



## **PETITION**

**Petitioner:** 2Life Development Inc.

**Nature of Appeal:** Application for a Comprehensive Permit Pursuant to Massachusetts General Laws, Chapter 40B, Sections 20-23.

**Subject Matter:** The Petitioner, 2Life Development Inc. proposes to construct 68 apartment units and will provide 66 units which meet the definition of low and moderate income under the meaning of M.G.L. Chapter 40B, Section 20. The Petitioner submits this application for a comprehensive permit under the provisions of M.G.L. Chapter 40B, Sections 20-23, inclusive and as amended (the "Statute"), for the construction, maintenance, and use of sixty eight (68) apartment units, of which sixty six (66) will be affordable deed-restricted units that will serve households with incomes up to 60% of the Area Median Income (AMI).

**Location and Zoning District:**

The locus is numbered 21 Newton Street and is identified as Map 61, Block 13, Lot 3 according to the Atlas of the City of Waltham. The locus is situated on the Westerly side of Newton Street and consists of 65,221 +/- square feet (1.497 +/-acres). The locus is situated in a Residence B Zoning District.

## **COMPREHENSIVE PERMIT**

**2Life Development Inc.  
21 Newton Street, Waltham, Massachusetts**

### **Background/Summary of Proceedings:**

2Life Development Inc., 30 Wallingford Road, Brighton, MA 02135 (the "Petitioner" or "Developer") has requested that the City of Waltham Zoning Board of Appeals (the "Board") pursuant to Massachusetts General Laws, Chapter 40B ("Chapter 40B") issue a comprehensive permit for the construction of a multi-family apartment complex (the "Development") on 1.497 +/- acres of property located on the westerly side of Newton Street. The Petitioner submitted to the Board a formal Petition on December 20, 2021, which also included but was not limited to a List of Waivers, Petitioner's bound Comprehensive Permit Application Materials, and preliminary design plans for the Development (the "Application").

Prior to filing its Application with the Board, the Petitioner submitted an application to the City of Waltham Community Preservation Committee (CPC) and was approved for six million dollars in Community Preservation Act (CPA) funds to support the Proposed Development.

After review and consultation with the Ward Councillor, abutters, and the City Council, the Petitioner revised its design to better address the concerns of neighbors, resulting in a reduction in the size of the Proposed Development, largely consisting of:

- Reduction of proposed units from 79 to 68;
- Reduction of the proposed height from four stories to a forty-foot, three-story building, both of which are compliant with the Zoning Ordinance; and
- Increase in proposed parking from forty parking spaces (0.5 parking spaces per unit) to 51 parking spaces (0.75 parking spaces per unit).

Based on these modifications to the Proposed Development, the City Council unanimously approved the six million dollars in CPA funds on August 3, 2021.

Thereafter, the Petitioner applied for and received a Project Eligibility Letter from the Commonwealth of Massachusetts Department of Housing & Community Development, dated November 17, 2021, indicating that the Proposed Development has been approved under the Low Income Housing Tax Credit (LIHTC) program. The Petitioner asserts that it is a non-profit corporation within the meaning of M.G.L. c. 40B and 760 CMR 56.04 and is eligible to receive the LIHTC after a Comprehensive Permit pursuant to said M.G.L. c. 40B has been granted.

The Petitioner contends that it has complied with the procedural requirements of Chapter 40B, Section 21 for submission of an application for a Comprehensive Permit. The Petitioner requested from the Board a Comprehensive Permit pursuant to Chapter 40B, asserting that the Development qualifies as low-and/or moderate-income housing as defined in Sections 20-23 of Chapter 40B. The Property is located in a Residence B Zoning District as shown under the Zoning Map as part of the Zoning Ordinance of the City of Waltham (the "Zoning Ordinance").

The Petitioner has reviewed local codes, ordinances, and regulations including the Zoning Ordinance, Stormwater Regulations, Engineering Department Plan and Utility Requirements and Engineering Department Drainage Calculation Requirements, and Traffic Rules and Regulations, and has submitted a list of provisions under said local codes, ordinances and regulations with which the Petitioner seeks not to comply, including but not limited to exceptions related to use, density, setbacks, and parking. The Petitioner shall comply as specifically identified below and as detailed in the Plans dated December 20, 2021 (identified fully in Section II below) which are incorporated herein and expressly made part of this Decision (note: a full set of said controlling Plans are located in the Office of the Zoning Board of Appeals, 119 School Street, Waltham, MA 02451).

A public hearing on the Application was held on January 25, 2022 before the Board, where the Board heard testimony from the Petitioner, received comments from various interested parties and

considered expert reports of Petitioner's consultants. This Decision is made this \_\_\_\_ day of \_\_\_\_\_, 2022 and grants a Comprehensive Permit for the Development, subject to the waivers and conditions specified in this decision. Upon issuance of this Decision, the Board agrees that it shall not advance any further appellate opposition against this Development under the land area safe harbor, subject to the Condition that the Petitioner does not appeal any terms of this Comprehensive Permit.

## **FINDINGS AND DECISION**

The Board on motion duly made and seconded hereby grants a comprehensive permit to the Petitioner under the provisions of M.G.L. c. 40B §§20-23 for the construction of 68 units of multi-family apartment housing at the Property, subject to all the terms and conditions contained in this Decision.

The Petitioner provided a Project Eligibility Letter dated November 17, 2021, which stated that the Petitioner is able to meet the requirements under the LIHTC program, the fundability requirement of 760 CMR 56, and the site control requirement of 760 CMR 56, thereby allowing the Petitioner to file a Comprehensive Permit Application before the Board. The Petitioner has shown evidence of its interest in the Property, in Section 6 of the Petitioner's Bound Application Materials, via a Purchase and Sale Agreement dated August 24, 2021 between Petitioner and the Legal Owner, sufficient to qualify it as a recipient for a comprehensive permit.

After reviewing the evidence, the Board finds that the Conditions enumerated below are required because the Development (without the imposition of such Conditions) causes several concerns as to use, density, setbacks, traffic and pedestrian safety, and parking design, and other local concerns. Said factors outweigh the regional need for low-and moderate-income housing in Waltham, particularly given Waltham's continuing efforts to address the affordable housing needs of the City: consequently, conditions are required for the issuance of this Comprehensive Permit in order to ameliorate said factors.

After reviewing the evidence, the Board voted to GRANT the Comprehensive Permit under the provisions of M.G.L. c. 40B, §§ 20-23 and the applicable regulations and guidelines for the development of a 68-unit Development, in accordance with the Plans which are incorporated by reference as if fully set forth herein, subject to the conditions and waivers set forth herein. The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Development, including concerns regarding health and safety of the occupants of the Development and of occupants of neighboring properties, environmental, and other local concerns identified above. The Board finds that the conditions as approved and identified below strike the appropriate balance between protecting health, safety and welfare of the residents of Waltham, tenants of the Development, and the abutters, and that with the conditions as approved and identified below, the Development is consistent with local needs.

## WAIVERS AND CONDITIONS TO THE COMPREHENSIVE PERMIT

The Board’s approval of the Comprehensive Permit for the Development is premised on the Petitioner’s and the Development’s compliance with the following Waivers and Conditions. All requirements imposed by these waivers and conditions and this Permit shall be applicable to any and all successors in interest to the Petitioner or other entity responsible for the administration of the Development regardless of whether these waivers and conditions specifically identify the Petitioner.

**I. The following Waivers requested by the Petitioner are as indicated:**

a. Special Permits:

1. Section 3.511 – Special Permit for Intensity of Use – Allowing for a maximum Floor Area Ratio of 1.15 in the Residence B Zoning District.
2. Section 3.512 – Special Permit for Use – Allowing a multi-family dwelling not allowed in the Residence B Zoning District.

b. Waivers:

<b>Ordinance Section</b>	<b>Requirement</b>	<b>Required Waiver(s)</b>	<b>Details of Proposal Requiring Waivers</b>	<b>Waiver Number</b>
3.4	Table of Uses	Allowing a multi-family dwelling not allowed in the Residence B Zoning District	The development has 68 units in the Residence B Zoning District	A
3.52	Development ProspectusComments	Waiver of Requirement from Development Prospectus Comments	Waiver of Requirement from Development Prospectus Comments	B
3.53	Determinations	Waiver of Requirement from Determinations	Waiver of Requirement from Determinations	C
3.618	Multi-family dwellings	Allowing a multi-family dwelling not allowed in the Residence B Zoning District	The development has 68 units in the Residence B Zoning District	D
4.11	Min. Side Setback	Waiver from required side setback of 10 feet in the Residence B Zoning District	The Development has a northerly side setback of 6’8” in the Residence B Zoning District	E
4.11	Min. Rear Setback	Waiver from required rear setback of 30 feet in the Residence B Zoning District	The Development has a rear setback of 15’ in the Residence B Zoning District	F

4.11	Max. FAR by right	Allowing for a maximum Floor Area Ratio of 1.15 in the Residence B Zoning District	The Development has a FAR of 1.15 in the Residence B Zoning District	G
4.11	Multifamily Dwellings	Waiver from the prohibition of multifamily dwellings in the Residence B Zoning District	The development has 68 units in the Residence B Zoning District	H
4.11	Lot Coverage	Waiver from the maximum allowed lot coverage of 30% in the Residence B Zoning District	The development has 38.6% lot coverage in the Residence B Zoning District	I
4.11	Open Space	Allowing for open space of 63% in the Residence B Zoning District	The development has 63% open space in the Residence B Zoning District	J
4.11	Maximum number of Units per Acre in the Residence B District	Allowing 46 units per acre in the Residence B Zoning District	The development has 46 units per acre in the Residence B Zoning District	K
4.11	Minimum Lot Area Per Dwelling Unit in the Residence B Zone	Allowing a minimum lot area per dwelling unit of 240 sq. ft. per unit in the Residence B Zoning District	The development has a minimum lot area of 240 sq. ft. per unit in the Residence B Zoning District	L
4.11	Minimum open space per unit	Allowing minimum open space per unit of 576 sq. ft. in the Residence B Zoning District	The development has minimum open space of 576 sq. ft. in the Residence B Zoning District	M
4.221	Location of accessory buildings in the Residence B Zoning District	Waiver from the requirement that an accessory building be located at least 10 feet from the principal building and 5 feet from the side and rear lot lines	The development has two accessory buildings (sheds). One is located 2 feet from the principal building and 4 feet from the rear lot line. The other is located 4 feet from the side lot line.	N
5.21	Parking Spaces for Multifamily Use	Waiver from the required 2 parking spaces per dwelling unit	The development has 51 parking spaces for 68 dwelling units or .75 spaces per unit	O
5.42	No paved area within 5 feet of a property line or a street line	Waiver from the requirement that there be no paved area within 5 feet of a lot line or a street line in the Residence C Zoning District	The development will have an area of paved area within 5 foot of a lot line or a street line associated with the drive along Newton Street	P
5.91	Loading Areas	Waiver from the requirement to provide 1 12' x 70' loading area	The Development has one proposed loading area at 12' x 30'	Q
6.31	New signs	Waiver of the requirement for a new sign permit	Waiver of the requirement for a new sign permit	R

**II. The Board grants the Comprehensive Permit subject to the Petitioner adhering to all of the following conditions and operative facts identified in this Decision:**

The Board's approval of the Comprehensive Permit for the Development is premised on the Petitioner's and the Development's compliance with the following conditions:

**A. Design and General Conditions**

1. The Development shall be constructed on the Property in accordance in all material respects with the following plans entitled "Leland House Comp. Permit (M.G.L. c. 40B)" (the "Plans"), consisting of sixteen (16) sheets including Cover Sheet. Said Plans are incorporated herein and expressly made part of this Decision. A full set of said controlling Plans are located in the Office of the Zoning Board of Appeals, located at 119 School Street, Waltham, MA 02451:
  - a. Cover Sheet, by Stantec Consulting dated December 20, 2021;
  - b. ALTA/NSPS Land Title Survey, by Precision Land Surveying, Inc., dated July 29, 2021, revised November 18, 2021;
  - c. 21 Newton Street Parcel Abutters City of Waltham Massachusetts, dated October 22, 2021 (provided by the City of Waltham Assessors Department along with the Certified List of Abutters);
  - d. Zoning Plan, Sheet L-101, by Stantec Consulting, dated December 20, 2021;
  - e. Layout and Materials Plan, Sheet L-201, by Stantec Consulting, dated December 20, 2021;
  - f. Grading Plan, Sheet L-301, by Stantec Consulting, dated December 20, 2021;
  - g. Utility Plan, Sheet C-401, by Stantec Consulting, dated December 20, 2021;
  - h. Planting Plan, Sheet L-501, by Stantec Consulting, dated December 20, 2021;
  - i. Site Details, Sheet L-601, by Stantec Consulting, dated December 20, 2021;
  - j. Site Details, Sheet L-602, by Stantec Consulting, dated December 20, 2021;
  - k. Utility Details, Sheet C-603, by Stantec Consulting, dated December 20, 2021;
  - l. Utility Details, Sheet C-604, by Stantec Consulting, dated December 20, 2021;
  - m. Aerial Photos, Sheet A1-01, by PCA, Inc., dated December 20, 2021;
  - n. Floor Plans, Sheet A1-10, by PCA, Inc., dated December 20, 2021;
  - o. Floor Plans, Sheet A1-11, by PCA, Inc., dated December 20, 2021; and
  - p. Elevations, Sheet A1-20, PCA, Inc., dated December 20, 2021.
2. 68 total apartments shall be constructed in one multi-family residential apartment complex that shall consist of 66 apartments for residents, two apartments for on-site support staff, associated interior common areas and amenity spaces, and other additional amenities on the Property as identified in the Plans.
3. All construction on the Property shall be in accordance in all material respects with the Plans

referenced above. Construction of the Development shall be in accordance with federal and state law and the State Building Code.

4. This Comprehensive Permit shall lapse if construction of the Development has not commenced within three years after this permit becomes final (which period shall toll in accordance with 760 CMR 56.05(12)(c)).
5. The Petitioner shall record this Decision at the Middlesex South Registry of Deeds and provide evidence of said recording to the Board and the Inspector of Buildings prior to application for a Building Permit.
6. Each condition in this Decision shall be applicable to and binding on the Petitioner and the Petitioner's successors and assigns.

***B. Affordability***

7. The Affordable Units (hereinafter defined) shall remain affordable, in perpetuity, at the rent levels articulated in Condition #9 below and as set forth in this Decision.
8. It is the intent of the City and the Petitioner that all of the units in the Development be included in the Subsidized Housing Inventory for Waltham maintained by DHCD and that the acreage of the entire parcel be counted in the numerator of the 1.5% calculation for the minimum land area safe harbor.
9. No less than sixty-six (66) of the sixty-eight (68) apartment units approved for the Development (97% of the total) shall be affordable and shall only be rented to seniors age 62 or older earning not more than sixty percent (60%) of Area Median Income (AMI) (as defined by HUD on an annual basis), in perpetuity (the "Affordable Units"). The Affordable Units shall be made available at an average annual rent (including utility allowances as defined by HUD for the Waltham Housing Authority) which does not exceed 60% of the household median income of the Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area (as defined by HUD on an annual basis). The Petitioner shall use commercially reasonable efforts to ensure that the Affordable Units are at all times, fully occupied by tenants who indeed qualify for such Affordable Units and shall require such tenants occupy said units as their domiciles and principal residences.
10. The Affordable Units shall consist of sixty-one (61) one-bedroom units and five (5) two-bedroom units, which shall be evenly dispersed within the Development in substantial accordance with the Floor Plans, Sheets A1-10 and A1-11 of the above referenced Plans. The remaining two (2) one-bedroom units are reserved for on-site support staff. The following table sets forth the unit mix for the Affordable Limits:

The following table sets forth the required unit mix for the Affordable Units:

<b>Unit Type</b>	<b>Total Units</b>	<b>Average Net Rental Square Footage (NRSF)</b>	<b>Unit Mix</b>
1 Bedroom	61	636	90%
2 Bedroom	5	929	7%
Total Affordable Units	66	658	97%

11. During the initial lease-up period, Waltham residents who properly apply for an apartment and who meet all qualification requirements for acceptance shall receive a preference for up to 70% of the units at the Development, to the extent permitted under State and Federal Fair Housing Laws and as reviewed and approved by the Subsidizing Agency.
12. The Petitioner shall own the Development through a new, for-profit (taxable) single purpose entity in order to utilize the LIHTC program. Such entity's managing member shall qualify as a non-profit corporation under the requirements of the Subsidizing Agency program. The new ownership entity shall enter into a regulatory agreement with the Subsidizing Agency which is a recorded document that governs the terms of the affordability and specifies the requirements to which the Petitioner must conform. Upon the Stamp of the Waltham City Clerk on the final Comprehensive Permit Decision, the Petitioner shall forward a copy of the stamped decision to DHCD so that 66 apartment units shall be added to the City's subsidized housing inventory.
13. The Petitioner shall, at its sole costs and expense, develop an affirmative marketing plan for the Affordable Units which conforms to any and all Fair Housing requirements or other requirements as imposed by federal or state regulation and the subsidizing agency. The Petitioner shall select tenants and maintain any waiting lists for the Affordable Units in a fair and impartial manner, based on objective criteria set forth in the marketing materials. If criminal record checks are performed as part of the screening process of potential tenants of Affordable Units, the Petitioner shall follow DHCD's Model Policy Regarding Petitioner Screening on the Basis of Criminal Records. The Petitioner shall charge no application and/or processing and/or "holding" fee to Petitioners for Affordable Units.
15. The Petitioner shall implement a Traffic Demand Management (TDM) Plan, the goal of which is to reduce the use of single occupant vehicles, including: assistance in accessing the MBTA's "The Ride"; assistance with accessing public transit; assistance with accessing ride-hailing services; assistance with accessing delivery services for food, medicine, and retail items; and coordination with shuttle services offered by the Waltham Council on Aging. Bicycle parking will also be provided on-site.

16. The Development shall provide a total of fifty-one (51) onsite surface parking spaces consisting of 43 standard, 6 compact, and 2 ADA accessible spaces, which allows for a parking ratio of 0.75 spaces per unit (note: this is a reduction from 2 spaces per dwelling unit required by the Zoning Ordinance), all located as shown on the Zoning Plan, Sheet L-101.
17. The Petitioner shall make all surface parking spaces available, free of charge, to tenants in the development. The marketing materials for the Affordable Units shall specifically include this condition.
18. The Development shall have trees and plantings as indicated on the Planting Plan, Sheet L-501, in order to provide a green buffer between the Development and abutting properties.
19. Upon completion of the Development and on an ongoing basis, the Petitioner shall trim and if necessary remove trees and vegetation along the Development site frontage that inhibit lines of sight from the vehicle access points of the Development.

***C. Stormwater, Sewer, Water, and Utilities***

20. The Petitioner shall comply with the City Ordinance 16-32 Infiltration and Inflow Mitigation fee as revised through ordinance number 33242 dated June 1, 2015. Upon connection to the sewer system, the Petitioner shall pay the required Infiltration and Inflow Mitigation fee.
21. The Petitioner shall submit a Stormwater Pollution Prevention Plan (SWPPP) to the City prior to the start of construction.
22. The Petitioner shall conform to MassDEP standards in installing the Development's stormwater system.
23. Petitioner shall provide sumps for all catch basins at a minimum of four feet.
24. All water and sewer connections shall be pressure tested by Petitioner and test results shall be provided to the City Engineer prior to approval for use.
25. Petitioner shall cut and cap all existing services at the main.
26. Petitioner shall construct all utilities underground.

***D. Fire Safety and Additional Site and Safety Issues***

27. Snow shall be stored in the snow storage locations shown on the Zoning Plan, Sheet L-101 or removed from the site and disposed of per State Regulations. Removal of snow from the Development shall be the exclusive responsibility of the Petitioner in perpetuity.

28. Waste shall be collected in the trash room locations shown on the Floor Plans, Sheets A1.10 and A1.11. Petitioner shall contract with a professional waste hauler to remove trash and recycling from the Development and all trash and recycling operations shall be the exclusive responsibility of the Petitioner in perpetuity.
29. The Petitioner, at the Petitioner's sole cost shall ensure that water pressure and flow at the Development will be sufficient to support the sprinkler systems to be installed in the Development. Said system shall be approved by the Waltham Fire Department.
30. The Petitioner shall install a fully addressable control panel and BDA (Bi-Directional Amplifier) system as required by and to be coordinated with the Waltham Fire Department.
31. Wall and ground mounted light fixtures incorporated into the Development shall be designed as "down-lights" to reduce the amount of light spilling onto the abutting properties.
32. The Petitioner shall provide as-built plans to the City for all utility, roadway, or pedestrian infrastructure within six months of receipt of the first certificate of occupancy for the Development.
33. Prior to the start of construction, the Petitioner shall engage the services of a qualified professional engineer and/or registered architect to provide certification at the completion of work that the Development has been built in accordance with the Plans in all material respects and prior to the start of construction shall inform the Board of the name, business address, and telephone number of the engineer and/or architect retained. The engineer and/or architect shall perform site inspections at his/her own discretion through the construction process to enable accurate final certification to the Board of compliance with this decision upon completion of the Development.
34. Prior to the start of construction. the Petitioner shall erect construction fencing along any unfenced portions of the property line.
35. Prior to the start of construction, including any demolition or site work, the Petitioner's contractor shall develop an Integrated Pest Management Plan and contract with a licensed or certified applicator(s) to implement such plan. Any rodenticides shall be placed in tamper resistant bait stations.
36. Prior to the start of construction, the Petitioner shall submit to the Waltham Fire Department, for approval by the Fire Chief or his designee, a detailed and comprehensive NFPA 241 plan. Said plan shall include any reasonable measures and/or precautions which the Fire Chief or his designee may require. Upon approval of the plan, the Fire Chief or his designee shall notify the Board and the Inspector of Buildings of said approval. Petitioner shall provide the fire prevention measures included therein for as long as the Fire Chief or his designee may deem necessary. If needed, the plan may be amended by written request of

the Petitioner and upon written approval by the Fire Chief or his designee, who shall notify the Board and Inspector of Buildings of such amendments.

37. During the period of construction and leasing, notwithstanding any pre-conditions for the issuance of a certificate of occupancy otherwise set forth herein, the Petitioner shall be entitled to designate, construct and operate up to two (2) of the units as decorated, model units.
38. During construction, the Petitioner shall be permitted to locate necessary construction trailers on the Property. All construction trailers shall be located within the fenced construction area of the Development. Placement, operation and maintenance of the construction trailers shall not adversely impact parking, safety, or the surrounding neighborhood. Other conditions of this decision required to be satisfied prior to the issuance of a building permit or certificate of occupancy shall not apply to building permits or certificates of occupancy acquired for the construction trailers except as set forth in the required fire safety, security, and Integrated Pest Management plans.
39. Portable bathroom facilities, trash containers and portable generators shall be located within the fenced construction area for the Development.
40. During the period of construction, no construction vehicles or construction worker vehicles shall be permitted to idle for more than 5 minutes, in accordance with MGL Chapter 90, Section 16A and 310 CMR 7.11.
41. If, in reviewing the Petitioner's building permit application(s), the Inspector of Buildings determines that the Application indicates that the Development will be in violation of the Zoning Ordinance because the Petitioner did not seek and/or obtain a necessary waiver, or varies materially from the Plans or this Decision, the Inspector of Buildings shall notify Petitioner of same. The Petitioner may submit a request to the Board for a determination under 760 CMR 56.05(11).
42. Prior to the issuance of a Building Permit, the Petitioner shall file an Approval Not Required (ANR) Plan with the Board of Survey and Planning removing all interior lot lines as identified by the City of Waltham Engineering Department, uniting all of the lots on the locus into one parcel. After endorsement by the Board of Survey and Planning the ANR Plan shall be recorded by the Petitioner in Middlesex South District Registry of Deeds and shall provide the recording information and a copy of the Plan to the Board of Survey and Planning, the Zoning Board of Appeals, the City Engineer, and the Building Inspector prior to the issuance of any Building Permits hereunder.

Based on the foregoing, the Board grants the Comprehensive Permit for the Development, subject to all the terms and conditions contained in this Decision and as shown on the Plans.

Dated: \_\_\_\_\_, \_\_\_\_, 2022

WALTHAM ZONING BOARD OF APPEALS

By: \_\_\_\_\_