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JUN 13 2022

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June 13, 2022
117373-12

VIA E-MAIL AND HAND DELIVERY

Mark Hickernell, Clerk
Zoning Board of Appeals
City of Waltham
610 Main Street
Waltham, MA 02452

RE: Applicant: MAPLE MULTI-FAMILY LAND SE, LP or Affiliates
(note: a single purpose entity will be created as the development entity)

Property: 73-79 Pond Street and 9-11 Pond Street Court,
Waltham, Massachusetts
Map 051, Block 007, Parcel 0021
Map 051, Block 007, Parcel 0022

Original Decision: Dated January 29, 2020, recorded with the Middlesex
County Southern District Registry of Deeds in Book 74245,
Page 409 (the "Comprehensive Permit")

**COMPREHENSIVE PERMIT
NOTICE OF PROJECT CHANGE
M.G.L. ch. 40B, §§20-23, 760 CMR 56.05(11)**

Dear Clerk Hickernell:

On January 29, 2020, the Waltham Zoning Board of Appeals ("Board") approved a Comprehensive Permit for 73 Pond Manager, LLC to construct 210 apartment units, 348 parking spaces and related amenities, including 25% of the units (53 units) priced at no more than 80% of median household income, with 39 units available to households earning at or below 80% of median household income and 14 units available to households earning at or below 60% of median household income. (the "Project"). Our client MAPLE MULTI-FAMILY LAND SE, LP, or an affiliate thereof ("Purchaser"), proposes to purchase the above-referenced Property, including the Comprehensive Permit, and to make minor, insubstantial changes to the Project, as shown on the plans filed herewith entitled "Layout & Materials Plan" prepared by Allen & Major Associates, Inc. and dated June 9, 2022, Redline Overlay of "Layout & Materials Plan"

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prepared by Allen & Major Associates, Inc. and June 9, 2022, and "ZBA Record Set" prepared by CUBE3 dated April 18, 2022 (collectively, the "Amended Plans"). Pursuant to this Notice of Project Change, Purchaser proposes to: (i) revise the parking count in the podium from 164 standard spaces, 4 accessible spaces and 0 compact spaces to 108 standard spaces, 4 accessible spaces and 56 compact spaces (overall podium count remains the same); (ii) revise the parking count in the surface parking area from 76 standard spaces, 5 accessible spaces, and 99 compact spaces to 128 standard spaces, 4 accessible spaces, and 48 compact spaces (overall surface count remains the same); (iii) revise the compact parking space count from 99 compact spaces to 104 compact spaces (note: the Plans of Record for the Comprehensive Permit showed 99 compact spaces, but the Comprehensive Permit included a waiver to allow for 104 compact spaces); (iv) add impervious area to the surface parking area; (v) increase the leasing/lobby area on the ground floor from 1,006 square feet to 2,500 square feet; (vi) increase the clubhouse area on the first floor from 2,560 square feet to 6,000 square feet and add an open outdoor amenity space to the rooftop of the clubhouse (however, the rooftop amenity space will not increase the FAR); (vii) through the addition of the new square footage set forth in items (v) and (vi), a resulting increase in the floor area ratio ("FAR") from 1.5 to 1.7; (viii) increase the façade of the clubhouse due to expansion of the clubhouse area; (ix) increase the building height (as defined in Section 2.3 of the Waltham Zoning Code) from 71' to 75'; (x) add a dog park; (xi) add accessible sidewalk to Pond Street and along Castle Street; (xii) add monument signage at the Pond Street entrance; (xiii) shift the parking on the east side of the Project to account for curbing and fencing; (xiv) reduce the trash room on the podium level; (xv) reduce the bike storage area on the podium level; (xvi) add a pool room to the podium level; (xvii) add mechanical rooms to the podium level; (xviii) revise condition D.44 of the Comprehensive Permit to allow a connection for emergency stormwater overflow into the existing municipal drainage system; (xix) revise the side yard setback from the building from 4.9' to 0.6', in accordance with the Amended Plans; and (xx) move the second garage entrance from the northeast side of the building to the southwest side (collectively, the "Proposed Project"). The Proposed Project, as shown on the Amended Plans, constitutes an insubstantial change under 760 CMR 56.07(4)(d).

As you know, 760 CMR 56.05(12)(b) provides:

"(b) Transfer of Permits. Prior to substantial completion of a Project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b), and upon written notice to the Board and the Committee (in the case of a Project granted a Comprehensive Permit under 760 CMR 56.07). Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a Comprehensive Permit shall be deemed to run with the land."

With respect to changes made to a Project after a Comprehensive Permit is issued, 760 CMR 56.05(11)(a) and (b) provide in pertinent part:

- “(a) If after a Comprehensive Permit is granted by the Board, including by order of the Committee pursuant to 760 CMR 56.07(5), an Applicant desires to change the details of its Project as approved by the Board or the Committee, it shall promptly notify the Board in writing, describing such change. **Within 20 days the Board shall determine and notify the Applicant whether it deems the change substantial or insubstantial with reference to the factors set forth at 760 CMR 56.07(4)** (emphasis added).
- (b) If the change is determined to be insubstantial or if the Board fails to notify the Applicant by the end of such 20-day period, the Comprehensive Permit shall be deemed modified to incorporate the Change.”

Finally, 760 CMR 56.07(4)(c) provides in pertinent part:

- (c) The following matters generally will be substantial changes:
1. An increase of more than 10% in the height of the building(s).

As shown on the Amended Plans, the proposed changes are as follows:

- Revise the parking count in the podium from 164 standard spaces, 4 accessible spaces and 0 compact spaces to 108 standard spaces, 4 accessible spaces and 56 compact spaces (overall podium count remains the same);
- Revise the parking count in the surface parking area from 76 standard spaces, 5 accessible spaces, and 99 compact spaces to 128 standard spaces, 4 accessible spaces, and 48 compact spaces (overall surface count remains the same);
- Revise the compact parking space count from 99 compact spaces to 104 compact spaces (note: the Plans of Record for the Comprehensive Permit showed 99 compact spaces, but the Comprehensive Permit included a waiver to allow for 104 compact spaces);
- Add impervious area to the surface parking area;
- Increase the leasing/lobby area on the ground floor from 1,006 square feet to 2,500 square feet;

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- Increase the clubhouse area on the first floor from 2,560 square feet to 6,000 square feet and add an outdoor amenity space to the rooftop of the clubhouse (however, the rooftop amenity space will not increase the FAR);
- Through the addition of the new square footage set forth in the two preceding items, a resulting increase in the FAR from 1.5 to 1.7;
- Increase the façade of the clubhouse due to expansion of the clubhouse area;
- Increase the building height (as defined in Section 2.3 of the Waltham Zoning Code) from 71' to 75';
- Add a dog park;
- Add accessible sidewalk to Pond Street and along Castle Street;
- Add monument signage at the Pond Street entrance;
- Shift the parking on the east side of the Project to account for curbing and fencing;
- Reduce the trash room on the podium level;
- Reduce the bike storage area on the podium level;
- Add a pool room to the podium level;
- Add mechanical rooms to the podium level;
- Revise condition D.44 of the Comprehensive Permit to allow a connection for emergency stormwater overflow into the existing municipal drainage system;
- Revise the side yard setback from the building from 4.9' to 0.6', in accordance with the Amended Plans; and
- Move the second garage entrance from the northeast side of the building to the southwest side.

None of the proposed changes are deemed to be a “substantial change” under any of the factors listed in 760 CMR 56.07(4)(c). Although the height of the building shall increase, thus that increase is less than 10%, and the design modifications of the site and the building do not trigger any substantial changes set forth in 760 CMR 56.07(4)(c).

To allow for the Proposed Project, the Purchaser is respectfully requesting, in addition to

the waivers already granted with the Comprehensive Permit, the following waivers to be added to the Comprehensive Permit:

- Allowing a multi-family dwelling with increased Intensity of Use (FAR) (Zoning Code § 3.4);
- Allowing a Kennel Use in the Commercial District (Zoning Code § 3.4);
- Allowing Indoor Theaters and Associated Recreational Facilities (Zoning Code § 3.4);
- Waiver of Special Permit from City Council (Zoning Code § 3.5);
- Waiver from the required maximum building height of 40 feet (Zoning Code § 4.11 and 4.12);
- Waiver from the required maximum building stories for a building of 3 stories (Zoning Code § 4.11 and 4.12);
- Waiver from the required maximum lot coverage for a building of 30% (Zoning Code § 4.11);
- Waiver from the requirement that curb cuts be a maximum of 25 feet wide (Zoning Code § 5.41);
- Waiver from building sewer permits and costs and liabilities arising from connection, advance payment or deposit (General Ordinances § 16-22 and 16-23);
- Waiver from local stormwater requirements and to allow stormwater regulations and standards developed by MassDEP to be implemented (General Ordinances Chapter 25, Article I);
- Waiver of local requirements related to sidewalks, public ways, public spaces, private ways, and parking areas (General Ordinances § 17); and
- Waiver of the Land Rules and Regulations of the Board of Survey and Planning of the City of Waltham with regard to subdivision amendment (Land Rules and Regulations § 6).

No additional waivers from the local by-law are needed for the Proposed Project.

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Other than the immaterial changes described herein regarding the Proposed Project and shown on the Amended Plans, no other changes to the approved Project are proposed.

This notice shall serve as notice to the Board, as required by Section C.29 of the Comprehensive Permit and 760 CMR 56.05(12)(b), of the transfer of the Project to Purchaser. Purchaser shall also obtain written confirmation from MassHousing that Purchaser meets the requirements of 760 CMR 56.04(1)(a) and (b).

Finally, the Purchaser will be obtaining final approval from MassHousing, which approval will include execution of the standard form MassHousing Regulatory Agreement, wherein the Purchaser agrees to the limit on dividends.

Thank you for your attention to this matter.

Very truly yours,

James G. Ward

JGW:imu
Enclosure
cc:

Zoning Comparison Summary Table

73 Pond Street

9-Jun-22

2280-12

Title:

Project:

Date:

A&M Project Number:

	Site Plans 1/23/20 "Approved Plans"	Site Plans 8/30/21 "Current Plans"	Change	% Change
Lot Area (SF)	135,149	135,149	0.0	0.0%
Lot Frontage (Feet)	104	104	0.0	0.0%
Pond St Front Yard Setback (feet)	185.5	178.7	-6.8	-3.7%
Westerly Side Yard Setback (feet)	8.5	8.5	0.0	0.0%
Easterly Side Yard Setback (feet)	35.5	36.5	1.0	2.8%
Southerly Side Yard Setback (feet)	39.5	0.6	-38.9	-98.5%
Rear Yard Setback (feet)	44	44.7	0.7	1.6%
*Local Building Height (feet)	71	75	4.0	5.6%
*State Building Height (feet)	65.3	69.83	4.5	6.9%
Building Stories	6	6	0.0	0.0%
Floor Area Ratio	1.5	1.7	0.2	13.3%
Lot Coverage (% Max)	41.0	41.4	0.4	1.0%
Open Space (% Min)	20	18.3	-1.7	-8.5%
Parking Lot Setback (feet)	1.2	2	0.8	8.1%
Snow Storage (square feet)	8600	8715	115.0	1.3%
Tree Count (>3.5" DBH)	35	35	0.0	0.0%

ZONING BOARD OF APPEALS

CITY OF WALTHAM

73-79 POND STREET AND 9-11 POND STREET COURT

FIRST AMENDMENT TO COMPREHENSIVE PERMIT

On January 29, 2020, the Zoning Board of Appeals (the "Board") issued a Comprehensive Permit ("Comprehensive Permit") to 73 Pond Manager, LLC ("73 Pond") regarding two parcels of land consisting of 3.1025± acres of land located at 73-79 Pond Street and 9-11 Pond Street Court, Waltham, Massachusetts (the "Project").

On June 13, 2022, MAPLE MULTI-FAMILY LAND SE, LP or Affiliates (the "Applicant"), successor to 73 Pond, provided written notice to the Board that, pursuant to 760 CMR 56.05(11), the Applicant is proposing insubstantial changes to the Project as shown on the Amended Plans (as defined below) and as follows: (i) revise the parking count in the podium from 164 standard spaces, 4 accessible spaces and 0 compact spaces to 108 standard spaces, 4 accessible spaces and 56 compact spaces (overall podium count remains the same); (ii) revise the parking count in the surface parking area from 76 standard spaces, 5 accessible spaces, and 99 compact spaces to 128 standard spaces, 4 accessible spaces, and 48 compact spaces (overall surface count remains the same); (iii) revise the compact parking space count from 99 compact spaces to 104 compact spaces (note: the Plans of Record for the Comprehensive Permit showed 99 compact spaces, but the Comprehensive Permit included a waiver to allow for 104 compact spaces); (iv) add impervious area to the surface parking area; (v) increase the leasing/lobby area on the ground floor from 1,006 square feet to 2,500 square feet; (vi) increase the clubhouse area on the first floor from 2,560 square feet to 6,000 square feet and add an open outdoor amenity space to the rooftop of the clubhouse (however, the rooftop amenity space will not increase the FAR); (vii) through the addition of the new square footage set forth in items (v) and (vi), a resulting increase in the floor area ratio ("FAR") from 1.5 to 1.7; (viii) increase the façade of the clubhouse due to expansion of the clubhouse area; (ix) increase the building height (as defined in Section 2.3 of the Waltham Zoning Code) from 71' to 75'; (x) add a dog park; (xi) add accessible sidewalk to Pond Street and along Castle Street; (xii) add monument signage at the Pond Street entrance; (xiii) shift the parking on the east side of the Project to account for curbing and fencing; (xiv) reduce the trash room on the podium level; (xv) reduce the bike storage area on the podium level; (xvi) add a pool room to the podium level; (xvii) add mechanical rooms to the podium level; (xviii) revise condition D.44 of the Comprehensive Permit to allow a connection for emergency stormwater overflow into the existing municipal drainage system; (xix) revise the side yard setback from the building from 4.9' to 0.6', in accordance with the Amended Plans; and (xx) move the second garage entrance from the northeast side of the building to the southwest side. The Applicant is also proposing an expansion of the waivers from the Board, in addition to the waivers already granted with the Comprehensive Permit, to include the following: (a) allowing a multi-family dwelling with increased Intensity of Use (FAR) (Zoning Code § 3.4); (b) allowing a Kennel Use in the Commercial District (Zoning Code § 3.4); (c) allowing Indoor Theaters and Associated Recreational Facilities (Zoning Code § 3.4); (d) waiver of Special Permit from City Council (Zoning Code § 3.5); (e) waiver from the required maximum building height of 40 feet (Zoning Code § 4.11 and 4.12); (f) waiver from the required maximum building stories for a building of 3 stories (Zoning Code § 4.11 and 4.12); (g) waiver from the required maximum lot coverage for a building of 30% (Zoning Code § 4.11); (h) waiver from the requirement that curb cuts be a maximum of 25 feet wide (Zoning Code § 5.41); (i) waiver from building sewer permits and costs and liabilities arising from connection, advance payment or deposit (General Ordinances § 16-22 and 16-23); (j) waiver from local stormwater requirements and to allow stormwater regulations and standards developed by MassDEP to be implemented (General Ordinances Chapter 25, Article I); (k) Waiver of local requirements related to sidewalks, public ways, public spaces, private ways, and parking areas (General Ordinances § 17); and (l) Waiver of the Land Rules and Regulations of the Board of Survey and Planning of the City of Waltham with regard to subdivision amendment (Land Rules and Regulations § 6) (the "Notice of Project Change").

None of the proposed changes qualify as a “substantial change” under any factor listed in 760 CMR 56.07(4)(c), nor violate Condition A.1 of the Comprehensive Permit, namely that the “Development shall be constructed on the Property in accordance in all material respects with the following civil engineering plans prepared by Paul Finger Associates, Inc., and the BSC Group, architectural drawings/renderings prepared by CUBE 3 Studio LLC and landscape drawings prepared by Paul Finger Associates, Inc., title Comprehensive Permit Set dated May 28, 2019 and Revised September 19, 2019, October 23, 2019, and January 29, 2020” (the “Plans of Record”). Finally, the Plans of Record have been updated to reflect the changes with the plans entitled “Layout & Materials Plan” prepared by Allen & Major Associates, Inc. and dated June 9, 2022, Redline Overlay of “Layout & Materials Plan” prepared by Allen & Major Associates, Inc. and dated June 9, 2022, and “ZBA Record Set” prepared by CUBE3 dated April 18, 2022 (collectively, the “Amended Plans”).

The Board has reviewed the Notice of Project Change dated May 19, 2022 and the Amended Plans attached thereto and hereby acknowledges receipt of said Notice of Project Change and approves the transfer effective (1) only if, as and when MAPLE MULTI-FAMILY LAND SE, LP, or an affiliate thereof becomes the record owner of the Project, and (2) obtains final approval from the Department of Housing and Community Development. Further, this transfer and the proposed changes to the Project do not constitute a substantial change pursuant to 760 CMR 56.07(4).

CITY OF WALTHAM ZONING BOARD OF APPEALS

DATE: June ____, 2022

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