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BRAintree, MA

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**TOWN OF BRAINTREE
ZONING BOARD OF APPEALS**



**FEBRUARY 10, 2020
COMPREHENSIVE PERMIT DECISION
ZBA APPLICATION: (40B-2017-01)**

**PARKSIDE APARTMENTS
383-385 WASHINGTON STREET/0 STORRS AVENUE AND ALVES WAY
APPLICANT: 383 WASHINGTON STREET, LLC**

**Parkside Apartments
Comprehensive Permit Decision**

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Date Application Filed: February 14, 2017

Application Type: Comprehensive Permit - MGL Chapter 40B Sections 20-23, including Approval Not Required Subdivision Plan - MGL Chapter 41 Sections 81(L) (M) and (P)

Applicant: 383 Washington Street, LLC (the "Applicant")
c/o The Holland Companies
Paul Holland, Principal
519 Albany Street, Suite 200
Boston, MA 02118

Subsidizing Agency: MassHousing

Location of Property: 383-385 Washington Street; 0 Storrs Avenue and Alves Avenue
Braintree, Massachusetts ("The Property")

Assessors' Reference: Portion of: Assessor Plan 2028, Plots 31 and 32-A

Zoning of Property: General Business

Zoning Overlay: Village District

Area of Property: The existing site consists of Two (2) Assessor lots and the Alves Way private layout for a total area of 114,193 Sq. Ft.

An Approval Not Required Subdivision Plan was filed with the Comprehensive Permit Application that includes the creation of a lot for this Development that is 93,866 Sq. Ft.

Description of Project: The Comprehensive Permit seeks permission to construct a three/four story residential building that contains 70 rental units, 25% of which will be designated as affordable to households at or below 80% of the Area Median Income (AMI) (the "Project"). The building consists of one level of parking with either two or three levels of residential units above. The development also includes a total of 128 Vehicle parking spaces (81 interior garage/47 surface) and 25 Interior Bicycle parking/storage spaces, along with associated drainage, landscaping, utility and lighting improvements.

| Residential Units Mix: | <u>No. of Units</u> | <u>Unit Type</u> | <u>No. Affordable Units</u> | <u>No. Market Units</u> |
|-------------------------------|----------------------------|-------------------------|------------------------------------|--------------------------------|
| | 4 | Studio | 1 | 3 |
| | 30 | 1 – Bedroom | 8 | 22 |
| | 29 | 2 – Bedroom | 7 | 22 |
| | 7 | 3 - Bedroom | 2 | 5 |
| | 70 Total | | 18 Total (3 Accessible) | 52 Total (2 Accessible) |

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Members Participating: Stephen Karll (Chair), Richard McDonough, Michael Ford and Gary Walker (Alternate) (the “ZBA” or the “Board”) Member Ford was absent from the hearing held on August 1, 2019 but filed a certification of compliance with G.L. c. 39, Sec. 23D with the Town Clerk on August 9, 2019, which was read into the record at the Board’s August 23, 2019 hearing. Member Walker was absent from the hearing held on October 23, 2019 but filed a certification of compliance with G.L. c. 39, Sec. 23D with the Town Clerk on November 6, 2019, which was read into the record at the November 20, 2019 hearing session.

Members Voting: Stephen Karll (Chair), Richard McDonough and Michael Ford

Public Hearing Sessions: March 13, 2017 Public Hearing Opened

- Zoning Board of Appeals (ZBA) Asserts “1.5% GLAM Safe Harbor”

March 23, 2017 ZBA Files Safe Harbor Notice with Department of Housing and Community Development (DHCD)
April 4, 2017 Applicant challenges Safe Harbor Notice with DHCD
May 4, 2017 DHCD denies ZBA Safe Harbor
May 22, 2017 Safe Harbor Initial Pleading for Interlocutory Appeal Filed with Housing Appeals Committee (HAC)
June 27, 2019 HAC Interlocutory Decision on Safe Harbor Issued – HAC found ZBA failed to satisfy its burden of proof to substantiate 1.5% GLAM safe harbor

August 1, 2019 Public Hearing Resumed – Member Ford Absent

- See Extension Agreement from Applicant filed with Town Clerk July 23, 2019.

September 23, 2019 Public Hearing Session

- Member Ford certified compliance with M.G.L. c. 39, Sec. 23D Re: August 1, 2019 Public Hearing

October 7, 2019 No Testimony Taken

- Mutually Agreed to extension of time to close the Public Hearing from November 17, 2019 to December 6, 2019

October 23, 2019 Public Hearing Session - Alternate Member Walker Absent

November 20, 2019 Public Hearing Session

- Alternate Member Walker certified compliance with M.G.L. c. 39, Sec. 23D Re: October 23, 2019 Public Hearing

December 2, 2019 Public Hearing Session

December 4, 2019 No Testimony Taken

- Mutually Agreed to extension of time to close the Public Hearing from December 6, 2019 to December 17, 2019

December 16, 2019 Public Hearing Session

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- Mutually Agreed to extension of time to close the Public Hearing from December 17, 2019 to January 9, 2020

January 6, 2020 Public Hearing Session

January 8, 2020 Public Hearing Session

- Public Hearing is Closed

January 27, 2020 Deliberation Session

February 10, 2020 Deliberation Session

Deadline to Close Public Hearing: November 17, 2019 with Extensions thru January 9, 2020

Public Hearing Closed: January 8, 2020

40 Day Decision Deadline: February 17, 2020

ZBA Vote on a Decision: February 10, 2020

Decision Filed with Town Clerk: February 14, 2020

I. PROCEDURAL HISTORY

On February 14, 2017, the Applicant filed a Comprehensive Permit Application, under General Laws Chapter 40B, Sections 20 – 23 for a residential development at 383-385 Washington Street and 0 Storrs Avenue. The development consists of seventy (70) rental units of which eighteen (18) will be low or moderate income units (at or below 80% AMI). A Project Eligibility Letter was issued by the Massachusetts Housing Finance Agency (“MassHousing”) on February 10, 2017.

1. Notice of the public hearing was published in The Patriot Ledger on February 24, 2017 and March 3, 2017, and notice was sent by U.S. mail to all interested parties on February 24, 2017 and posted in Town Hall as required by G.L. c. 40A §11.
2. The public hearing was opened on March 13, 2017, at which time the Board verbally invoked a safe harbor pursuant to 760 CMR 56.03(3)(b), asserting that the Town had 1.5% of its general land area (“GLAM”) dedicated to affordable housing. The Board notified DHCD and the Applicant in writing of its invocation of this safe harbor on March 23, 2017. On April 4, 2017, the Applicant appealed the Board’s assertion to the Department of Housing and Community Development (“DHCD”), who, later on May 4, 2017, issued a determination finding that the Town has not satisfied the GLAM Safe Harbor. Thereafter, the Board filed an interlocutory appeal of this determination to the Housing Appeals Committee (“HAC”) on May 22, 2017, which stayed further proceedings pending the outcome of the appeal per 760 CMR 56.03(8)(c). On June 27, 2019, the HAC issued its Decision on the Interlocutory Appeal Regarding Applicability of Safe Harbor, finding that the Board had not met its burden of proving that the Town had achieved the 1.5% general land area safe harbor and ordering the proceedings before the Board to resume and a Public Hearing to be opened in 30 days. The Board filed a Motion for Reconsideration and Request to Re-Open the Hearing before the Committee with

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the HAC on July 8, 2019, which the Applicant opposed. The HAC issued a decision denying the Motion for Reconsideration on October 11, 2019.

3. Notice of the resumed public hearing was advertised in The Patriot Ledger on July 16, 2019 and July 23, 2019 and notice was sent by the Department via U.S. mail to all interested parties on July 18, 2019 and posted in Town Hall as required by G.L. c. 40A §11. Pursuant to a mutually agreed to extension of the 30-day deadline to resume the public hearing, it was resumed on August 1, 2019.
4. At the resumed public hearing, the Board voted to reaffirm its position that the Town had achieved a safe harbor as at least 1.5% of the Town's general land area is dedicated to affordable housing, and the Board voted to reserve its rights to further assert this safe harbor, upon the conclusion of this public hearing in accordance with 760 CMR 56.03.
5. The Project is proposed for a portion of the Property at 383-385 Washington Street and 0 Storrs Avenue, which is located in the General Business Zoning District and in the Village Overlay District.
6. The Project is located on a portion of the Properties noted above (Current Size 114,193 Sq. Ft./Proposed Project Size 93,866 Sq. Ft.) that are located in North Braintree Square, with access off of Washington Street via the Parking Way and Storrs Avenue. The location is surrounded by office, residential, religious, education/recreation, retail, fast food and restaurant, all types of business, including automotive services.
7. The Property is 90% paved and is the former site of Dave Dinger Automotive Repairs and Herb Chambers Automotive and Collision Centers. Since 2012 and currently, one use of the Property has been by Holland Brothers as a contractor's yard, with interior and exterior storage and parking of equipment, vehicles and supplies and use of three commercial/industrial buildings located on the site. The second use is open-air parking by abutting businesses and a local private catholic high school in conjunction with their athletic fields.
8. During the public hearing, the Applicant's Principal, Paul Holland, was present and represented by Attorneys Peter L. Freeman, and Ilana M. Quirk of Freeman Law Group, LLC and a 40B Consultant, Lynne D. Sweet of LDS Consulting Group. The Applicant had the following subject matter consultants:

| | |
|---------------------|--|
| Civil Engineering | James W. Burke P.E. of DeCelle-Burke-Sala |
| Architect/Lighting | Marquis (Mark) G. Major R.A. of VMY Architects LLC |
| Traffic Engineering | Jeffrey S. Dirk P.E., PTOE, FITI of Vanasse & Associates, Inc. |
| Fire Engineering | Kevin S. Hastings P.E., LEED AP of Hastings Consulting |
| Landscape Architect | LeBlanc Jones Landscape Architects, Inc. |

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9. The Board on February 17, 2017 and on February 27, 2017 notified Town departments, local boards and committees of this Comprehensive Permit Application filed on February 14, 2017 and circulated the Application materials and revised/updated materials to the appropriate Departments and received the following comments:

| DATE | DEPARTMENT | COMMENT |
|-------------------|--|--|
| February 17, 2017 | Treasurer/Collector - Barbara Walls | Property is in Good Standing |
| February 27, 2017 | Health Division – Amy L. Carey | Various Board of Health Comments |
| February 27, 2017 | Building Division – Russell Forsberg | No Objections to Proposal |
| March 1, 2017 | Public Works – James Arsenault | Concerns with Trip Generation Volumes, Loss of Parking on Washington Street, Site Distances and Mitigation |
| March 6, 2017 | BELD – Sean Murphy | Plans Do Not Meet BELD Approval |
| March 7, 2017 | Historical Commission – Elizabeth Mees | No Jurisdiction – No Comment |
| March 9, 2017 | Engineering Division – Robert Campbell | Concerns with Utilities/Easements, pedestrian connection along the Parking Way, Storrs Avenue mitigation and lack of on-site open space. |
| March 10, 2017 | ADA Coordinator – Kristen Zechello | Several ADA Comments regarding design and access |
| March 10, 2017 | Building Division – Russell Forsberg | Seeks clarification as to MA State Building Code – As to allowable floor area per floor. |
| March 10, 2017 | Police Department – Lt. Sean M. Lydon | Recommends Favorable Action with concerns noted |
| March 13, 2017 | Fire Department – Chief James O'Brien | Concerns related to Fire Department maneuverability inside the Development, Accessibility to the Property, Parking Way Access Restrictions and Lack of Access to the rear of the Building. |

All documents and exhibits received from Town departments, local boards and committees during the public hearing are contained in the Zoning Board of Appeal's files as listed above in the Table.

10. Based on the length of time to pursue the to the safe harbor appeal and the fact that Applicant updated some of the submission documents, on August 5, 2019 the Board re-distributed the revised Application Materials to all Town departments and local boards and committees. The Board received written comments from the following departments:

| DATE | DEPARTMENT | COMMENT |
|--------------------|---|---|
| August 6, 2019 | Treasurer/Collector - Barbara Walls | Property is in Good Standing |
| August 8, 2019 | Health Division – Amy L. Carey | Various Board of Health Comments |
| September 13, 2019 | Fire Department – Deputy Chief Sawtelle | Continued Concerns as Noted March 13, 2017 |
| September 19, 2019 | Fire Department – Deputy Chief Sawtelle | Turning Radius Materials |
| September 23, 2019 | Engineering Division – Robert Campbell | Traffic Concerns, wants to see updated Turning Movements when school in session. Still has concerns and additional concerns as noted in March 8, 2017 Memo. |

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| DATE | DEPARTMENT | COMMENT |
|-------------------|--|---|
| October 22, 2019 | Stormwater Division – Cynthia B. O’Connell | Various Comments/Concerns related to erosion controls, Design and Drainage Plan Content and Operations and Maintenance Plans. |
| November 19, 2019 | Fire Department – Deputy Chief Sawtelle | Fire Department remains opposed due to lack of access. |
| November 19, 2019 | Water and Sewer Division – Lou Dutton | Dept. has Water and Sewer capacity for the Project at this time, all units must be separately metered and backflow for suppression system must be provided |
| November 19, 2019 | Police Department – Lt. Robert Joseph | Impact on already congested area, complex may become a cut-through and questions sufficiency of parking |
| November 20, 2019 | Fire Department – Deputy Chief Sawtelle | Outline of various NFPA Code concerns in support of the Fire Departments opposition due to the lack of proper access around the site and to the 70-Unit building. |
| November 20, 2019 | Fire Department – Deputy Chief Sawtelle | NFPA 1 2015 Edition of Fire Access Road |
| November 26, 2019 | Stormwater Division – Cynthia B. O’Connell | Revised Materials do not address several comments from October 22, 2019 Letter |
| December 2, 2019 | Fire Department – Deputy Chief Sawtelle | Remains Opposed and outlines continued concerns due to lack of fire department access, the ability to safely conduct fire suppression and the concern for public safety |
| December 2, 2019 | Fire Department – Deputy Chief Sawtelle | Fire Department reserve right to further comment on Ladders on the Building |
| December 16, 2019 | Fire Department – Deputy Chief Sawtelle | Revised Plans – Extensive concerns and outlining of several situations and questions that result in the continued opposition. |
| January 6, 2020 | Fire Department – Deputy Chief Sawtelle | Concerns related to Location of Ladder Truck Placement, Access, Collapse Zones, ground Ladders and Dead End Access. <i>“The Braintree Fire Department has been consistently opposed to this Project due to the size of the proposed building, the size of the land and the lack of fire department access. The Fire Department remains opposed....”</i> |

All documents and exhibits received from Town departments, local boards and committees during the public hearing are contained in the Zoning Board of Appeal’s files as listed above in the Table.

- In August of 2019, the Board retained Ron Muller P.E., Principal and Kristen Braun, Associate with Ron Muller & Associates of Hopkinton, Massachusetts to serve as the Board’s Transportation and Traffic Peer Review consultant and Deborah W. Keller P.E. Senior Project Manager with Merrill Engineers and Land Surveyors of Hanover, Massachusetts as the Board’s Stormwater/Drainage Peer Review consultant. The Board secured all Peer Review Services and the Applicant funded all of the Peer Review expenses pursuant to G.L. c. 44, §53G. The Peer Review consultants issued the following comments and reports to the Board.

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| DATE | FROM/PEER TOPIC | COMMENT |
|--------------------|-------------------------------------|---|
| September 13, 2019 | Muller – Transportation and Traffic | Concerns and Questions related to: Parking reduction, use in school existing conditions data, evaluate shift from 2016 to 2019, future conditions comments, traffic operations analysis comments, sight distance evaluation, pedestrian connection via Parking Way, fire access and school bus stop locations. |
| September 23, 2019 | Merrill - Stormwater/Drainage | First Peer Review: Concerns and Questions related to: Stormwater Regulations Sections 1, 2 3 and 4 and MASS DEP Stormwater Standards 1, 2, 3, 4, 8, 9 and 10 as well as several other comments related to the plans and calculations. |
| October 22, 2019 | Merrill - Stormwater/Drainage | Second Peer Review: Comments on revised Plans and Stormwater Calculations dated October 16, 2019. Continued Concerns as noted previously, some items have been resolved. Concerns and Questions related to: Stormwater Regulations Sections 1, 2 3 and 4 and MASS DEP Stormwater Standards 1, 2, 3, 4, 8, 9 and 10 as well as several other comments related to the plans and calculations. |
| October 31, 2019 | Muller – Transportation and Traffic | The revised materials address some of the concerns raised. Comments related to mitigation, provide on street parking plans, sight line conditions, 23.5 Ft. wide drive aisle, plans should show pavement and sign controls for STOP, sidewalk connection from site to Parking Way to Washington and Fire Department access still must be addressed. |
| November 27, 2019 | Merrill - Stormwater/Drainage | Third Peer Review: Comments on revised Plans dated November 18, 2019 and Revised Stormwater Calculations dated November 23, 2019. Minor concerns remaining, plans require revisions. |
| November 27, 2019 | Muller – Transportation and Traffic | Suggested Mitigation Conditions |
| December 2, 2019 | Merrill - Stormwater/Drainage | Email Correspondence With Peer Review Engineer and the Applicant’s Engineer and additional questions to be answered. |
| December 9, 2019 | Muller – Transportation and Traffic | Email clarification regarding resident inquiry. Item resolved. |
| January 3, 2020 | Merrill - Stormwater/Drainage | Fourth Peer Review: Minor plan revisions required. Meets all applicable state and local design standards and criteria |

- The Assistant Director of Planning and Community Development issued the memo/reports on the following dates: March 10, 2017 (1.5% Safe Harbor), March 23, 2017 (Safe Harbor Notice), September 19, 2019 revised to September 23, 2019 (Transmittal to ZBA), November 19, 2019, revised to December 2, 2019, January 2, 2020 and January 6, 2020 (Waivers) and January 3, 2020 (Project Update)

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13. Public Comment

The Board received several comments from the public, in writing and verbally. Written comments are listed below, and verbal comments are memorialized in the minutes of the Board's hearings.

Written Public Record

| | | |
|--------------------|---|-------------------------------------|
| March 5, 2017 | Letter in Support | Caritas Communities – Braintree, MA |
| July 31, 2019 | Request to Delay Public Hearing Due to Vacation | John T. Haran Jr., Resident |
| September 23, 2019 | Letter in Opposition | Anthony Preston, Resident |
| December 16, 2019 | Several Concerns in Opposition | Jill Coyle, Resident |
| January 6, 2020 | Several Concerns in Opposition | Jill Coyle, Resident |
| January 8, 2020 | Several Concerns in Opposition | Cathy Mosesso, Resident |

Public Hearing Record

The Board conducted several sessions during the Public Hearing in which several Residents provided comments related to traffic congestion, fire safety and access, vehicle access, drainage, cut through traffic, density, overall size, lack of on-site recreation/open space, disruption to area businesses, water and sewer capacity, parking and snow storage. Most of the public comments were in opposition to the Project. A couple of comments regarding drainage were favorable.

PLEASE SEE MEETING MINUTES FOR A RECORD OF ALL PUBLIC COMMENT

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II. APPLICATION MATERIALS/REPORTS/INFORMATION AND PLANS

The Comprehensive Permit Application for Parkside Apartments, filed on February 14, 2017, included the following plans, reports and submissions as either part of the submission, part of the Peer Review Process or necessitated through other means or requests during the Public Hearing process.

1. Zoning Board of Appeals Application Form
2. ZBA Zoning Computation Form
3. Gatehouse Media Authorization Form
4. Narrative Description and Development Summary for Parkside Apartments, Braintree, Massachusetts
5. Application to MassHousing for Chapter 40B Project Eligibility/Site Approval
6. MassHousing Project Eligibility/Site Approval letter dated February 10, 2017
7. Property Deed dated December 27, 2012 that was stamped in at the Norfolk County Registry of Deeds on December 28, 2012 for the Property and description of Land and ownership entity, including plans to transfer to a "limited dividend organization".
8. Site Engineering Report (Includes Stormwater Calculations)
Prepared By: DeCelle-Burke-Sala
Dated: February 2, 2017, revised to October 7, 2019 and November 23, 2019 and December 31, 2019

9. Site Plan

Plan Set Title: Parkside Apartments and Parkside Condominiums
Proposed Chapter 40B Residential Project
383-385 Washington Street
Braintree, Massachusetts

Prepared By: Decelle-Burke-Sala

Dated: February 2, 2017 and Revised in 2019 as noted below

| <u>Sheet</u> | <u>Title</u> | <u>Revised On</u> | <u>Final Revision</u> |
|--------------|----------------------------------|---|-----------------------|
| 1 | Cover Sheet | October 16, November 18 & December 2 | December 18, 2019 |
| 2 | Existing Conditions | October 16, November 18 & December 2 | December 18, 2019 |
| 3 | Construction Management | October 16, November 18 & December 2 | December 18, 2019 |
| 4 | Proposed Subdivision | October 16, November 18 & December 2 | December 18, 2019 |
| 5 | Proposed Site Layout | October 16, November 18 and December 2 and 18 | January 6, 2020 |
| 6 | Proposed Site Grading | October 16, November 18 and December 2 and 18 | January 6, 2020 |
| 7 | Proposed Site Utilities | October 16, November 18 & December 2 | December 18, 2019 |
| 8 | Proposed Utility Profile | October 16, November 18 & December 2 | December 18, 2019 |
| 9 | Construction Details | October 16, November 18 & December 2 | December 18, 2019 |
| 10 | Construction Details | October 16, November 18 & December 2 | December 18, 2019 |
| | Proposed Average Grade Elevation | | January 6, 2019 |

10. Narrative Description of Design Approach

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11. Architectural Plans

Prepared By: VMY Architects LLC
Plan Set Title: Comprehensive Permit Submission
Parkside Apartments (Building A)
383-385 Washington Street
Braintree, Massachusetts
Dated: February 6, 2017

| <u>Sheet</u> | <u>Title</u> |
|--------------|-----------------------|
| T-1 | Title Sheet |
| A-1 | Plan: Basement |
| A-2 | First Floor |
| A-3 | Second Floor |
| A-4 | Third Floor |
| A-5 | Elevations |
| A-6 | Elevations |
| A-7 | Typical Wall Sections |
| A-8 | Typical Unit Plans |

12. Waiver List Lot 1 - Parkside Apartments, Braintree, MA

Dated: Undated and revised to November 3, 2019, December 19, 2019
and January 7, 2020 Letter and Email

**13. Application to MassHousing for Chapter 40B Project Eligibility/Site Approval
Financial Information – Initial Pro Forma**

14. MassHousing – Sustainable Development Criteria and Scorecard

**15. Environmental & Energy Phase I and Phase II Environmental Site Assessment (Executive Summary),
dated January 17, 2013 was part of the original Application Submission and subsequently the full report
was filed August 7, 2019.**

**16. Parkside Apartments Affordable Rental Unit – DRAFT Affirmative Fair Marketing and Resident
Selection Plan**

17. Statement of Qualification of the Developer, Property Owner and Consultants including Resumes

18. Transportation Impact Assessment, Correspondence and Peer Review Responses

Parkside Apartments and Condominiums
383 – 385 Washington Street
Braintree, Massachusetts

Prepared by: Vanasse & Associates, Inc.
Report Dated: Draft and Final February, 2017, July 2019 and October 18, 2019
Peer/Correspondence Dated: September 20, 2019, (2) September 23, 2019, October 29, 2019,
December 9, 2019

19. Certified Abutters List – Dated February 1, 2017 and revised to July 18, 2019

20. Copy: Zoning Board of Appeals Presentation by the Holland Companies August 1, 2019

21. Applicant Response to Stormwater Peer Review
Prepared By: Decelle-Burke-Sala
Dated: October 16, 2019, November 23, 2019, Email December 2, 2019
and December 18, 2019

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22. Lighting Plan and Details

Prepared By: VMY Architects LLC
Plan Set Title: SL-1 Site Lighting Photometric Plan
Parkside Apartments and Condominiums
385 Washington St Apartments Braintree, MA
Dated: November 18, 2019
Details: Cut Sheets (Wall Packs and Pole Lighting)
Dated: Received November 20, 2019

23. Fire Access and Circulation Plans and Memorandums

Plan Title: Emergency Vehicle Access Sketch (2 Pages)
Parkside Apartments and Parkside Condominiums
Proposed Chapter 40B Residential Project
383-385 Washington Street
Braintree, Massachusetts
Prepared By: Decelle-Burke-Sala
Dated: February 2, 2017 and Revised to August 21, 2019, September 23, 2019,
October 16, 2019, October 18, 2019, October 30, 2019, December 11, 2019

Plan Title: Aerial Apparatus Placement Sketch
Parkside Apartments and Parkside Condominiums
Proposed Chapter 40B Residential Project
383-385 Washington Street
Braintree, Massachusetts
Prepared By: Decelle-Burke-Sala
Dated: December 11, 2019

Document Title: Fire Department Vehicle Access Review
Prepared By: Hastings Consulting
Dated: October 15, 2019

Document Title: Fire Protection Response Letter
Prepared By: Decelle-Burke-Sala
Dated: December 11, 2019

Document Title: Fire Department Access Roads
Prepared By: Hastings Consulting
Dated: December 19, 2019

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Plan Set Title: A6A Elevation (Ladder Plan)
Parkside Apartments
383-385 Washington Street
Braintree, Massachusetts
Prepared By: VMY Architects LLC
Dated: February 6, 2017

24. Proposed Sight Distance

Plan Title: Storrs Avenue
Parkside Apartments and Parkside Condominiums
Proposed Chapter 40B Residential Project
383-385 Washington Street
Braintree, Massachusetts
Prepared By: Decelle-Burke-Sala
Dated: September 23, 2019

25. Landscaping Plan

Prepared By: LeBlanc Jones Landscape Architects, Inc.
Plan Set Title: Parkside Apartments
Braintree, MA

| <u>Sheet</u> | <u>Title</u> | <u>Date</u> | <u>Revision</u> |
|--------------|-----------------------|-------------------|-------------------|
| L100 | Overall Planting Plan | November 15, 2019 | November 22, 2019 |
| L200 | Planting Details | November 8, 2019 | |

III. Relief from Local Rules, Regulations and Bylaws

The Applicant shall comply with all bylaws, rules and regulations of the Town of Braintree unless: (1) specifically waived hereunder; or (2) as set forth elsewhere in this Decision. Nothing herein may be construed as a waiver of any applicable state or federal law.

No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of any local fee or charge has been granted. These waivers are granted to the extent necessary for the Applicant to construct the Project as shown on the Final Plans, which are those revised plans presented to the Board in this proceeding. Any subsequent revision to the Final Plans, including but not limited to revisions that are apparent in the Final Plans approved by the Subsidizing Agency that require additional or more expansive waivers of any local by-laws or regulations must be approved by the Board in accordance with 760 CMR 56.05(11).

All denial of waivers is based on a valid Local Concern, such as public safety, health, environmental concern or adequate fire access/protection that has been articulated by the Board during the Public Hearing. The Applicant informed the Board that denial of certain waivers rendered the Project uneconomic, but the Applicant was unwilling to grant the Board an extension of time to complete the public hearing in order to allow for a review of Applicant's pro forma; therefore, no additional information in support of Applicant's assertion will be provided. The Applicant also advised that they did not intend to modify their plan to bring the Project in compliance with certain zoning requirements that would negate the need for a waiver.

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The following specific waivers are granted as and to the extent set forth below:

| <u>Regulations Governing the Subdivision of Land</u> | <u>Regulation/Requirement</u> | <u>This Comprehensive Permit Project Provides</u> | <u>Granted Yes or No</u> |
|--|---|---|--------------------------|
| Section III A | Application Submission and Fees Procedural in Nature | Submission of the ANR Plan as part of the Comp. Permit, with no separate Application or Fees | YES 3:0:0 |
| Section III C | Review and Decision Process Procedural in Nature | This ANR Plan will be reviewed and voted on as part of the Comp. Permit | YES 3:0:0 |
| Section III D | Extension Procedural in Nature | The statutory time frames allotted for ANR endorsement are not applicable in this case and the Comp. Permit time frames apply | YES 3:0:0 |
| <u>Braintree Zoning Bylaw</u> | <u>Regulation/Requirement</u> | <u>This Comprehensive Permit Project Provides</u> | <u>Granted Yes or No</u> |
| Section 135-201A | The Building Inspector shall issue no permit unless the plans, specifications and intended use of the premises comply in all respects with the provisions of the Braintree Zoning Bylaw Procedural in Nature | The Braintree Zoning Bylaw does not apply to this Development | YES 3:0:0 |
| Section 135-203 | Special Permit and Site Plan Review Requires Planning Board Approval Procedural in Nature | Comp. Permit so neither is Required and The Zoning Board of Appeals is the Comp Permit Granting Authority | YES 3:0:0 |
| Section 135-204 | Zoning Board of Appeals Procedural in Nature | The Zoning Board of Appeals is ALSO the Comp Permit Granting Authority | YES 3:0:0 |
| Section 135-302 | Use and Structures to Comply with Density and Use Requirements Procedural in Nature | The Braintree Zoning Bylaw does not apply to this Development | YES 3:0:0 |
| Section 135-401 | Permit Granting Authority Procedural in Nature | The Zoning Board of Appeals is ALSO the Comp Permit Granting Authority | YES 3:0:0 |

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| <u>Braintree Zoning Bylaw</u> | <u>Regulation/Requirement</u> | <u>This Comprehensive Permit Project Provides</u> | <u>Granted Yes or No</u> |
|-------------------------------|---|--|---|
| Section 135-407 | Variances Procedural in Nature | Comp. Permit so not required. All deviations from the Braintree Zoning Bylaw are reviewed through the Comp. Permit Process. | YES 3:0:0 |
| Section 135-502 | Site Plan Review Requirement Procedural in Nature | Comp. Permit so not required and all Site Plan Review Components are reviewed through the Comp. Permit Process. | YES 3:0:0 |
| Section 135-503 | Special Permit Procedures Procedural in Nature | Comp. Permit so not required and all Special Permits are reviewed through the Comp. Permit Process. | YES 3:0:0 |
| Section 135-601 | Table of Principal Uses Procedural in Nature | Use Special Permit for Multi-Family Dwellings in a General Business District. Comp. Permit so not required and all Special Permits are reviewed through the Comp. Permit Process. | YES 3:0:0 |
| Section 135-613C | Village Overlay District Applicability Procedural in Nature | Overlay Districts to not Apply to Comp Permits | YES 3:0:0 |
| Section 135-613D | Village Overlay District Permitted Uses Procedural in Nature | Use Special Permit for Multi-Family Dwellings in a General Business District applies in Village Overlay. Comp. Permit so not required and all Special Permits are reviewed through the Comp. Permit Process. | YES 3:0:0 |
| Section 135-613F(2) | Village Overlay District Dimensional Requirements | A waiver from the rear yard setback requirement is required. The Rear yard setback shown in the Plans is 10.5 Ft. where 20 is required. A waiver is required from the side setback range of 0 to 10 Ft. The minimum Side Yard setback shown in the Plans is 9.9 Ft. 47% of the Building is 4 Stories and 53% is 3 Stories. | NO 3:0:0 The granting of this waiver will result in the allowance of an area to be developed in a manner that creates Public Safety Concerns - Major Life and Fire Safety and Access Concerns – and is therefore, not Consistent with Local Needs. |

**Parkside Apartments
Comprehensive Permit Decision**

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| <u>Braintree Zoning Bylaw</u> | <u>Regulation/Requirement</u> | <u>This Comprehensive Permit Project Provides</u> | <u>Granted Yes or No</u> |
|--------------------------------------|---|---|---|
| Section 135-613F(3) | Village Overlay District Maximum Setback from Street of 15 Feet | This property does not front on the Main Square and is located 244+ Feet from Storrs Avenue. | NO 3:0:0 The granting of this waiver will result in an allowance of a setback that creates Public Safety Concerns – Major Life and Fire Safety Access Concerns – and is therefore not consistent with Local Needs. |
| Section 135-613G | Village Overlay District Submission Requirements Procedural in Nature | Submission of all materials and plans are part of the Comp. Permit, with no separate Application or Fees | YES 3:0:0 |
| Section 135-613H | Parking Regulations | See Section 135-815 Below | SEE BELOW |
| Section 135-701 and 135-701 Notes | General Business District Dimensional Requirements Rear Yard = 20 Ft. Minimum Side Yard = 10 Ft. Minimum | A waiver from the rear yard setback requirement is required. The Rear yard setback shown in the Plans is 10.5 Ft. where 20 is required. A waiver is required from the side setback of 10 Ft. The minimum Side Yard setback shown in the Plans is 9.9 Ft. 47% of the Building is 4 Stories and 53% is 3 Stories | NO 3:0:0 The granting of this waiver will result in the allowance of an area to be developed in a manner that creates Public Safety Concerns - Major Life and Fire Safety and Access Concerns – and is therefore not Consistent with Local Needs. |
| Section 135-705 | Multifamily Dwellings Minimum Frontage 100 Ft. | The Comp. Permit lot provides for 50 feet of frontage | NO 3:0:0 The granting of this waiver will result in the allowance of an area to be developed in a manner that creates Public Safety Concerns - Major Life and Fire Safety and Access Concerns. Frontage is directly related to access to the site. Actual access to the proposed building is setback a significant distance from either Washington Street or Storrs Avenue. The reduced frontage, combined with the proposed locations of buildings and parking on this site and the adjacent proposed condominium Project also owned by the Applicant impede fire access and operational set-up. Therefore, the grant of this waiver is not Consistent with Local Needs. |

**Parkside Apartments
Comprehensive Permit Decision**

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| <u>Braintree Zoning Bylaw</u> | <u>Regulation/Requirement</u> | <u>This Comprehensive Permit Project Provides</u> | <u>Granted Yes or No</u> |
|-------------------------------|--|---|--|
| Section 135-705 | Multifamily Dwellings Minimum Open Space of 2,000 Sq. Ft. per Unit or a total of 140,000 Sq. Ft. | Comp. Permit Does not provide the minimum 2,000 Sq. Ft. of Open Space that is required per Unit, it provides 350 Sq. Ft. per Unit for a total of 24,499 Sq. Ft. | NO 3:0:0 This development lacks open space and recreational areas within the Development and is therefore not Consistent with Local Needs. |
| Section 135-711B, C, D, E | Site Plan Review Multifamily Procedural in Nature | Site Plan Review is required for all Multifamily Developments. Comp. Permit so not required and all Site Plan Review is conducted through the Comp. Permit Process. | YES 3:0:0 |
| Section 135-802A | Off Street Parking and Loading Applicability Procedural in Nature | | YES 3:0:0 |
| Section 135-806A | Schedule of Off Street Parking Multifamily = 2 spaces per unit 70 Units = 140 spaces | The Development provides for 128 Parking spaces or 1.83 Spaces Per Unit | YES 3:0:0 |
| Section 135-812C | Landscape Requirements 5 Ft. Wide Landscape Strip between Parking Area and abutting property line | The Parking provided along the access drive has a deficient buffer width of 3 Ft. | YES 3:0:0 |
| Section 135-812D | Landscaping Requirements Minimum of 5% of the interior of the parking area shall be landscaped | The Comp. Permit Plans state that this Development contains 3.3% of interior landscaping | YES 3:0:0 |
| Section 135-815 1(a) | Village Zoning District off-street parking and loading Parking in the Front Yard | Parking is provided between Storrs Avenue and the Building, but beyond the 20 Ft. requirement and behind the Condo Comp. Permit. | YES 3:0:0 |
| Section 135-815 1(c) | Village Zoning District off-street parking and loading Payment | The Application materials discuss the potential for offsite parking mitigation in the form of improvements to the municipal parking lot. | YES 3:0:0 |
| Section 135-815 1(e) | Village Zoning District off-street parking and loading Determination of Fee by P.B. | The Applicant has Proposed Parking Mitigation in the Municipal Parking Lot. | YES 3:0:0 |
| Section 135-1201B | Grading Regulations A Grading Permit review would be included as part of the Special Permit/Site Plan Review. Procedural in Nature | Comp. Permit so not required and all Grading Review is conducted through the Comp. Permit Process. The Site is a Net fill of 3,789 Cubic Yards. | YES 3:0:0 |
| Section 135-1201G | Grading Regulations Procedures for Application Procedural in Nature | Submission of all materials and plans are part of the Comp. Permit, with no separate Application or Fees | YES 3:0:0 |

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| <u>Braintree Zoning Bylaw</u> | <u>Regulation/Requirement</u> | <u>This Comprehensive Permit Project Provides</u> | <u>Granted Yes or No</u> |
|-------------------------------|---|---|------------------------------|
| Section 135-1201H(5)B | Grading Regulations Excavation Procedural in Nature | There may be temporary excavation below seasonal groundwater for utility installations that would be back filled | YES 3:0:0 |
| Section 135-1201H(7)C | Grading Regulations Grading Standards This Section requires a slope of 24 Inches over 1Ft. for the first 6 ft. around the building. | Minimum Grading at building is 50 Inches to 1 Ft. or 2% | YES 3:0:0 |
| Section 135-1201H(12) a-d | Grading Regulations Grading Standards Setbacks | This Section requires that all cuts and fills be certain distances from the property line but allows them to be waived by constructing a retaining wall, which is being constructed | YES 3:0:0 |
| N/A | Waive All Town Fees Associated with the Development of the Affordable Units | The total estimated Fees requested to be waived is about \$90,000.00 | NO 3:0:0 |

IV. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by M.G.L. c. 40B, §§ 20-23 and its implementing regulations, 760 CMR 56.00 et seq., the Board's Comprehensive Permit Regulations dated October 25, 2016, and by all governing Town ordinances, bylaws and regulations. The Board also considered evidence and testimony presented at the public hearings and comments submitted by the Applicant and/or its representatives, Town departments, local boards and committees as well as the Board's peer review consultants and residents placed in the public record during the course of the hearings.

A. Jurisdictional Requirements

The Board finds that the Applicant has adequately demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum Project eligibility requirements set forth in 760 CMR 56.04(1) as follows:

1. The Applicant has indicated in its application that it will conform to the limited dividend requirements of G. L. c. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 519 Albany Street, Suite 200, Boston, MA 02118.
2. The Applicant has received a written determination of Project Eligibility from the Massachusetts Housing Finance Agency ("MassHousing") dated February 10, 2017, a copy of which was provided to the Board with the original application.
3. The Applicant has "Site Control" pursuant to M.G.L. Chapter 40B Section 21 and 760 CMR 56.04 (1) in that the Property is currently owned by 383 Washington Street LLC, the Applicant, who intends to transfer the Property to a related limited dividend organization, Braintree Parkside Apartments, LLC, pursuant to an option agreement. The Applicant provided a copy of the deed dated December 27, 2012 that was stamped in at the Norfolk County Registry of Deeds on December 28, 2012 for the Property.
4. The Applicant has agreed to execute a Regulatory Agreement that limits its annual distributions in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by the Department of Housing and Community Development ("DHCD").

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B. Statutory Minimum for Low and Moderate Income Housing

Based on the Subsidized Housing Inventory maintained by the Department of Housing and Community Development, as of February 14, 2017, the Town of Braintree has 7.81% of its available housing units dedicated to low and moderate-income households.

The Board maintains that the Town has 1.5% of its general land area dedicated to affordable housing and therefore qualifies for a safe harbor pursuant to 760 CMR 56.03(3)(b) ("Safe Harbor"). The Board voted to assert this Safe Harbor at the initial public hearing on March 13, 2017, but in a letter dated May 4, 2017 the Department of Housing and Community Development determined that the Town had not achieved this Safe Harbor. The Board appealed this determination to the Housing Appeals Committee, who issued an Interlocutory Decision Regarding Safe Harbor on June 27, 2019, finding that the Town had not met its burden of proving that this Safe Harbor had been achieved and ordering the Board to reconvene its proceedings on this application. The Board filed a Motion for Reconsideration and to Re-Open the Hearing before the Committee on July 8, 2019, which was denied on October 11, 2019. On August 1, 2019, the Board resumed the public hearing but also voted to re-assert its position that the Town has 1.5% of its general land area dedicated to affordable housing as provided in 760 CMR 56.03(3)(b), notwithstanding the Interlocutory Decision on Safe Harbor rendered by the Housing Appeals Committee on June 27, 2019 and further voted to reserve its rights to challenge the Interlocutory Decision Regarding Safe Harbor in any further appeal pursuant to 760 CMR 56.03(8)(c).

C. Civil Engineering/Site Design/Building Design

The Board finds the Applicant has not demonstrated that they have satisfied all of the concerns of the Town Engineer pursuant to his letters dated March 9, 2017 and September 23, 2019. The comments relate to water and sewer design, caution during construction given the location of the existing sewer easements, provisions for a pedestrian connection from the development(s) via the Parking Way to Washington Street, concerns that the proposed traffic signal timing mitigation at the Storrs Avenue/Washington and Elm Streets intersection will eliminate green time on the main artery (Washington Street) and the lack of on-site passive and active open recreational areas for residents of the Project.

The Board finds that in order to complete the Project 3,789 Cubic Yards of Fill Material will need to be imported to the Site.

The Board finds that the property is accessed via Storrs Avenue, a public way, and over a right of way known as Alves Way that also provides access to an abutting proposed Comprehensive Permit development. The Board finds that the property is also accessed via the Parking Way, a 20-foot wide privately owned right of way that intersects with Washington Street, a Town way. The site is encumbered by sewer easements along a portion of the easterly and western property boundaries, which serve the Project site as well as the adjacent Archbishop William's athletic field and multiple properties beyond the eight (8) unit proposed Comprehensive Permit development on adjacent property also owed by the Applicant. The Board further finds that the proposed development necessitates the need for access, drainage, water, sewer, gas and electric easements as well as extreme caution during site work.

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The Board finds the location of the 118,290 Sq. Ft. (includes partially exposed garage) building on the site is setback from the frontage over 240 Feet, where the Village Overlay Zoning District encourages smaller buildings located closer to and along the street frontage.

The Board finds the lot created for the development cannot support the size or shape of the building proposed, based on the inability to meet the minimum dimensional requirements of the district.

The Board finds the building to be three and four stories in height, which includes the partially-exposed garage. 53% of the building is 3 stories and 47% is 4 stories.

D. Stormwater Management Issues

The Board finds there are extensive public concerns about historical down-stream flooding.

The Board finds the Applicant has mitigated the rate of stormwater run-off leaving the site through detention and infiltration of a watershed area that includes upstream properties, and therefore, the post-development rate of flow for all storm events will be reduced by as much as 7.83 CFS less than current rates of flow. In fact, the Board finds that the Project, as proposed, will capture stormwater run-off on site, detain it and treat it through a subsurface infiltration system, which is an improvement over current conditions.

The Board finds this topic was subject to a Peer Review and the Board is satisfied that the Stormwater Management System Plan, Design and Calculations, as revised based on the Peer Review Consultant's recommendations, are acceptable.

E. Transportation, Circulation, Pedestrian and Vehicular Safety

The Project will be accessed via Storrs Avenue, across a private access known as Alves Way, and via a 225 Foot long private right of way off Washington Street, known as the Parking Way. The access at Storrs Avenue is located just over 300 feet west of the signalized intersection of Storrs Avenue and Washington Street. Alves Way is a private access to the site also shared by three commercial condominium units at 14 Storrs Avenue and is proposed to be shared with an eight-unit townhouse comprehensive permit project. The Parking Way is a 20-foot wide easement, privately owned by party(s) other than the Applicant but the abutting properties have the right to pass over the Parking Way. There is no sidewalk on the southerly side of the Parking Way. On the northerly side of the Parking Way, there is a limited stretch of sidewalk from Washington Street westerly 130 feet towards the Project site. Parking is not restricted along the Parking Way and historically, parking occurs on both sides of the Parking Way.

The Board finds the location of the Project's access from the Parking Way and on Storrs Avenue, creates an opportunity for vehicles stuck in traffic to cut through the site to bypass the intersection and use densely settled residential streets in the neighborhood to get to the highways and other points north. To discourage cut-through traffic, the Board finds the Applicant proposes to install a speed table within the drive aisle of the development.

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The Board finds that the Applicant will improve sight distance by removing existing tall vegetation along the Storrs Avenue access and replacing it with low-lying vegetation. The Board finds that in order to ensure appropriate sight lines at the Parking Way intersection with Washington Street, the Applicant would need to undertake parking striping and signage. In addition, the Board finds that parking should be prohibited along the first twenty feet of the Parking Way from its intersection with Washington Street.

The Board finds the Project provides no pedestrian connectivity or sidewalks compliant with the Americans with Disabilities Act (“ADA”) to Washington Street from the development’s Parking Way entrance.

The Board finds that the Applicant has not demonstrated the legal ability to alter the Parking Way; the Applicant is not able to restrict parking, widen the traveled way or provide for an ADA-accessible sidewalk. In fact, the Board notes that the Town Assessors’ records indicate that the Parking Way is owned by others unrelated to the Applicant.

The Board finds the current traffic congestion in and around the Storrs/Washington/ Elm Intersection to be fairly heavy in the AM Peak Period with approximately 1,900 cars utilizing the intersection and 1,982 cars utilizing the intersection in the PM Peak Period.

The Board finds that while the Projected AM and PM Peak Hour vehicle increase as represented in the Traffic Impact Assessment is not significant. However, any new trips in the network results in increased congestion.

The Board finds this topic was subject to Peer Review, and the Board is satisfied that the Traffic Mitigation Design and Methodology used, and as revised, and the Board agrees with the Peer Review Consultant’s recommendations for traffic and municipal parking mitigation and pedestrian improvements along the Parking Way, subject to the consent of the owner(s), and sight line improvements the Applicant has agreed to perform along Storrs Avenue. Specifically, the Applicant proposes to design and implement an optimal traffic signal timing and phasing plan, that includes ADA and pedestrian improvements at the Storrs/Washington/ Elm Intersection which may improve the number of vehicles that can move out of Storrs Avenue but will revise the green light time at the other two approaches that will result in longer delays along the main artery (Washington Street) as well as additional vehicle stacking. Currently, this intersection overall operates at a Level of Service (“LOS”) E. The mitigated intersection will be improved to an overall LOS D. However, some of the approaches at the overall intersection will experience longer delays and a decrease in LOS.

The Board finds that while no formal or legally binding parking easements are in place, as a practical matter, portions of this property were utilized by abutting (educational/recreational and religious) uses as off-street parking during peak parking demands of the abutting uses. The loss of the use of this property for said peak parking periods may result in additional vehicles parked in the abutting neighborhood.

The Board finds that the Braintree Police Department thru written testimony and verbal testimony at the Public Hearing have noted that increases in traffic continues to be concern.

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F. Fire Access Issues

The Braintree Fire Department has raised continued opposition to the Project in regards to life and fire safety, and the Board finds that these concerns present a matter of Local Concern, as such term is defined in 760 CMR 56.02:

1. The Board acknowledges that Applicant's consultant, Kevin Hastings, prepared a report finding that the site complies with the requirements of the National and MA Comprehensive Fire Safety Code in terms of fire access. However, the Applicant's report only addresses the physical standards for fire lanes and fire access where they are actually provided on the site. The Fire Code does not mandate where or how many fire lanes or other means of fire access a site must provide; this determination rests with the discretion of the local Fire Chief. The Applicant's Fire Consultant concedes that the Fire Code does not address requirements for foot access, yet the Applicant and his consultant acknowledge that the only practical fire access to the south and west elevations of the building will be by foot access.
 - a. The Assistant Planning Director noted during the public hearing that it is the Town's practice, based on input from the Fire Chief or his designee, to require fire access to at least three sides of a building of this nature. The Board finds that this local requirement that the Fire Department have access to at least three sides of a building of this size and nature addresses a serious life and public safety concern and is a matter of Local Concern. Therefore, the Board finds that enforcement of this local requirement is reasonable and Consistent with Local Needs. The Deputy Fire Chief argued, and the Board agrees, that the site does not provide a fire lane on two sides of the building, and fire access to the south and west sides of the building are inadequate.
 - b. According to Section 3.3.117 of NFPA 1, 2015 Edition and 527 CMR 3.3.117, a "Fire Department Access Road" is defined as: "The road or other means developed to allow access and operational setup for fire-fighting and rescue apparatus." It is undisputed that there is no access road along the south or west elevations of the building. Further, the means of access to these two sides of the building is not developed in any manner, meaning there are no pathways of concrete, asphalt, stone dust or other building material designed to provide defined fire access. Rather, the access to these two sides of the building is via a strip running parallel to the side of the building of varying width and composed of grass and landscaped beds.
2. The site presents inadequate width and fire ladder placement stability, uneven grades and no surface treatment for fire access on the south and west sides of the building. Specifically:
 - a. Access to the south and west sides of the building is exclusively by foot. The Deputy Fire Chief expressed concern that firefighters must travel on foot for distances over 250 feet on these two sides of the building, requiring at least two firefighters per 35-foot high ground ladder to service these two sides of the building.
 - b. The Applicant's consultant notes that NFPA Section 18.2.3.2.2.1 requires any portion of a facility or exterior wall of the first story of a building to be located not more than

250 feet from a fire access road, and to comply with this requirement, the Applicant proposed a Grass-Crete pad on the southeasterly corner of the building adjacent to the entrance at the Parking Way. The Deputy Fire Chief argued that for a ladder truck to position itself on the proposed Grass-Crete pad it would require the fire apparatus to make a 90 degree turn at the base of the Parking Way, and the ladder and hoses would have to be deployed from the side of the truck. This proposed location is not practical, as the Deputy Fire Chief explained that the aerial truck must be positioned away from the building to allow a safe climbing angle. The Applicant's engineer provided a sketch demonstrating the angle of the ladder in order to achieve certain heights, which reflects that, in order to reach a height of 60 feet, which is just above the height of the proposed building, the fire apparatus would have to be located at least 50 feet away from the building. However, the Applicant has only provided 26.5 feet of area for fire apparatus at the southeasterly corner of the building. Further, the more appropriate positioning of the fire apparatus, as determined by the Deputy Fire Chief, will block access to the site from the Parking Way for other emergency vehicles. The Deputy Fire Chief also explained that the deployment of ladder and hoses from the side of any fire apparatus is the least stable operating position and not consistent with best fire management practices.

- c. Similarly, the aerial ladder will have to be positioned at least 50 feet away from the northwesterly corner of the building in order to reach the roof. A drive aisle of 24 feet is provided in this area parallel to the northerly side of the building, which backs up to designated resident parking. Another 24-foot drive aisle is perpendicular to the northerly side of the building, along the side of a proposed 3-unit townhouse (which is the subject of a separate application filed by this Applicant). The Board finds that the Applicant has failed to provide sufficient area for fire apparatus to be safely positioned to deploy the aerial ladder to effectively reach the southwesterly corner or portions of the westerly side of the building. Therefore, the Board finds that the site does not provide safe or practical fire access to the building, presenting a public health and safety concern for firefighters and residents.
- d. Notwithstanding the proposed fire apparatus locations suggested by the Applicant, the Deputy Fire Chief insisted that set-up at other locations on the site present the same challenges. An aerial ladder will have to be positioned at least 50 feet away from the building in order to reach the roof at a safe climbing angle. Immediately in front of the building's main entrance is a circular drive aisle of 24 feet in width, setback from the building at the closest point by 23 feet which includes landscaping and a 5 foot wide sidewalk. If an aerial ladder was positioned here, it would only be setback 23 feet from the building, such that the aerial truck would need to operate from the parking circle where cars will be parked. Similarly, along the easterly side of the building, there is 27 feet from the building to the drive aisle, which includes landscaping and a 5-foot wide sidewalk. Again, the aerial ladder requires a setback of 50 feet from the building to reach the roof, requiring the ladder truck to be positioned along the easterly boundary line, on top of a sewer easement and designated parking spaces. This position requires the ladder and hoses to be deployed off the side of the fire truck, which the Deputy Fire Chief maintains is the least stable position for

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firefighting. The Deputy Fire Chief insisted this site does not provide adequate fire access, and the Board agrees this presents a serious Local Concern.

- e. Both the south and west sides of the building provide grass, loam, or landscaped areas, with no impervious surface or other surface treatment approved by the Fire Department to provide stable footing for ladders. This is of particular concern when seasonal or weather changes impact the soil, causing ground ladders to sink into the ground, thereby decreasing the reach of the ladders. The Applicant provided no plan for snow removal on these sides of the building to ensure clear access on these sides of the building; snow accumulation along these two sides will further exacerbate fire access and operations.
- f. According to the proposed layout of the Project, the width of the foot path on the south elevation of the building varies from 20.4 feet closest to the Parking Way, decreases to 17.2 feet just before the deck in the southwest corner of the building and narrows to 10.5 feet from the corner of the deck to the southerly property line. The Deputy Fire Chief represented that a safe angle for a ground ladder is to be offset from the building 1 foot for every four feet of building height; in this case, with a 35-foot high ground ladder, the ladder would have to be set back 9 feet from the building to provide a safe climbing angle. This leaves a firefighter or other rescue personnel only 8.2 to 11.4 feet at the base of the ladder for operational set-up and maneuvering on the ground, yet this same area is occupied by landscaping, which further hinders fire access. The Board notes that a fire lane is required to be 20 feet wide, unobstructed, with 13.6 feet of vertical clearance per Section 18.2.3.4.1 of NFPA 1, 2015 edition. The Board acknowledges that this side of the building has no designated fire lane, but offers this as an indication of the width that the NFPA considers to be adequate fire department access. The Board finds this limited area is not adequate room for fire and rescue operations to set up on the ground.
- g. According to the proposed layout for the Project, the width of the footpath along the west elevation of the building varies from 15.7 feet, widens modestly to 16.6 feet and is restricted to 9.9 feet from the corner of the deck to the westerly property line. This leaves a firefighter or other rescue personnel with only 6.7 to 7.6 feet at the base of the ladder, which the Board finds inadequate for fire and rescue operational set-up and maneuvering.
- h. The south elevation of the building has significant topographical grade changes from 78 feet at the southeasterly corner of the building and sloping to 68 feet at the southwesterly corner by the proposed deck. The Board finds this slope presents an uneven surface for the ground ladders causing a safety issue for fire and rescue personnel.
- i. Landscaping is also proposed along the perimeter of the south and west sides of the building. As landscaping grows and matures, it will impede fire access, ground staging area and rescue operations, if not properly maintained.

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- j. The Board finds that all of the Applicant's assumptions regarding access to the site are based upon pristine conditions and do not take into account illegally parked cars or snow accumulation.
3. Adequate access to the roof has not been provided to the satisfaction of the Braintree Fire Department, and the Board finds that the access as proposed by the Applicant presents a life safety concern for firefighters and rescue personnel as well as residents of the building. According to the Deputy Fire Chief, the Fire Department's goal is to ventilate the roof as close to over the fire as possible in order to allow for an interior attack, and the aerial ladder should be located as close as possible to the roof ventilation area as possible to allow firefighters to get off the roof. The Deputy Fire Chief acknowledges that the Applicant has provided access to the roof, but depending upon the location of the fire, firefighters may have to traverse over 200 feet across the roof. The Applicant has provided an emergency vehicle turning radius and access plan which positions fire apparatus in three locations: in front of the building at the parking circle; at the immediate entrance of the site from the Parking Way; and along the northwesterly corner of the building, just westerly of the entrance to the parking garage. The Deputy Fire Chief explained that fire apparatus, whether the ladder truck or the aerial platform truck is 8.3 feet wide and when stabilizers on each side are deployed, the truck width expands to 15 feet wide. The ladder and aerial trucks must be positioned away from the building so as to provide a safe climbing angle. Best management practice for firefighting calls for the fire truck to be deployed perpendicular to the building such that the ladder or aerial platform projects over the front or rear of the truck, not the side of the truck. The Applicant has proposed no architectural or mechanical features that would allow automatic ventilation of the roof to address this Fire Department concern about roof access.
4. The size of the building in relationship to the land around the building leaves insufficient area to maneuver and deploy life and fire safety apparatus safely and effectively. In response to the first alarm, the Braintree Fire Department will deploy two engine trucks, one incident command vehicle, and a ladder truck and/or aerial platform truck. An ambulance will also respond to the scene. The combination of the site design, size and configuration of the building, the number and configuration of surface parking spaces and access leaves insufficient area for the Braintree Fire Department to set up in response to a fire. Once deployed, the Deputy Fire Chief explained that it is difficult and time-consuming to re-position apparatus. Also, once in position, at least one access to and from the site will be eliminated.
5. The Fire Department is concerned that the south and west sides of the building offer no area for maneuvering outside of the building collapse zone, which is half the height of the building. For a building of this height and construction materials, the building collapse zone is approximately 23.5-26.5 feet. The Applicant's engineer stated that the site allows fire apparatus to be located outside of the building collapse zone, but the Deputy Fire Chief is concerned about on-foot fire and rescue personnel and operations on the south and west sides of the building. Neither the south nor the west sides of the building provide 23.5-26.5 feet of width to accommodate a collapse zone plus area for firefighters to maneuver, and in the event of building collapse on the south or west sides, a means of egress will be blocked. Moreover

fire and rescue personnel, seeking to avoid a collapse area will not be able to cross onto abutting property on the west side of the building, as this area drops 10 feet at the property line, as evidenced by the retaining wall.

6. The Applicant proposes snow storage areas on top of landscaped areas surrounding the building, which the Applicant's engineer estimated will be at least 1.5 feet high for a 6-inch snowstorm. One significant snow storage area is proposed along the easterly elevation of the building will further impede fire access and rescue operations.
7. One means of access to the site is via the 20-foot wide easement known as the Parking Way. This easement is privately owned; however, the Applicant enjoys the right to use the easement for access. In some portions, the 20 feet of width of the Parking Way abuts up to the side of a building not owned by or under the control of the Applicant. Historically, parking is unrestricted along the Parking Way. The Board acknowledges that the Applicant presented a turning radius plan, demonstrating that fire apparatus can turn down the Parking Way to access the site, but even the Applicant's engineer concedes that parking should be prohibited along portions of the Parking Way at its intersection with Washington Street. Since this easement is privately owned, the Applicant has no any authority to restrict parking along the Parking Way. Based on historical parking patterns along the Parking Way, access for fire apparatus will be compromised, if not obstructed. Snow accumulation along the Parking Way will further constrict access for fire apparatus. The Board found that the Applicant lacks control over the Parking Way to ensure adequate and safe access for all life and fire safety vehicles and apparatus.

G. Landscaping Design

The Board finds, as noted by the Town Engineer, that the Project provides no on-site recreation or usable open spaces areas for residents, except for a small deck in the southwest corner of the property and modest landscaping. The Board finds this lack of adequate recreational area for a development of this density presents a matter of Local Concern and is not Consistent with Local Needs.

The Board finds that the Landscape Design will need to be continually replaced in the spring due to the use of landscaped areas for snow storage.

H. Consistency with Local Needs

The Board finds that the Town has satisfied one of the statutory minima defined at 760 CMR 56.03(3)(b). Specifically, the Board finds that Subsidized Housing Inventory eligible units exist of sites comprising 1.5% of the Town's general land area, pursuant to 760 CMR 56.03(3)(b). In the Interlocutory Decision on Safe Harbor issued by the HAC on June 27, 2019, the HAC calculated that 1.396% of the Town's general land area was comprised of sites eligible for the Subsidized Housing Inventory maintained by DHCD. The Board finds that the Interlocutory Decision on Safe Harbor contained erroneous conclusions and omitted calculations of land area that the HAC conceded should have been included but for the fact that the HAC could not easily extrapolate and apply those land areas. The Board also finds that the HAC refused to allow the Town to present the calculations that the HAC admitted were lacking, thereby depriving the Town of its opportunity to demonstrate that the 1.5 % land area minimum had been achieved.

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The Board re-asserted its position on having achieved this “safe harbor” at the resumed public hearing. Pursuant to 760 CMR 56.03, the Board again asserts that the Town has achieved this statutory minima and that denial or approval of this comprehensive permit application with conditions is Consistent with Local Needs.

Based on any or all of the above Findings, the Board is of the opinion that the project as proposed does not provide adequate recreational areas or fire access, thereby presenting valid health and safety concerns for the residents of the Project, fire fighters and the Town in general, which are matters of Local Concern. The Board finds that there are no conditions that can be imposed on the Project that would alleviate these Local Concerns, as the Project would have to be scaled down in size or re-designed. These Local Concerns, coupled with the Board’s finding that the Town has achieved the 1.5% general land area “safe harbor”, renders denial of this Project Consistent with Local Needs and outweigh the need for housing.

Based on the Findings noted above, the Board is of the opinion that the Project is NOT consistent with Local Needs. The Board inquired whether the Applicant would modify its plans to address any of the Board’s concerns, and the Applicant declined. The Board finds there are no conditions that it could impose that would address these Local Concerns, as the Board is of the opinion that the Project must be re-designed or additional land area must be acquired.

Upon a motion made and seconded, the Board voted (3-0-0) to approve the Approval Not Required (ANR) Plan creating a separate development lot for this Project. This Plan was endorsed by the Chair of the Board on February 10, 2020.

Upon a Motion made and seconded, the Board voted (3-0-0) to find that the Parkside Apartments comprehensive permit for 70 rental units, as proposed, is NOT Consistent with Local Needs, as defined by 760 CMR 56.02 because:

- The size of the site, density, and location of the building on the site does not provide adequate access for fire apparatus or operational set-up for firefighters and rescue personnel.
- The project does not provide sufficient outdoor recreational areas for the intended residents.
- There are no conditions the Board can impose that would address these Local Concerns.
- 1.5% of the Town’s general land area is dedicated to affordable housing qualifying the Town for a “safe harbor.”

**Parkside Apartments
Comprehensive Permit Decision**

RECEIVED TOWN CLERK
BRAintree, MA

**February 10, 2020
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V. Vote

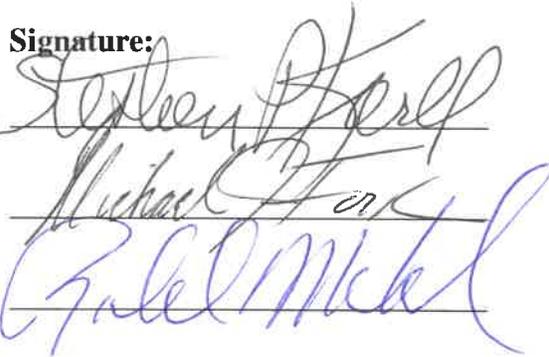
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By a vote of **3:0:0**, the Zoning Board of Appeals hereby **DENIES** the Applicant, 383 Washington Street, LLC, a Comprehensive Permit to construct 70 rental units on 383-385 Washington Street, Storrs Avenue and Alves Way in Braintree, MA, in accordance with G.L. c. 40B §§ 20-23 and its implementing regulations at 760 CMR 56.00 et seq., in accordance with the Approved Plans and subject to the conditions herein.

RECORD OF VOTE

The following members of the Zoning Board of Appeals voted to DENY a Comprehensive Permit:

| Member: | Vote: |
|---------------------------|--------------|
| Stephen Karll, Chair | YES |
| Michael Ford, Member | YES |
| Richard McDonough, Member | YES |

Signature:


The Board and the Applicant have complied with all statutory requirements for the issuance of this Comprehensive Permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Braintree Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

This Decision was filed in the office of the Town Clerk on 02/14/2020.

Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40B, §21 and Chapter 40A, §17, and shall be filed within twenty days after the filing of this decision in the office of the Braintree Town Clerk. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty days after the filing of this decision in the office of the Braintree Town Clerk.

The Comprehensive Permit granted by this Decision shall not take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty-day period or that any duly filed appeal has been dismissed or denied. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision shall be furnished to the Board.