. and not after 6 p.m.

3. The Applicant shall pay a fair share contribution of \$172,058.00 of the cost of construction of a sidewalk along Asbury Street in front of the Project site to Highland Avenue.

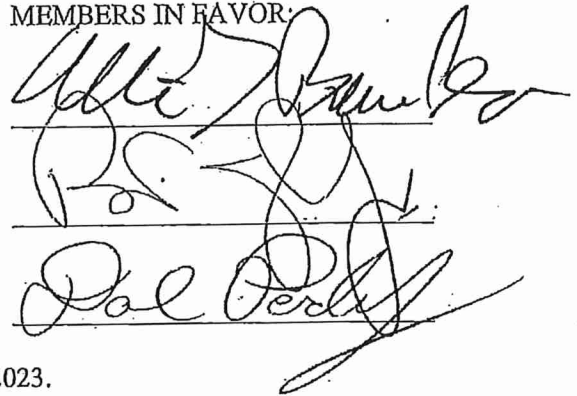
**SIGNATURE PAGE FOLLOWS**

Decision on Application for Comprehensive Permit  
Harborlight Community Partners  
466 Highland Street, Hamilton, MA  
March 13, 2023  
Page 16 of 16

### RECORD OF VOTE

The Board voted 3-0-0 at public deliberations on March 1, 2023 to grant a Comprehensive Permit in accordance with the terms and conditions stated in this decision, as attested by the signature below.

MEMBERS IN FAVOR:



Filed with the Town Clerk on March 21, 2023.



Town Clerk

Notice: Appeals, if any, by any party other than the Applicant, shall be made pursuant to G.L. c. 40A, § 17 and shall be filed within twenty (20) days after filing notice with the Town Clerk. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G.L. c. 40B, § 22, within twenty (20) days after filing notice with the Town Clerk.

### **Exhibit A – Waivers**

The Board has granted the waivers set forth in Exhibit A. To the extent not specifically waived as set forth in Exhibit A, all zoning bylaw provisions, and any and all local rules, regulations or requirements shall apply to the Project.

# EXHIBIT

## A



Table of Requested Waivers Vs. Existing Zoning Requirements

Requested Waivers	Existing Zoning Requirements
Multi-Family Use	The parcel is located in zoning district R-1B, single residence district.
Reduced Lot Area per Dwelling Unit (Sq. Ft.)	Currently requires 40,000 square feet per dwelling unit.
<u>All</u> other requirements are met including setback and height requirements.	