



TOWN OF WESTON MASSACHUSETTS
BOARD OF APPEALS
COMPREHENSIVE PERMIT UNDER M.G.L. CHAPTER 40B

APPLICANT: 104 Stony Brook LLC, PO Box 158, Waban, MA 02468.
c/o Layline Ventures, PO Box 1674, Duxbury, MA 02332

LANDOWNER: 104 Stony Brook LLC

PROPERTY: 104 Boston Post Road, Weston, MA, 2.1 acres of land (“Site”).

PROJECT: 150 rental units on 2.1 acres in a single building, with 8 stories (“Project”).

DISPOSITION: The Application for a Comprehensive Permit is denied for the reasons set forth below.

The Weston Board of Appeals (“Board” or “ZBA”) voted 3-0 to deny the Application because the Project would violate multiple Local Requirements and Regulations and, in particular, those violations would adversely impact the drinking water sources for the City of Cambridge and the Board determined that protection of the drinking water sources from adverse impacts under the Local Requirements and Regulations is a Local Concern, one that outweighs the regional need for affordable housing and one that cannot be adequately mitigated; and, in addition, the Board determined that there are additional Local Concerns, as identified below, that outweigh the regional need for affordable housing and for which adequate mitigation was not provided. The Local Concerns and the Local Requirements and Regulations and the reasons for denial are identified below and are also discussed in greater detail in the Board’s waiver decisions attached hereto (Exhibit B), which are incorporated by reference into this denial decision.

I. Drinking Water Protection

1. The Town has Local Requirements and Regulations that protect drinking water sources, including the:
 - i. Stormwater and Erosion and Control Bylaw (General Bylaw Article XXVII);
 - ii. Stormwater & Erosion and Control Regulations;
 - iii. Aquifer Protection Overlay Districts (Zoning Bylaw (“ZBL”) §V.H);
 - iv. Earth Removal and Movement (ZBL §V.I.3); and
 - v. Board of Health Regulations.

2. The Project proposes construction and related activities at the Site that would violate the above Local Requirements and Regulations which protect drinking water sources.
3. The Project would occur within the so-called "Zone A" (i.e., within 400 feet of drinking water supplies) for the Stony Brook and the Stony Brook Reservoir.
4. The Stony Brook and the Stony Brook Reservoir are essential drinking water sources for the City of Cambridge.
5. The Stony Brook and the Stony Brook Reservoir are part of the natural environment within the meaning of 760 CMR 56.02, definition of "Local Concern."
6. The need to protect the Stony Brook and the Stony Brook Reservoir, as essential drinking water sources for the City of Cambridge, from adverse impacts is a Local Concern that outweighs the regional need for affordable housing.
7. The proposed construction, in the Zone A would create direct adverse impacts to the Stony Brook and Stony Brook Reservoir as the proposed construction would eliminate the natural annual recharge to groundwater that now occurs in the Zone A at the Site, in violation of the Town's Stormwater and Erosion Control Bylaw and Regulations.
8. The Town's Local Requirements and Regulations require that any loss of annual recharge to groundwater in the Zone A shall either be eliminated or shall be minimized through infiltration measures that shall infiltrate the required recharge volume as determined under the Massachusetts Stormwater Handbook; however, the proposed activity would result in loss of annual recharge to groundwater, with no infiltration, in violation of the Town's Local Requirements and Regulations, and this violates the requirements of DEP Stormwater Standard 3 which is incorporated into the Town's Stormwater and Erosion Control Bylaw and into the Town's Stormwater and Erosion Control Regulations.
9. The Town's Local Requirements and Regulations prohibit stormwater discharges to a Zone A unless the discharges are essential to the operation of a public water supply; however, the proposed activity would discharge stormwater to the Zone A, and the discharges would have no relation to the operation of a public water supply, in violation of the requirements of DEP Stormwater Standard 6, as incorporated into the Town's Stormwater and Erosion Control Bylaw and the Town's Stormwater and Erosion Control Regulations.
10. The immediate and direct and unavoidable harms to the nearby drinking water sources from the loss of annual recharge to groundwater at the Site would be the impairment of the quality of the drinking water sources and a reduction in the quantity of the water that would be available to the drinking water sources of the Stony Brook Reservoir and the Stony Brook.

- i. The impairment to water quality would occur as a result of the loss of the filtration of the water that would otherwise fall directly onto or flow over the Site and would then be filtered into the ground by the vegetation and through the soils and natural geologic materials there (virtually all of which vegetation and natural materials would be removed). While the amount of filtration lost at the Site might be perceived as moderate, relative to the size of the entire Stony Brook watershed, it would add to the cumulative loss of resources protecting drinking water quality and quantity there. The loss of annual groundwater recharge in the Zone A is of critical importance. It is, and should be, prohibited, and certainly, every project proposed for the Zone A would be subject to this prohibition in the Town; and
 - ii. The impairment to water quantity would be caused through the substantial, if not total, elimination of the current groundwater storage beneath the Project, reducing the amount of annual groundwater that is recharged at the Site and then retained in the ground there, held in both the plant materials and the unconsolidated soils and natural geologic materials under the Project, and is then released, gradually over time, to the nearby drinking water sources. This is a serious adverse impact that is, and should be, prohibited.
11. Although the groundwater level at the Site was not definitively identified by the Applicant, the plans indicate that construction would involve excavation into the ground to install three stories that would be at least partially below grade, with the floor of the lowest story to be constructed entirely below grade, and the foundation of the building to be close to the level of the surface of the nearby drinking water sources. Therefore, the Board found that construction would likely result in excavation or grading within 6 feet of the maximum high groundwater table elevation, in violation of the express prohibition against such activity as set forth under the Town's Aquifer Protection Overlay Districts Bylaw (ZBL V.H.5.h), which is designed to prevent contamination of ground water.
12. The Project proposes a wastewater treatment facility in the Zone A, a facility that would be below grade and at an elevation that would be near the surface level of the drinking water sources within 400 feet of the facility.
13. The wastewater treatment facility would generate effluent at the Site in an amount that would be between 10,000 gallons of effluent per day (the minimum actual amount) and 25,850 gallons of effluent per day (the design flow) (i.e., between 3.6 million gallons of effluent per year and 9.4 million gallons of effluent per year).
14. The amount of effluent to be generated at the Site would create a serious risk of accidental leaks.
15. Evaporator units, which would be located in the subbasement at the proposed building at the Site, would boil the effluent to evaporate it and would collect

- remaining solids, with the remaining solids to be trucked away, after being pumped up to and then out through an upper garage level.
16. The evaporator units are designed to operate 24 hours a day/365 days per year.
 17. The constant operation of the evaporator units creates a serious risk of equipment failure.
 18. The repair time and lead time (to obtain replacement parts and equipment and perform the repairs), in the event of mechanical failure, would likely far exceed the Project's effluent storage capacity, causing a high likelihood of effluent leaks.
 19. The potential risk of harm to the nearby drinking water sources, from contamination from potential leaks from the wastewater facility (whether due to equipment failure or an accident), would create an unreasonable threat of contamination to the nearby drinking water sources as accidental leakage could flow into the ground and be conveyed to the drinking water surface supplies that are within 400 feet of the wastewater treatment facility. The risk of harm to the public water supply for the City of Cambridge is a Local Concern that outweighs the regional need for affordable housing and is one that cannot be mitigated adequately. Certainly, a septic system of any type would not be allowed in the Zone A.
 20. The Board determined that the proposed removal and movement of earth at the Site would contribute to the adverse impacts on local groundwater resources and on the nearby drinking water supplies described above and would violate the local requirements that removal and movement of earth be minimized so that material imported to a property shall be equal to or greater than that which is removed, as set forth under the Town's Earth Removal and Earth Movement Bylaws. (ZBL §V.I.3)
 21. The Board determined that the proposed construction of a building in the Zone A at the Site that would have a footprint that would result in building coverage of 50.5% of the lot (more than double the 25% maximum building coverage allowed in a Business B Zoning District under ZBL §VI.D.2 Table of Dimensional Requirements). The removal of earth from the Site and its replacement with an impervious structure covering over 50 percent of the lot area would contribute to the adverse impacts on the nearby drinking water supplies described above, in violation of ZBL §VI.D.2.

II. Health and Safety of the Occupants (760 CMR 56.02)

1. **Traffic.** The Board agreed with the Applicant that the Project could not be safely allowed unless Boston Post Road is widened, to improve access to the Project, with the Applicant to pay for all design and permitting and installation costs and with the Project not able to proceed unless the widening takes place appropriately and unless MassDOT approves the changes as this would be outside the jurisdiction of the Town. The Board determined that the need to develop, design and implement a plan to widen Boston Post Road is necessary for the safety of the occupants and this is a Local Concern, one that outweighs the regional need for affordable housing, but one that could be adequately mitigated if the development, design and implementation of

the necessary plan to adequately widen Boston Post Road were to take place, with the Applicant to pay all design and permitting and installation costs (including land surveying and any necessary land acquisitions) and with there to be engineering peer review by the Board of the plan designs proposed, again at the Applicant's expense. Since the Applicant did not have a design or approval from MassDOT for the necessary changes, the Board denies the Application for that reason, but with this portion of the denial to be without prejudice to the Applicant returning to the Board to provide the necessary designs and plans and peer review and approval by MassDOT.

2. **Pedestrian Safety.** The Board found that there is not a sidewalk on Boston Post Road in front of the Site and along the road to the nearby traffic signal; without such a sidewalk, the occupants of the Project would be very unsafe, as they would not be able to safely cross the road to reach the sidewalk on the other side of the road because the Boston Post Road (Route 20) is a very busy, highly trafficked thoroughfare, where vehicles travel at a fairly high rate of speed. Pedestrians cannot cross safely without a sidewalk to reach the existing signal and a crosswalk, with a crosswalk signal across the Boston Post Road. The right of way for the roadway will not allow installation of a sidewalk without a taking or the grant of an easement from the City of Cambridge for its adjacent land to allow for such a sidewalk. The Board determined that the lack of the sidewalk is a Local Concern that outweighs the regional need for affordable housing and that cannot be mitigated due to lack of sufficient ownership and control by the Applicant; and the Board denied the Application for this reason, but with the denial on this point to be without prejudice to the Applicant returning if the Applicant obtains the necessary ownership and control to allow the Applicant to install a sidewalk from the Site to the nearby traffic signal and to install a crosswalk to allow safe pedestrian travel from the Site to the sidewalk across the street.
3. **Wastewater Treatment Facility.** The Board recognizes that it does not grant the ultimate permit for the wastewater treatment facility, but the Board denied the verbal waiver request made by the Applicant (just before the public hearing closed) to waive all local health regulations because the Board determined that the Applicant did not identify the permitting process that the Applicant would pursue in order to attempt to obtain approval of the proposed wastewater treatment facility and did not identify what local regulations would apply and that are sought to be waived. The proposed facility would be located in the lowest level of the proposed building, below the two parking garage levels, and would involve effluent storage tanks, evaporators and other appurtenances. The system would heat the effluent and evaporate it into the air, concentrating and collecting the remaining solids in storage tanks. Without identification of the specific waivers requested, the Board voted to deny the blanket waiver and to deny the Project, without prejudice to a determination in the future on a request for specific waivers. The Board found that this proposal creates safety concerns for the occupants of the building with respect to noise, vibration, moisture, and heat, along with the potential release of pathogens and chemicals within or outside of the proposed building. The proposal for the wastewater treatment facility was not sufficiently detailed so that the Board could obtain peer review of it to determine the potential harms that might affect the health, safety, and welfare of the occupants. The Board's concerns were as follows:

- i. Removal of the solid wastes from the Site would take place in one of the garage levels and could result in spills that would adversely impact the health and safety (and convenience) of the occupants (i.e., from the material left in the garage and odors from spills) and could interrupt parking availability, which is already minimal;
- ii. Heat from the processing of the effluent (i.e., to boil it and cause it to evaporate) could make the building economically difficult to for the occupants to cool, especially for the residents in the affordable units, adversely impacting all occupants;
- iii. Pathogens and dangerous chemicals could be released (inside the building or outside or both), whether into the air to be inhaled, or on surfaces such as the building's courtyards, or to the groundwater beneath and around the building; this would adversely impact the health and safety of the occupants and could contaminate the nearby drinking water supply sources;
- iv. Noise and vibration from the mechanical processes could adversely impact the health and convenience of the building's occupants; and
- v. Moisture generated by the effluent heating processes, both inside and outside the building, could result in mold and mildew conditions that could impact the health of occupants and could cause, during winter conditions, black ice conditions on Sibley Road and/or on Boston Post Road or in the Project's open areas.

The Board determined that above issues are Local Concerns that outweigh the regional need for affordable housing and for which adequate mitigation measures either are not possible or were not provided by the Applicant, and the Board voted to deny the Application for these reasons.

RECORD OF PROCEEDINGS:

There having been presented to the Weston Board of Appeals (the "Board" or the "ZBA") a petition for a Comprehensive Permit dated February 22, 2017, by 104 Stony Brook LLC (the "Applicant"¹), and following an agreement signed by the Applicant and to Board to extend the statutory hearing deadline to open the public hearing to April 6, 2017, which was filed with the Town Clerk on March 6, 2017, the Board decided to hold a public hearing on said petition on Thursday, April 6, 2017 at 7:00 pm, and caused the following notice to be published in The Town Crier, a newspaper of general circulation in Weston:

TOWN OF WESTON
MASSACHUSETTS
BOARD OF APPEALS

¹ The term "Applicant" shall include the Applicant's agents and successors and assigns.

Hearing Notice

Notice is hereby given that the Board of Appeals of the Town of Weston will hold a public hearing on **Thursday, April 6, 2017 at 7:00 P.M.** in a conference room at the Weston Town Hall, on an application by 104 Stony Brook LLC, P.O. Box 158, Waban, MA as to **104 Boston Post Road** (Map 24, Lot 5) requesting a Comprehensive Permit under M.G.L. Ch. 40B for 154 rental housing units (39 of which will be affordable) on 2.1 acres.

The petition and plans on above application with said Board of Appeals are available for public inspection in the office of the Board of Appeals on Monday through Friday, from 9 A.M. to 4:30 P.M. Documents may also be viewed at:

<http://www.weston.org/509/Current-40B-Proposals>

On March 2, 2017, the Board also mailed the foregoing notice, postage prepaid, to the parties in interest deemed by the Assessor's Office to be all persons affected by said petition as they appear on the most recent tax list, Board of Appeals Members, Li, Carlson, and Larocque, and the Planning Boards of Weston, Waltham, Wellesley, Wayland, Newton, and Natick.

On February 23, 2017, the Board of Appeals issued a letter to the Board of Selectmen, Board of Health, Building Inspector, Conservation Commission, Historical Commission, Housing Partnership, Planning Board, and Engineering, Fire and Police Departments, requesting them to consider and comment on the petition and plans.

Pursuant to the foregoing notice, the Board of Appeals opened the public hearing on April 6, 2017 at 7:00 P.M. in the Weston Town Hall. The following members were present for all of the public hearings sessions listed in Section IV, below:

Winifred I. Li, Chair

Jane Fisher Carlson, Acting Secretary

Stephen J. Larocque (absent on April 6, 2017, but reviewed the hearing videotape and all evidence for that session and placed a written certificate to that effect, dated May 2, 2017, into the record.)

BACKGROUND

The development project proposed under this Comprehensive Permit application (the "Project") was originally submitted to the Massachusetts Housing Finance Agency ("MassHousing") by the Applicant on November 23, 2016 for Project Eligibility/Site Approval under M.G.L. c. 40B §§ 20-23, a copy of which was provided to the Board. The Project as originally designed consisted of 154 units of rental housing, 39 of which were to be restricted as affordable units. MassHousing provided a 30-day period for the Town to review the Site Approval application, and to submit comments to Mass Housing. At the request of the Town Manager, this period was extended by MassHousing for a period of two weeks. The Town submitted a letter dated January 11, 2017, which summarized the comments in its Project Eligibility/Site Approval letter ("PEL" or "Site Approval") issued February 21, 2017. A list of documents filed with the Town concerning the original design is attached as Exhibit A.

The Applicant re-designed the Project after the initial filing with MassHousing, after receiving comments and a determination from the Conservation Commission concerning the portion of the original project located in the 200' jurisdictional riverfront and wetlands resource areas. As a result of the Conservation Commission's comments, and before the opening of the public hearing on April 6, 2017, the Project was re-designed dated March 28, 2017 in order to remove it entirely from the jurisdictional resource areas. As a result, the most recent design, for which the Comprehensive Permit was sought, is comprised of 150 rental units, 38 of which will be permanently restricted as affordable units ("Affordable Units") for low or moderate income persons or families. The rental units as most recently designed are to be housed in a residential structure consisting of three-, four-, and five- residential stories, over two parking levels and a below-grade utility level, located near the Intersection of MA Routes 128 and 20 (Boston Post Road) and at the intersection of Route 20 and Sibley Road, across from the Weston Corporate Center and known as 104 Boston Post Road (the "Site"). The Site is located in Zoning Business District B and abuts Commercial and Industrial properties to the north and east and immediately abuts land owned by the City of Cambridge (the "City"), to the south and west, which is managed for water supply protection purposes to protect the Stony Brook and the Stony Brook Reservoir, essential components of the City's drinking water sources. Route 20 (Boston Post Road) is one of Weston's major state highways, and the Project is located immediately adjacent to Route 20.

The Project was not endorsed as a Local Initiative Project.

I. The Applicant submitted to the Board the following plans and materials as prepared by the Applicant and its consultants (herein collectively known as the "Plan of Record"):

A. Site Development Plans for Stony Brook Weston, 104 Boston Post Road, Weston, MA, prepared by Allen & Major Associates, Inc. ("A&M"), March 28, 2017.

1. Cover (rev. 7-28-17)
2. Drawing ABB-1 Abbreviations & Notes (rev. 7-28-17)
3. Drawing ABB-2 Abbreviations & Notes (rev. 7-28-17)
4. Drawing EX-I Existing Conditions Plan (rev. 3-28-17)
5. Drawing C-1 Demolition & Erosion Control Plan (rev. 7-28-17)
6. Drawing C-2A Layout & Materials Plan (rev. 7-28-17)
7. Drawing C-2B Parking Plan (P-2) (rev. 7-28-17)
8. Drawing C-2C Parking Plan (P-1) (rev. 7-28-17)
9. Drawing C-3A Grading & Spot Grades Plan (rev. 7-28-17)
10. Drawing C-3B Drainage Plan (rev. 8-11-17)
11. Drawing C-4 Utilities Plan (rev. 7-28-17)
12. Drawing C-5A Landscape Plan (rev. 8-11-17)
13. Drawing C-5B Landscape Details (rev. 8-11-17)
14. Drawing C-6 Fire Truck Turning Plan (rev. 7-28-17)
15. Drawing D-1 Details (rev. 7-28-17)
16. Drawing D-2 Details (rev. 7-28-17)
17. Drawing D-3 Details (rev. 7-28-17)
18. Drawing D-4 Details (rev. 8-11-17)
19. Drawing D-5 Details (rev. 7-28-17)

- 20. "PRE" Pre Development Watershed Plan (rev. 8-11-17)
- 21. "POST" Post Development Watershed Plan (rev. 8-11-17)

B. Stony Brook Weston (Revised Submission) prepared by Smook Architecture and Urban Design, 8 Lyman Street, Suite 206, Westborough, Massachusetts 01581 ("Smook"), March 28, 2017.

- 1. Sheet A0.0 Cover
- 2. Sheet A0.1 Locus Plan, Drawing List, Project Narrative, and Building Tabulations
- 3. Sheet A1.0 Lower Level Plan
- 4. Sheet A1.1 P1 Parking Level Plan
- 5. Sheet A1.2 P2 Parking Level Plan
- 6. Sheet A1.3 Typical Floor Plan (1st-3rd Floors)
- 7. Sheet A1.4 Fourth Floor Plan
- 8. Sheet A1.5 Fifth Floor Plan
- 9. Sheet A1.6 Roof Plan
- 10. Sheet A1.7 Enlarged Typical Unit Plan
- 11. Sheet A2.0 Exterior Elevations
- 12. Sheet A2.1 Courtyard Elevations
- 13. Sheet A3.0 Building Section
- 14. Sheet A4.0 Perspective
- 15. Sheet A4.1 Perspective

C. Drainage Report and Plan Set for Stony Brook, Weston, 104 Boston Post Road, Weston MA, Prepared by Allen & Major Associates, Inc. 100 Commerce Way, Woburn, MA 01888, April 18, 2017, latest revision August 11, 2017; Revised Document includes Civil Site Development Plans: Drainage Sheet C-3b, C-5A, C-5B, and D-4, prepared by Allen & Major Associates, Inc. Also includes "Pre" Pre Development Watershed Plan (rev. 8-11-17) and "Post" Post Development Watershed Plan (rev. 8-11-17).

D. Conceptual Design Executive Summary for Proposed Wastewater Treatment and Evaporation Facilities, prepared by Stantec Consulting Services, 3 Burlington Woods Drive, Suite 210, Burlington, MA.

E. Memorandum from F. Giles Hamm, P.E., Vanasse & Associates, Inc., dated May 12, 2017 to David Calhoun re: Proposed Residential Development, Route 20, Weston, MA (supplemental traffic information), including Sidewalk and Crosswalk Plan and Boston Post Road Left-Turn Lane Plan.

F. Letter from Allen & Major to City of Cambridge Water Department, dated May 16, 2017, regarding "A&M Response to Kleinfelder Peer Review Letter dated May 9, 2017", with attached "Contech Jellyfish Details and Design Data", and "Revised O&M Plan", revision dated May 16, 2017, and "MassHighway Outfall Velocity [sic] Data, with attached "Drainage and Erosion Control, 8-49, MassHighway 2006 Edition, "Rip Rap Outfall Velocities, printed 5/16/2017, and "TSS Removal Worksheet, page 1 of 1, and "Revised Design Plans": "Drainage Plan, Sheet C-3B" and "Details, Sheet D-4", both prepared by

Allen & Major Associates, Inc., rev. dated 5/16/17, and “Mag, High performance Ice Melter,” 2 sheets of information.

- G. Groundwater Observation Sheets (3), dated 6/5/17, from New England Boring Contractors, P.O. Box 165, Derry, NH for Boring Locations 1, 2, and 3; Accompanying Boring Location Plan B-1 from Allen & Major Associates, Inc., incorrectly dated 3/8/17.
 - H. Email from Timothy Williams, Allen & Major Associates, Inc. dated 6/16/17 to the ZBA, attaching Revised Peak Runoff Tables (6/15/17).
 - I. Transmittal from Timothy Williams, Allen & Major Associates, Inc. dated 6/20/17, attaching Peak Flow and Volume Tables revised to units of acre-feet (AF), not cubic feet per second (CFS), revised through June 20, 2017.
 - J. Email from David Calhoun dated 7/11/17 to ZBA transmitting Transportation Impact Assessment, Proposed Residential Development, Weston, Massachusetts, dated July, 2017, prepared by Vanasse & Associates, Inc.
 - K. Letter from Clay B. Smook, Smook Architecture & Urban Design, Inc. dated 7/18/17 to David Calhoun re: Weston – Additional Renderings and Central Wing Revision Report.
 - L. Letter from F. Giles Ham, Vanasse & Associates, Inc. dated 8/28/17 to ZBA re: Supplemental Information regarding traffic.
 - M. Project Eligibility Letter dated February 21, 2017 from the Massachusetts Housing Finance Agency, One Beacon Street, Boston, MA to David D. Calhoun
- II. Town department documents, letters, and emails submitted to the ZBA include, but are not limited to:
- 1. Letter from the Joint Committee, Weston Housing Partnership and Weston Affordable Housing Trust to David Calhoun, dated November 16, 2016;
 - 2. “104 Boston Post Road, Weston, Massachusetts, Site Walk,” notes by Stockman, dated 12/2016;
 - 3. Memorandum from the Conservation Commission to the Board of Selectmen, dated December 21, 2016;
 - 4. Memorandum from the Board of Health to the Board of Selectmen, dated December 22, 2016, including a copy of 310 CMR 15.00;
 - 5. Email from the Conservation Commission to Donna VanderClock, dated December 22, 2016;
 - 6. Email from the Conservation Commission to Noreen Stockman et al, dated December 24, 2016;
 - 7. Letter from the Planning Board to the Board of Selectmen, dated January 4, 2017;

8. Letter from the Historical Commission, dated January 10, 2016 [sic];
9. Letter from Board of Selectmen to MassHousing dated January 10, 2017;
10. Letter of Support with conditions from Weston Affordable Housing Trust to the Board of Selectmen, dated January 13, 2017;
11. E-mail from Imaikalani Aiu to Noreen Stockman et al, dated January 24, 2017;
12. E-mail from Conservation Commission, dated January 24, 2017;
13. Email from Board of Health to Noreen Stockman, dated January 24, 2017;
14. Email from Noreen Stockman to Town departments requesting comments, dated February 23, 2017, and March 2, 2017;
15. Memo of Meeting from the Engineering Department dated April 3, 2017, Memo to ZBA dated April 6, 2017, and email from Steve Fogg, dated January 12, 2017;
16. “Agreement for Extension of Statutory Hearing Deadline,” to extend through April 6, 2017 the 30-day time limit for opening the public hearing, filed with the Town Clerk on March 6, 2017;
17. Emails from Board of Health to David Calhoun, dated April 6, 2017, with attached 105 CMR 410.000 “Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II);
18. Letter from the Board of Selectmen to the Zoning Board of Appeals, dated April 6, 2017;
19. Email from Board of Health to the Zoning Board of Appeals, dated April 13, 2017;
20. Memorandum from the Conservation Commission to the Zoning Board of Appeals, dated April 26, 2017;
21. Letter from Weston Historical Commission to the Zoning Board of Appeals, dated April 28, 2017;
22. Certification Pursuant to G.L. c.39, Section 23D, of Participation in a Session of an Adjudicatory Hearing Where the Undersigned Member Missed a Single Hearing Session, signed by Stephen J. Larocque, and dated May 2, 2017;
23. Notes from Ben Fehan (temporary Town Engineer) “104 Boston Post Road, Stony Brook Project”, undated;
24. Letter from Weston Affordable Housing Trust to the Zoning Board of Appeals, dated May 8, 2017;

25. Email from Board of Health to the Zoning Board of Appeals, dated May 19, 2017;
26. Memorandum from the Planning Board to the Zoning Board of Appeals, dated June 7, 2017;
27. Letter from the Fire Chief to the Zoning Board of Appeals, dated June 16, 2017;
28. Memorandum from Weston Historical Commission to the Zoning Board of Appeals, dated June 18, 2017;
29. Letter from the Fire Chief to the Zoning Board of Appeals, dated June 16, 2017, updated June 27, 2017;
30. E-mail from the Conservation Commission regarding wetland limits, dated June 29, 2017;
31. Letter from Danielle S. Black, Chair of the Weston School Committee to the Zoning Board of Appeals, dated August 8, 2017;
32. Email from Board of Health to the Zoning Board of Appeals, dated August 29, 2017;
33. Memorandum from the Board of Selectmen to the Zoning Board of Appeals, dated September 12, 2017;
34. Memorandum from the Planning Board to the Zoning Board of Appeals dated September 6, 2017;
35. Submission from the Weston Public Schools to the Zoning Board for “Affordable Housing Project – 104 Stony Brook, Summary,” comprising 9 pages, hand-dated 9-13-2017 (following submission at hearing on 9-13-2017); and
36. Excerpts from 310 CMR 7.00: Air Pollution Control, 248 CMR 10.00: Uniform State Plumbing Code, and Chapter 111, Section 127A: State Sanitary Code.

III. Additional Documents in the file include, but are not limited to:

- A. Documents Submitted by the Applicant and the Applicant’s Consultants to the ZBA:
 1. Memorandum from Susan A. Bernstein to Chris Berardi, re: “Weston Redevelopment Project: Preliminary Zoning Analysis,” dated December 8, 2014;
 2. Letter from Timothy J. Williams of Allen & Major Associates, Inc. to Weston Conservation Commission, dated January 16, 2017;
 3. Letter from Julie Pruitt Barry of Prince Lobel Tye LLP to Christopher E. Houston, Chairman, Town of Weston Board of Selectmen, dated February 15, 2017;

4. Letter from Julie Barry to Christopher E. Houston, Chairman, Town of Weston Board of Selectmen, dated February 24, 2017;
5. Letter from 104 Stony Brook LLC to Noreen Stockman, accompanying the submission for the Comprehensive Permit for 104 Boston Post Road, stamped in with the Town Clerk on February 22, 2017;
6. “Massachusetts Board of Wastewater Treatment Plants Certification Program-Industrial WWTPs”, comprising 41 pages, dated April 3, 2017;
7. Agreement for Extension of Statutory Hearing Deadline signed by Applicant and Zoning Board of Appeals, March 6, 2017;
8. Letter from F. Giles Ham, Vanasse & Associates, to MassDOT submitting preliminary traffic study and access plan (3/7/17), dated March 10, 2017;
9. Cover letter from 104 Stony Brook LLC to the Zoning Board of Appeals re: Comprehensive Permit Application, dated March 30, 2017;
10. Letter from David D. Calhoun to State Historic Preservation Officer et al, dated April 13, 2017;
11. Letter from Allen & Major Associates, Inc. to the Zoning Board of Appeals: “Drainage Report Cover Letter”, dated April 18, 2017;
12. E-mail from Julie Barry to the Zoning Board of Appeals re: 104 Stony Brook, LLC’s 40B Application, Response to Town of [sic] Board of Selectmen April 6, 2017 Letter, with exhibits, dated May 1, 2017 (49 page attachment):
 - a. Exhibit A: March 7, 2017 letter from Julie Pruitt Barry to Winifred Li
 - b. Exhibit B: page 60 of the Weston Housing Production Plan
 - c. Exhibit C: page 61 of the Weston Housing Production Plan
 - d. Exhibit D: Allen & Major Associates, Inc. letter to Noreen Stockman
 - e. Exhibit E: April 13, 2017 letter from 104 Stony Brook LLC to Brona Simon, and March 31, 2017 letter from Brona Simon to David Calhoun
 - f. Exhibit F: “Weston Land use Department Process, 133 Boston Post Road Project”
 - g. Exhibit G: “Conservation Restriction,” related to area of Duck Pond, proximate to 133 Boston Post Road
 - h. Exhibit H: page 65 of the Weston Housing Production Plan
13. Letter from Vanasse & Associates, Inc. to David Calhoun, dated May 2, 2017 (re: Conceptual Plan MassDOT);
14. Memorandum from Vanasse & Associates, Inc. to Mas DOT, dated March 7, 2017, attached to cover letter to MassDOT Highway Division, dated March 10, 2017;

15. Letter from Allen & Major Associates to Cambridge Water Department, dated May 5, 2017, re: A&M Response to Kleinfelder Peer Review Letter dated May 1, 2017;
15. Letter from Allen & Major Associates to the Zoning Board of Appeals, re: Drainage Report Cover Letter, dated May 5, 2017;
17. Memorandum from Vanasse & Associates, Inc. to David Calhoun, dated May 12, 2017;
18. Letter from Allen & Major Associates to the Zoning Board of Appeals, dated May 18, 2017, re: Response to Nitsch Engineering Peer Review Letter dated May 15, 2017, with attached “2275-01 Proposed HydroCAD-Weston,” “Rip Rap Outfall Velocities”, printed 5/16/2017, and “Drainage and Erosion Control, 8-49,” from Mass Highway, 2006 Edition;
19. Letter from Allen & Major Associates to the Zoning Board of Appeals, dated May 22, 2017 re: Response to Karen Sebastian LLC Peer Review Letter dated May 17, 2017;
20. E-mail from Julie Barry to the Zoning Board of Appeals, dated June 13, 2017 with attached “Oregon Health & Science University Center for Health and Healing (5 pgs) plus power point slides for “Enviroquip MBR System Helps OHSU Go Platinum”, by Kimberly Mathis (21 pgs), with “Ovivo, OHSU Block 25, or WWTP (5 pgs), and “Water & Wastes Digest: Case History, dated 11/20/2009;
21. Letter from Julie Barry to the Zoning Board of Appeals, dated June 13, 2017, enclosing case studies of wastewater re-use systems;
22. Letter from Allen & Major to City of Cambridge Water Department, dated June 15, 2017, re: A&M Response to Kleinfelder Peer Review Letter, dated May 22, 2017;
23. Letter from Julie Barry to the Zoning Board of Appeals, enclosing “Preliminary List of Waivers,” dated June 16, 2017;
24. E-mail from Allen & Major Associates to the Zoning Board of Appeals, dated June 16, 2017, regarding typo in Drainage Report, with attached amended sheet and link for download of updated calculations;
25. E-mail from Julie Barry to the Zoning Board of Appeals, dated June 16, 2017 with attached “Preliminary List of Waivers”;
26. E-mail from David Calhoun to the Zoning Board of Appeals, dated June 19, 2017, with responses to June 16, 2017 Fire Department letter;
27. Letter from Allen & Major to the Zoning Board of Appeals, dated June 29, 2017, “Response to Karen Sebastian LLC Peer Review Letter dated June 28, 2017”;
28. Letter from Vanasse & Associates, Inc., to the Zoning Board of Appeals, dated July 6, 2017, with responses to MDM June 12, 2017 comments;

29. Letter from Allen & Major to the Zoning Board of Appeals, dated July 6, 2017, re: “Response to Chessia Consulting Services memo dated June 14, 2017”;
30. Draft Comprehensive Permit provided by Julie Barry to the Zoning Board of Appeals, hand dated July 10, 2017. Update by e-mail, and hand dated July 17, 2017;
31. E-mail from David Calhoun to the Zoning Board of Appeals, dated July 14, 2017, with attached:
 - a. Letter from Keith Flanders, PE, Cosentini Associates, Inc., 101 Federal Street, Suite 600, Boston, MA, dated July 14, 2017 (2 pgs)
 - b. Letter from Meredith S. Zona, PE, Stantec Consulting Services, Inc., 5 Burlington Woods Drive, Burlington, MA, dated July 14, 2017 (2 pgs)
 - c. Letter from Timothy J. Williams, PE, Allen & Major Associates, dated July 14, 2017 (2 pgs)
32. E-mail from David Calhoun to Chris Berardi and Julie Barry, dated July 14, 2017, provided to the Board at the 7-17-2017 meeting – Common Chemicals from WWTF;
33. E-mail from Julie Barry to the Zoning Board of Appeals, dated July 17, 2017, attaching (1) Draft Decision, Comprehensive Permit, and (2) “Proposed Condition for Stormwater Management System” three pages, sent and hand dated July 17, 2017;
34. Memorandum from Smook Architecture & Urban Design to David Calhoun, dated July 18, 2017;
35. Email from David Calhoun to the Zoning Board of Appeals, dated July 18, 2017, transmitting Table entitled “Stony Brook Residential, Weston, Massachusetts, dated Mar-17;
36. Email from David Calhoun to the Zoning Board of Appeals, dated July 19, 2017, transmitting traffic accident data from Weston Police Department;
37. E-mail from David Calhoun to Weston Planning Board regarding parking and MAPC comments, dated July 25, 2017;
38. Email from Kasia Hart, MAPC, to David Calhoun dated July 25, 2017, re: Parking at 104 Boston Post Road and “Perfect Fit Parking” research;
39. E-mail from Luke Miller, CityLift Parking, 20 Park Plaza, Boston, MA, dated July 26, 2017, with “2 Level Standard Specifications Model No. 2LP3W6”, pages S1 and S2, both dated 9-15-16, and “Three Level Puzzle”, comprising three pages, by CityLift, 2335 Broadway, Oakland, CA;
40. Letter from Allen & Major Associates to the Zoning Board of Appeals, dated July 28, 2017 re: “Revised Resubmission to ZBA for 40B Comprehensive Permit Approval”;

41. Letter from Allen & Major Associates to the Zoning Board of Appeals, dated July 28, 2017 “Response to Karen Sebastian LLC Peer Review Letter dated July 19, 2017”;
42. Email from David Calhoun to the Zoning Board of Appeals, dated August 2, 2017, containing draft language re: coordination between Petitioner’s property management team and Weston School Department;
43. E-mail from David Calhoun to Danielle S. Black, Chair of the Weston School Committee, dated August 8, 2017;
44. Transmittal from David Calhoun to Zoning Board of Appeals, dated August 9, 2017, attaching supplemental information regarding (1) Clarifications/Supplemental Information for Waivers Requested from Local Regulations Regarding Off-Street Parking and Stormwater (8/8/17) and (2) Parking Ratio Requirements;
45. Letter from Allen & Major Associates to the Zoning Board of Appeals, dated August 11, 2017 re: “Revised Stormwater Bylaw/Regulations Waiver Request”;
46. Clarifications/Supplemental Information for waivers requested from local regulations regarding Offstreet Parking and Stormwater, dated 8/8/2017 (rec’d 8-15-2017);
47. Letter from Vanasse & Associates to the Zoning Board of Appeals, dated August 28, 2017, with attachment “Exhibit 1-Proposed Signage & Existing Road Width, Sheet EXH-1”, prepared by Allen & Major Associates, dated 8/28/2017;
48. Letter from Julie Barry to the Zoning Board of Appeals, dated August 29, 2017 re: Objection to “Site Analysis” by the Planning Board;
49. Letter from Vanasse & Associates to the Zoning Board of Appeals, dated September 6, 2017, including a Sibley Road Parking accumulation survey; and
50. E-mail from Julie Barry to the Zoning Board of Appeals, with attached 9/7/2017 Draft of Comprehensive Permit and List of Waivers.

B. Documents submitted by the Board’s peer reviewers and others:

1. Letter from City of Cambridge to MassHousing, dated December 21, 2016;
2. Letter from MDM Transportation Consultants, Inc., to the Planning Board/Zoning Board of Appeals, dated March 2, 2017;
3. Letter from Sean M. McKendry, City of Cambridge, Office of City Solicitor to the Zoning Board of Appeals, dated April 6, 2017;
4. Letter from Terry Eastman, 50 Pigeon Hill Road, dated April 11, 2017 (opposition);
5. “Road Safety Audit, Weston Street (Route 20) at I-95 Ramps/Weston Street (Route 20) at Main Street (Route 117)/Totten Pond Road/Winter Street at 3rd Avenue; Winter Street at

2nd Avenue. City of Waltham, May 2017. Prepared for MassDOT by McMahon Associates, Inc., 45 Bromfield Street, 6th Floor, Boston, MA;

6. Memorandum, from Kleinfelder, 215 First Street, Cambridge, MA, to City of Cambridge Water Department, dated May 1, 2017;
7. Letter from Nitsch Engineering, 2 Center Plaza, Suite 430, Boston, MA, to the Zoning Board of Appeals, dated May 5, 2017;
8. Letter from Nitsch Engineering to the Zoning Board of Appeals, dated May 15, 2017;
9. Letter from KarenSebastian, LLC to the Zoning Board of Appeals, dated May 18, 2017, peer landscape review;
10. Letter from Sean M. McKendry, City of Cambridge, Office of City Solicitor to the Zoning Board of Appeals, dated May 22, 2017;
11. Letter from BETA Group, Inc. (traffic consultants) to the Zoning Board of Appeals, dated May 23, 2017;
12. Letter from MDM Transportation Services, Inc. to the Zoning Board of Appeals, dated May 23, 2017;
13. Email from Nitsch Engineering to the Zoning Board of Appeals, dated June 1, 2017;
14. Letter from Massachusetts Historical Commission to David Calhoun, dated June 12, 2017;
15. Letter from MDM Transportation Consultants to the Zoning Board of Appeals, dated June 12, 2017;
16. Letter from John C. Chessia, PE, Chessia Consulting Services LLC, P.O. Box 724, Norwell, MA, to the Weston Board of Selectmen, dated June 14, 2017;
17. “104 Boston Post Road (Sibley Road) Project: Issues (and conditions) Raised by Town of Weston Boards and Commissions and by the City of Cambridge Office of the City Solicitor (as of 6/17/17),” provided by Jane Fisher Carlson, Zoning Board of Appeals;
18. Letter from KarenSebastian, LLC to the Zoning Board of Appeals, dated June 28, 2017;
19. Letter from MDM Transportation Consultants, Inc., to the Zoning Board of Appeals, dated June 12, 2017, including traffic counts from Precision Data Industries LLC, dated 3/21/2013;
20. Letter from Chessia Consulting Services LLC to the Weston Board of Selectmen, dated July 6, 2017;

21. Email from MDM Transportation Consultants, to the Zoning Board of Appeals, dated July 10, 2017;
22. Letter from Nitsch Engineering, Inc. to the Zoning Board of Appeals, dated July 10, 2017;
23. Letter from Sean M. McKendry, City of Cambridge, to the Zoning Board of Appeals, dated July 17, 2017;
24. Email from Nitsch Engineering, Inc. to the Zoning Board of Appeals, dated July 17, 2017;
25. Letter from KarenSebastian, LLC to the Zoning Board of Appeals, dated July 19, 2017, with accompanying sketch plan of 104 Boston Post Road section landscape;
26. Letter from KarenSebastian, LLC to the Weston Zoning Board of Appeals, dated August 2, 2017, regarding landscape plan dated 7-28-2017;
27. Email from MDM Transportation Consultants to the Zoning Board of Appeals, dated August 1, 2017;
28. Letter from MDM Transportation Consultants to the Zoning Board of Appeals, dated August 3, 2017;
29. E-mail from MDM Transportation Consultants to the Zoning Board of Appeals, dated September 11, 2017, with attached “Illustrative Conceptual Plan, Traffic & Safety Improvements, Boston Post Road (Route 20), Weston, Massachusetts (dated September 5, 2017);
30. Letter from Scott Horsley, Horsley Witten Group, Inc., 90 Route 6A, Unit 1, Sandwich, MA, to the Zoning Board of Appeals, dated September 11, 2017;
31. Letter from Chessia Consulting Services LLC to the Weston Board of Selectmen, dated September 11, 2017; and
32. Letter from Sean M. McKendry, City of Cambridge, to the Zoning Board of Appeals, dated September 13, 2017, with attached Proposed Conditions and Comments, 104 Stony Brook LLC’s Chapter 40B Application to Weston Zoning Board of Appeals, Weston, Massachusetts (6 pgs).

IV. The Board and the Applicant agreed on an extension of the statutory hearing deadline to open the public hearing to April 6, 2013, which extension was filed with the Town Clerk on March 6, 2017. The Board held a public hearing comprised of seven sessions, duly advertised, on the following dates: April 6, 2017, May 2, 2017, May 22, 2017, June 19, 2017, July 10, 2017, July 17, 2017, and September 13, 2017. A site walk was made by Board members Li, Carlson, and Larocque on July 7, 2017. On September 13, 2017, the public hearing was closed.

V. DECISION

Following the close of the public hearing, and after due and open deliberation, the Board voted 3-0 to deny, for the reasons stated above and in the Findings below and for the detailed reasons set forth in Exhibit B of this decision (“Actions on Requested Waivers”), the requested Comprehensive Permit under M.G.L. Chapter 40B for the development of a project consisting of a maximum of 150 rental units, 38 of which would have been permanently affordable, as defined by G.L.c.40B and the regulations promulgated thereunder, all of which would have been housed in one multifamily residential structure with varying elevations of three, four and five residential stories with two stories of below grade structured parking, and a lower level containing mechanical rooms and a wastewater treatment facility with associated evaporator units, to be located at 104 Boston Post Road (Route 20) at its intersection with Sibley Road and close to the junction of, and the rotary over, MA Route 128 (US I-95), for a total of eight stories at its greatest height.

VI. FINDINGS:

After hearing and carefully considering the concerns regarding the Project raised by (1) the City of Cambridge (“City”), the owner of property abutting the Site and the owner and operator of the Stony Brook Reservoir and the Stony Brook, essential components of the City’s public drinking water supply system, both of which are near the Site, (2) Town of Weston departments and agencies, and (3) the Board’s and the Town’s peer reviewers for stormwater, hydrology and water quality, traffic, and landscaping, during the course of the public hearing, and after reviewing the documents, plans, and other evidence submitted to the Board by the Applicant and others concerning the Project, the Board makes the following Findings:

1. The Site contains approximately 2.1 acres, with approximately 1.7 acres to be developed, and is located in Business Districts A and B, a commercial/office district of Weston.
2. Both the Site and the Project itself are located within the so-called Zone A public water supply protection area, defined under 310 CMR 22.00, as they are within the 400-foot protective buffer for the public drinking water sources, Stony Brook and the Stony Brook Reservoir.
3. The Site is located near the Intersection of MA Route 128/US I-95 and MA Route 20 (Boston Post Road) and is located at the corner of Boston Post Road and Sibley Road, across from the Weston Corporate Center, in a heavily traveled location for commuters, both in Weston and other communities, using Route 128. Vehicular access into the Site would be provided from Boston Post Road onto Sibley Road with two curb cuts for access into and egress from the Project onto Sibley Road and the abandonment of the existing curb cut on Boston Post Road. Traveling west along Boston Post Road into Weston, commercial space occupied by the Weston offices of Biogen and Monster Worldwide, Inc., is located north of the Site and across Route 20. To the south of the Site is wooded, undeveloped land, which will remain undeveloped as a result of the modification to the Project plans, which would leave that area

undisturbed. To the east, along the Boston Post Road and Sibley Road, are commercial and industrial developments consisting of a Mobil Gas Station, various commercial tenants, and offices.

4. The Site presently contains an existing residential building with historical significance, the Sibley House, which is currently used for office space. The Applicant has proposed to donate the Sibley House for relocation, and perhaps re-use for additional affordable housing units, within the Town of Weston.
5. The Site elevation is approximately 138 feet at the center of the property and drops to a low point of approximately 90 feet to the south, and with the highest elevation at 140 feet 6 inches +/- . The proposed Project will lower the site elevations closer to the existing grades for vehicle access to and from the Sibley Road driveways. The Site contains jurisdictional wetlands and riverfront resource areas; however, as currently designed, the Project contains no known jurisdictional wetlands or riverfront resource areas as confirmed by the Conservation Commission's Memorandum referenced in Section II, above. Nevertheless, as noted above, the bulk of the Site and the Project are located in the Zone A, designated by the state as a buffer zone in order to protect the quality and quantity of public drinking water supplies, as both the Site and the Project are within 400 feet of the bank of the Stony Brook and the Stony Brook Reservoir.
6. According to the Architect's Plans and hearing presentations, the Project will consist of one "stick-built" multi-family residential structure with varying elevations of three, four, and five residential stories constructed over a parking podium with two stories of structured parking, some of which is below grade, and a lower level to house interior wastewater treatment and evaporation facilities and other appurtenances. The Project will be accessed by two curb cuts along Sibley Road, and the existing curb cut from Boston Post Road will be abandoned. The Site design includes the incorporation of an emergency access route around the rear of the building consisting of reinforced pavers capable of withstanding fire apparatus loading. The remaining 0.40 acres on the Site will remain in their current condition, and the Project will be situated outside wetland resource areas, including the 200-foot riverfront buffer.
7. Of the 150 units, not less than 25% of the units shall be permanently restricted as affordable for low or moderate income persons or families earning at or below 80% of the Area Median Income: 14 A1 units (1 Bed, 1 Bath), 7 A+1 units (1 Bed, 1 ½ Bath), 13 B2 units (2 Bed, 2 Bath), and 4 C3 units (3 Bed, 2 ½ Bath) as defined under 760 CMR 56. There will be affordable units located on each of the 5 floors. The remaining 112 units will be market rate.
8. 104 Stony Brook LLC controls the entire Site as evidenced by a Deed to it from Massachusetts Broken Stone Company dated January 9, 2015.
9. The Applicant obtained a Project Eligibility Letter ("PEL") MassHousing dated February 21, 2017, pursuant to 760 CMR 56.00 for the Project.
10. As indicated in MassHousing's PEL, the Town of Weston submitted a Housing Production Plan, which was certified effective on June 27, 2016. According to DHCD's Chapter 40B Subsidized Housing Inventory ("SHI"), less than 10% of Weston's housing inventory was considered low or moderate for purposes of M.G.L. Ch. 40B at the time of receipt of the

Application. According to the Weston Housing Needs Assessment of August 5, 2016, of the 3,952 housing units, 149 (3.77%) meet Chapter 40B requirements. An additional 246 units would be required for the town to achieve the 10% threshold of 395. The Board determined the Town of Weston does not satisfy one of the statutory and regulatory exemption thresholds outlined in Chapter 40B and 780 CMR 56.00

11. Not less than 25% of the 150 rental units shall be permanently restricted as affordable for low or moderate income persons or families, and shall be marketed and rented to eligible households whose annual income may not exceed 80% of the area median income (“AMI”) adjusted for household size as determined by the U.S. Department of Housing and Urban Development (“the Affordable Units”), and subject to the approval by DHCD, the Affordable Units shall be eligible to be included in the Town’s Subsidized Housing Inventory, as maintained by DHCD and the Applicant, in the event of approval and construction of the units, shall cooperate with the Town in providing information to DHCD to add units to the SHI.
12. Traffic – The Applicant submitted a traffic analysis prepared by Vanasse & Associates, Inc., and MDM Transportation Associates, the Town’s peer review traffic consultant, has commented thereon. While the Project is located on Route 20 and the Board does not have jurisdiction over a state highway, the Applicant agreed that it would be unsafe for the occupants to access the Project without specific roadway improvements and agreed to certain conditions as conditions precedent to any construction of the Project.
13. Stormwater Management – The Applicant submitted a Drainage Report dated April 18, 2017 prepared by Allen & Major Associates, Inc. (“A&M”), which was revised in full on May 5, 2017, with supplemental updates on May 16, 2017, June 15, 2017, July 28, 2017, and August 11, 2017 in response to comments by Nitsch Engineering, the Board’s peer review engineer, and Kleinfelder Engineering, the peer reviewer for the City of Cambridge Water Department. Chessia Consulting Services LLC also submitted comments (“Chessia Comments”), which were obtained by Weston’s Town Manager. The stormwater impacts of the Project were also reviewed by the Board’s peer review consultant, Hydrologist Scott Horsley, who opined in a letter to the Board dated September 6, 2017 (revised on September 11, 2017) that the Project “does not comply with several local and state laws and guidelines that are designed to protect drinking water quality and wetland resource areas” and that, as designed, the Project “poses significant risks to downgradient water resources.”

The subgrade for the Project has not been established, and the Applicant proposed that the soils would not be tested until construction begins (i.e., after the extensive blasting and removal of existing ledge and earth materials from the Project, as well as the cutting and removal of all trees and vegetation on the Project land).

The Applicant stated that the Stormwater Management System as most recently modified by Allen & Major will be a detention system, which will consist of a solid corrugated metal pipe laid in a bed of crushed stone and over-blasted bedrock with a large storage capacity, and will utilize a level spreader outlet design consisting of an outlet control structure with varying outlet elevations to reduce peak flows for all analyzed storm events as well as a rip-rap lined concrete level-spreader system with perforated pipe set in a Gabion basket, the purpose of which is to dissipate outlet velocities to the maximum extent practicable to mitigate any

potential scouring or erosion on the slope leading to the Stony Brook and Stony Brook Reservoir. As described in the Applicant's most recently revised Drainage Plan, dated August 11, 2017 (p. 9), and shown on the Plan of Record, the level spreader outlet control structure will be located only 200+ feet from the Stony Brook, within the Zone A.

14. Landscaping – the Applicant submitted a Landscape Plan and Landscape Details by A&M (Sheets C-5A and C-5B of the Project Plans), revised on May 22, 2017, May 30, 2017, June 28, 2017, and August 11, 2017 in response to comments by the Board's peer landscape reviewer, Karen Sebastian, that found the proposed screening was inadequate due to the limited space for plantings and the urban heat effect. In response, the Landscape Plan has been revised, most recently as of August 11, 2017, to increase screening as requested.
15. Wastewater Treatment Facility – The proposed wastewater treatment facility (“WWTF”) for the Project will be located on the “Lower Level” of the residential structure, below the second parking level. The WWTF has a design flow of 25,850 gallons per day (“gpd”), none of which will be discharged to town sewer or to groundwater, as the WWTF will use three or four evaporators, According to the Applicant, as a system designed to handle wastewater flows in excess of 10,000 gpd, the WWTF and its evaporators fall under MassDEP's jurisdiction for review and approval. The Applicant did not identify any particular local regulations or other requirements that it wished the Board to waive. The Applicant stated that the facility would be reviewed and approved by MassDEP. Nevertheless, the Applicant submitted to the Board a 6-page Conceptual Design Executive Summary, with two “process flow diagrams,” for Proposed Wastewater Treatment and Evaporation Facilities by Stantec Consulting Services Inc., dated May 12, 2017, and a representative from Stantec attended the public hearing to address the Board's questions and comments. The peer reviewer for the City of Cambridge, Kleinfelder Engineering, also provided comments on the WWTF.
16. The Planning Board submitted several memoranda, referenced in Section II, expressing opposition to the Project.
17. The Board of Selectmen submitted several memoranda, referenced in Section II, and several Chessia comments, referenced in Section III.B, expressing opposition to the Project.
18. The Weston Historical Commission submitted several memoranda, referenced in Section II, expressing opposition to the Project, and specifically to the removal and relocation of the Sibley House. The Applicant continues to work with various agencies, including veterans groups, to accept the building as a donation for use off Site.
19. The Conservation Commission issued a letter from Michele Grzenda, Conservation Agent, dated April 26, 2017, in Section II, concerning the Project as modified and stating that Conservation Commission review and approval were not required since the proposed work was outside the 200-foot Riverfront Area.
20. The Weston Housing Partnership issued a conditional letter of support for the Project dated May 8, 2017, referenced in Section II.

21. The Town Engineer issued a Memorandum dated April 6, 2017, referenced in Section II, supporting the early stages of the Project long before interim and final stormwater plans were proposed.
22. Weston Fire Chief David Soar submitted a letter dated June 27, 2017, referenced in Section II, stating that the Fire Department is satisfied with the site plan access for the Project.
23. The Director of the Weston Board of Health submitted emails to the Board and others, referenced in Section II, raising concerns about the Applicant's ability to meet the Massachusetts Department of Public Health regulations for the Minimum Standards for Human Habitability, as well as its ability to obtain necessary Board of Health variances.
24. The Chair of the Weston School Committee, Danielle S. Black, requested that the school bus pick up and drop off location for the Project be on Sibley Road, rather than on the Boston Post Road.
25. The Site Layout Plan, referenced in Section I, provides for 197 parking spaces on two levels of underground garage, which is not in compliance with zoning requirements but for which the Board has granted a waiver subject to conditions. See below, and Exhibit B to this Decision.
26. With the exception of one individual (referenced in Section III.B.4), there were no neighbors or town residents who expressed opposition to the Project, other than those individuals on certain town boards, notably the Weston Historical Commission and the Planning Board and the Board of Selectmen. In addition, the City of Cambridge, a direct abutter to the Project, submitted letters and comments to the Board, referenced in Section III.B, and City representatives attended each hearing session.
27. The Massachusetts Historical Commission ("MHC") submitted a letter to the Applicant dated June 12, 2017, referenced in Section III.B, stating that "MHC has determined that the proposed project will have an 'adverse effect' (950 CMR 71.05(a), 950 CMR 71.05(b), 950 CMR 71.05(c) and 950 CMR 71.07(2)(b)(3)) on the Nathaniel Sibley House and the Boston Post Road Historic District..."
28. In accordance with Board regulations, the Board determined that it required technical advice unavailable from municipal employees. As a result, the Board employed outside consultants:

Nitsch Engineering, 2 Center Plaza, Suite 430, Boston, MA 02108 –
Engineering Peer Review.

MDM Transportation Consultants, 28 Lorde Road, Suite 280,
Marlborough, MA 01752 – Traffic Impact Assessment Peer Review.

Karen Sebastian, Landscape Architect, 44 Leonard Street, Waltham, MA
02451.

Scott Horsley, Horsley Witten Group, 294 Washington Street, Suite 801,
Boston, MA 02108.

These outside consultants provided assistance to the Board in plan review, impact analysis, traffic safety and access, and other technical assistance necessary to insure compliance with relevant laws and regulations prior to action by the Board. All consultants were selected and retained by the Board, with the actual and reasonable costs for the services paid by the Applicant. In addition, the Board employed KP Law for necessary legal assistance, including but not limited to, analyzing the Application and providing legal counsel for the Decision.

In addition, the City of Cambridge retained Kleinfelder Engineering, 215 First Street, Suite 320, Cambridge, MA 02142 for drainage and stormwater review.

The Weston Town Manager retained Chessia Consulting Services, LLC for stormwater peer review.

29. The Project does not comply with certain zoning bylaw provisions and other Town Requirements and Regulations. As provided in Chapter 40B, the Applicant requested waivers from specific provisions as noted and as acted upon in Exhibit B to this Decision.

On October 19, 2017, the Board voted 3-0 to adopt the above-stated findings of fact and to authorize the Board's Acting Secretary to sign this decision on behalf of the Board.

I hereby certify that the foregoing, including Exhibits A and B, below, is a True Record of the Board's vote taken on October 19, 2017, to deny the Comprehensive Permit.

Attest: _____
Jane Fisher Carlson, Acting Secretary
Weston Zoning Board of Appeals

Date of Decision: October 19, 2017

Filed with Town Clerk on: October 23, 2017

Sent to Applicant, certified mail, on: October 24, 2017

Notices to interested parties, first class mail, on: October 24, 2017

EXHIBIT A – List of Documents Submitted Prior to 3/28/17 Modified Project Design

- A. The Applicant submitted to the Board the following plans and materials:
1. Memorandum from Susan A. Bernstein, re: “Weston Redevelopment Project: Preliminary Zoning Analysis,” dated December 8, 2014
 2. “Stony Brook Weston, 104 Boston Post Road, Weston, Massachusetts”, cover dated 18 November 2016, containing:
 - a. Sheet A0.1, Locus Plan, by Clay B. Smook, dated 18 November, 2016
 - b. Sheet 1, Existing Conditions, by Allen & Major Associates, Inc., dated 11/18/16
 - c. Sheet C-1, Conceptual Layout Plan, by Allen & Major Associates, Inc., dated 11-21-2016
 - d. Sheet C-2, Conceptual Grading Plan, by Allen & Major Associates, Inc., dated 11-21-2016
 - e. Sheet C-3, Conceptual Utilities Plan, by Allen & Major Associates, Inc., dated 11-21-2016
 - f. Sheet C-4, Conceptual Planting Plan, by Allen & Major Associates, Inc., dated 11-21- 2016
 - g. Sheet A1.0, Typical Garage Plan, by Clay B. Smook, dated 18 November 2016
 - h. Sheet A1.1, Ground Floor Plan, by Clay B. Smook, dated 18 November 2016
 - i. Sheet A1.2, Typical Floor Plans, by Clay B. Smook, dated 18 November 2016
 - j. Sheet A1.3, Typical Fourth Floor Plan, by Clay B. Smook, dated 18 November 2016
 - k. Sheet A1.4, Fifth Floor Plan, by Clay B. Smook, dated 18 November 2016
 - l. Sheet A1.5, Roof Plan, by Clay B. Smook, dated 18 November 2016
 - m. Sheet A1.6, Enlarged Typical Unit Plans, by Clay B. Smook, dated 18 November 2016
 - n. Sheet A2.0, Southwest Perspective, by Clay B. Smook, dated 18 November 2016
 - o. Sheet A2.1, Southeast Perspective, by Clay B. Smook, dated 18 November 2016
 - p. Sheet A2.2, Southeast Perspective, by Clay B. Smook, dated 18 November 2016
 - q. Sheet A3.0, Site Section, by Clay B. Smook, dated 18 November 2016
 3. Letter dated November 22, 2016 from 104 Stony Brook LLC to Weston Board of Selectmen enclosing completed Application Form for the MassHousing New England Fund (“NEF”) Program
 4. Letter from 104 Stony Brook LLC to Noreen Stockman, accompanying the submission for the Comprehensive Permit for 104 Boston Post Road, stamped in with the Town Clerk on February 22, 2017
 5. Letter dated February 21, 2017 from the Massachusetts Housing Finance Agency, One Beacon Street, Boston, MA to David D. Calhoun
- B. Documents submitted prior to 3/28/17 modified project design by Town Departments and others include, but are not limited to:
1. Letter dated November 28, 2016 from Mass Housing to the Weston Board of Selectmen

2. Letter from the Joint Committee, Weston Housing Partnership and Weston Affordable Housing Trust to David Calhoun, dated November 16, 2016
3. "104 Boston Post Road, Weston, Massachusetts, Site Walk," notes by Stockman, dated 12/2016
4. Memorandum from the Conservation Commission to the Board of Selectmen, dated December 21, 2016
5. Memorandum from the Board of Health to the Board of Selectmen, dated December 22, 2016, including a copy of 310 CMR 15.00
6. Email from the Conservation Commission to Donna VanderClock, dated December 22, 2016
7. Email from the Conservation Commission to Noreen Stockman et al, dated December 24, 2016
8. Letter from the Planning Board to the Board of Selectmen, dated January 4, 2017
9. Letter from the Weston Historical Commission, dated January 10, 2016 [sic]
10. Letter from Board of Selectmen to MassHousing dated January 10, 2017
11. Letter of Support with conditions from Weston Affordable Housing Trust to the Board of Selectmen, dated January 13, 2017
12. E-mail from Imaikalani Aiu to Noreen Stockman et al, dated January 24, 2017
13. E-mail from Conservation Commission, dated January 24, 2017
14. Email from Board of Health to Noreen Stockman, dated January 24, 2017
15. Email from Noreen Stockman to Town departments requesting comments, dated February 23, 2017, and March 2, 2017
16. Memorandum of Meeting from the Engineering Department dated April 3, 2017, Memo to Zoning Board of Appeals dated April 6, 2017, and email from Steve Fogg, dated January 12, 2017

EXHIBIT B: Actions on Requested Waivers

Under 760 CMR 56.05(7) Waivers from Local Requirements and Regulations, a 40B applicant may request waivers, as listed in its application or as may subsequently arise during the hearing, and the Board shall grant such Waivers as are Consistent with Local Needs and are required to permit the construction and operation of the Project. Zoning waivers are required solely from the “as-of-right” requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district. If a Project does not request a subdivision approval, waivers from subdivision requirements are not required (although a Board may look to subdivision standards, such as requirements for road construction, as a basis for required project conditions, in which case the Applicant can seek Waivers from such requirements).

The Board took the following actions on the Applicant’s waiver requests:

VOTED: Moved, seconded and voted 3-0 that any waiver not explicitly granted below is denied.

VOTED: Moved, seconded and voted 3-0 to find that the Applicant made multiple fee waiver requests and the Board voted 3-0 on the fee waiver requests by granting them in part and denying them in part as follows:

- The ZBA grants the waiver requests in part by accepting the filing fee paid by the Applicant for the Comprehensive Permit as the appropriate fee for the local permits and local approvals encompassed by the comprehensive permit application; and, so, any fee that would otherwise be due now to the agency that would have otherwise heard the request for relief contained within the comprehensive permit application is waived.
- The ZBA denies the waiver requests in part by denying any blanket request for relief from local fees for local approvals and permits that have not been applied for as part of the comprehensive permit application, but does so without prejudice to the Applicant making a future request to the ZBA for fee relief for any additional local permit or approval, when and if additional local relief is sought.
- The ZBA denies any request for a waiver of any fee established by state statute or regulation for a state permit(s) that may be sought in the future and denies any waiver from local fees for state permits that are established by local regulation, rule or by-law without prejudice to the Applicant returning to the Board once the local regulation, rule or by-law and the specific fee have been identified, to make a specific request.

(Hereinafter: “Fee Waiver Action”)

Weston Zoning By-law (“ZBL”)

1. ZBL SECTION V.D BUSINESS DISTRICTS (A and B)

Request: WAIVER TO ALLOW RESIDENTIAL USE WITHIN THE BUSINESS DISTRICT

ZBA Action: Applicant seeks a waiver from ZBL §V.D Use Regulations, which prohibit residential uses for property located in Business Districts A and B.

VOTED: The Board voted 3-0 to grant this waiver.

2. ZBL SECTION V.H AQUIFER PROTECTION OVERLAY DISTRICTS

Request: WAIVER TO ALLOW EXCAVATION OR GRADING WITHIN 6 FEET OF THE MAXIMUM HIGH GROUNDWATER TABLE ELEVATION

Applicant: “If groundwater is encountered, an appropriate Dewatering General Permit (DGP) through the EPA will be filed.”

ZBA Action: Applicant seeks a waiver from ZBL §V.H.3.d and §V.H.5.h, which prohibit excavation and grading in Aquifer Protection Overlay Districts unless that activity occurs six feet or more above maximum high groundwater table elevation. Under ZBL §V.H.5.h, the term “excavation” means “any digging in one area that disturbs more than one cubic yard.”

Under ZBL §V.H.1, “The purpose of the Aquifer Protection Overlay Districts is to preserve and protect the quality and quantity of present and potential drinking water supplies, both public and private, and their recharge areas.”

VOTED: The Board voted 3-0 to find that the Site is located near the Stony Brook and the Stony Brook Reservoir, essential drinking water sources for the City of Cambridge; and that the Site is within the Zone A for these surface waters and, so, the Site is within the recharge areas of these surface waters.

The Board’s peer review consultant, Hydrologist Scott Horsley, on September 11, 2017, finalized his report (“Horsley Report”) and noted that the provisions set forth under ZBL §V.H “preserve the natural recharge and filtering functions of surficial geologic materials for the protection of drinking water supplies. Removal of these materials reduces the inherent protections provided and increases the vulnerability of the water supply.” (Horsley Report, p. 6.)

The Horsley Report also noted that: “If recharge is reduced, water tables and groundwater flow rates will decline correspondingly. Additionally, because this project site is adjacent to a public water supply reservoir the sustainable yield of the drinking water supply is directly dependent upon groundwater recharge rates and subsequent subsurface discharge to the reservoir...groundwater is an extension of the reservoir and provides additional storage within the subsurface.” (Horsley Report, p.3)

The Horsley Report highlighted the adverse impacts of replacing recharge areas with impervious surfaces, citing: (1) ZBL §V.H.4.h (under “Special Permit Uses”), requiring a Special Permit for “Rendering impervious more than fifteen (15) percent of the lot area by structures or paving, provided that adequate recharge measures are taken;” (2) ZBL §V.H.6.b (under “Special Permit Procedures”), requiring “...Analysis by a registered professional engineer experienced in groundwater evaluation and/or geohydrology, with an evaluation of the proposed use including its probable effects on surface and groundwater quality and quantity...”; and (3) ZBL §V.H.7, requiring “...that the proposed use...will not, during construction or thereafter, have an adverse environmental impact on the aquifer or recharge area; and [w]ill not adversely affect an existing or potential water supply.”(Horsley Report, p. 6)

The Horsley Report noted that: “... the applicant has not determined the water table conditions on site, two of their borings (B-1 and B-2) indicate that the bedrock surface was found only two feet below existing grade at an elevation of approximately 118 feet. The bedrock surface serves as a low permeability layer that likely supports a seasonal (maximum) water table. This would suggest that the proposed excavations would be well within the six feet of the maximum high water table.” (Horsley Report, p.6)

VOTED: The Board voted 3-0 to find it agrees with Mr. Horsley’s analysis.

VOTED: The Board voted 3-0 to find that excavation and grading within six feet of the maximum high groundwater table elevation and replacing over 50 percent of the lot area with an impervious structure (see Waiver Request 5(C), below) would adversely impact the quality and quantity of the drinking water supplies presently available by eliminating the existing groundwater recharge and the essential filtering functions of the soil and other geologic materials that would be disturbed and removed.

The Board's stormwater engineering peer reviewer, David Conway of Nitsch Engineering, wrote in a letter to the Board dated May 15, 2017 ("Nitsch Report"):

On Sheet 3-A of the Site Development Plans, the lower level garage finish floor elevation is 104' ±. The lower level garage will be 27' ± below the existing grade. A geotechnical report has not been provided with high groundwater, so it is unknown if the lower level garage will encounter groundwater. The site stormwater management system does not consider additional groundwater via foundation drains, sump pumps, or other methods of mitigation from the lower level garage. (Nitsch Report, p.1)

VOTED: The Board voted 3-0 to find that it agrees with the above statements in the Nitsch Report.

VOTED: The Board voted 3-0 to find that the size of the proposed building's footprint and the location of the proposed Wastewater Treatment Facility and its associated evaporators and other appurtenances (WWTF) below the lower level garage (as shown on revised architectural plans, Sheet A1.0 (Lower Level Plan) of the Plan of Record), would likely require grading and excavation for the Project to occur within six feet of the maximum high groundwater table elevation.

VOTED: The Board voted 3-0 to find that the WWTF would have an effluent design flow of 25,850 gallons per day, which would create an effluent design flow of 9.5 million gallons per year. See, "Conceptual Design Executive Summary for Proposed Wastewater Treatment and Evaporation Facilities," prepared for 104 Stony Brook LLC by Stantec Consulting Services, Inc., 5 Burlington Woods Drive Suite 210, Burlington, MA 01803, at p. 1. The actual effluent flow would likely be less, but would certainly exceed 10,000 gallons of effluent flow per day, which would mean that at least 3.6 million gallons of effluent flow would be generated at the Site per year and the amount would likely be higher.

VOTED: The Board voted 3-0 to find that the revised architectural plans, Sheet A2.0 (Exterior Elevations) of the Plan of Record, indicate that the floor elevation of the WWTF would be at or near the same elevation as the surface of the Stony Brook, which is located within 400 feet south of the Project. The Board did not have sufficient information to evaluate the elevation of the surface of the nearby (within 400 feet) Stony Brook Reservoir.

VOTED: The Board voted 3-0 to find that any accidental leakage from the WWTF could and very likely would flow directly to seasonal high groundwater under the proposed building or to and

then through fissures in the ledge and/or the remaining soil under the proposed building and then into the Stony Brook and to the Stony Brook Reservoir, causing contamination of the City of Cambridge's water supply.

VOTED: The Board voted 3-0 to find that the effluent evaporators would operate on a continuous basis (i.e., 24 hours per day/365 days per year) in order to keep up with the effluent generated at the Site; and this type of operation would be subject to mechanical failure. The September 13, 2017 letter to the Board from the City of Cambridge City Solicitor's Office noted that the City is concerned that, "The capacity of the evaporator unit assumes that the units will operate continuously for 24 hours/day. It should be noted that the long operating hours of the evaporator units could potentially increase the risk of failure, and the repair time and/or lead time for equipment/parts will likely far exceed the storage time [of the treated water storage tank]."

VOTED: The Board voted 3-0 to find that mechanical failures happen, as do accidents, despite diligent efforts, and the location of the WWTF in the Zone A (i.e., within 400 feet of a drinking water supply and at a floor elevation that is likely close to the seasonal high groundwater and at or near the same elevation as the surface of the nearby drinking water supply) would create a high likelihood of contamination of the nearby drinking water supply if a mechanical failure or an accident were to occur, as leaked contaminants could and likely would either:

- (i) flow directly to the seasonal high groundwater under the proposed building and then to the nearby Stony Brook (within 400 feet) and then to or directly to the nearby (within 400 feet) Stony Brook Reservoir; or
- (ii) flow through ledge fissures or through the geologic materials under the proposed building and either flow to the groundwater below and then to the nearby surface waters or flow through the ledge or other materials to the nearby (within 400 feet) surface waters.

VOTED: The Board voted 3-0 to deny this waiver based upon the above findings because protection of the quality and quantity of the drinking water for the City of Cambridge, which is a part of the natural environment, is a local concern under 760 CMR 56.02 and is a local concern that outweighs the regional need for affordable housing. The Board reviewed potential conditions in an attempt to mitigate this local concern, but determined that there is no set of

conditions that it could impose that would adequately protect against the adverse impacts that would result to the critical surface drinking water sources near the Site if the Project is allowed. Such adverse impacts would result from:

- the loss of current groundwater recharge on the Site, with a subsequent loss of subsurface discharge to the nearby surface drinking water sources (i.e., a loss of surface water quantity);
- the degradation of ground and nearby surface water quality caused by the loss of the filtering functions of surficial geologic materials on the Site;
- the rendering impervious of more than 50 percent of the Site's lot area and the resulting reduction of essential groundwater recharge there; and
- the unacceptable risk of contamination to the groundwater beneath the Site and the critical surface drinking water sources near the Site that would occur if the WWTF were to accidentally leak, with the possibility of that harm greatly increased by the subsurface location of the WWTF, with its floor close to the level of the nearby surface waters and the potential for the leaks to travel, through underlying geologic materials or fissures in the ledge, to the groundwater and then to the nearby drinking water sources.

3. SECTION V.I.3.a EARTH REMOVAL

Request: WAIVER TO ALLOW REMOVAL OF EARTH EXCEEDING EARTH IMPORTED

Under ZBL §V.I.3, the stated goal of the earth removal bylaw is to “minimize land disturbance and to achieve a condition where material being imported to a site is equal to or greater than the amount being removed from the site.”

Under ZBL §V.I.3.a, removal of earth is allowed only if the material removed does not exceed the import of material.

ZBA Action: **VOTED:** The Board voted 3-0 to find that the Plan of Record (primarily Sheet C-1, Demolition & Erosion Control Plan, as revised 7-28-17) demonstrates that the amount of material that must be removed from the Site to construct the Project would substantially exceed the amount that would be imported.

VOTED: The Board voted 3-0 to find that removal of the material and then replacing it, in significant part, with impermeable surfaces at the Site, would significantly and adversely impact the quality and quantity of the drinking water surface supplies

currently available in the Stony Brook and Stony Brook Reservoir by removing critical geologic materials that are responsible for filtering and recharging the groundwater that discharges into those surface water supplies, as discussed under Waiver Request 2, above.

VOTED: The Board voted 3-0 to find that the adverse impacts, as discussed under Waiver Request 2, above, would be as follows:

- the loss of current groundwater recharge on the Site, with a subsequent loss of subsurface discharge to the nearby surface drinking water sources (i.e., a loss of surface water quantity);
- the degradation of ground and nearby surface water quality caused by the loss of the filtering functions of surficial geologic materials on the Site;
- the removal of earth from the Site and its replacement with an impervious structure covering over 50 percent of the lot area, resulting in the reduction of essential groundwater recharge there; and
- the unacceptable risk of contamination to the groundwater beneath the Site and the critical surface drinking water sources near the Site that would occur if the WWTF were to accidentally leak, with the possibility of that harm greatly increased by the subsurface location of the WWTF, with its floor close to the level of the nearby surface waters and the potential for the leaks to travel, through underlying geologic materials or fissures in the ledge, to the groundwater and then to the nearby drinking water sources.

VOTED: The Board voted 3-0 to deny this waiver based upon the above findings because: (1) protection of the quality and quantity of drinking water sources for the City of Cambridge, which sources are a part of the natural environment, is a local concern under 760 CMR 56.02; and (2) protection of the quality and quantity of these sources is a local concern that outweighs the regional need for affordable housing. The Board reviewed potential conditions in an attempt to mitigate this local concern, but determined that there is no set of conditions that it could impose that would adequately protect against the adverse impacts that would result to the critical surface drinking water sources near the Site if the Project is allowed.

4. SECTION V.1.3.b

EARTH MOVEMENT

Request:

WAIVER TO ALLOW REMOVAL OF EARTH EXCEEDING 1,000 CY

Under ZBL §V.I.3.b, removal of earth in excess of 1,000 cubic yards is not allowed.

ZBA Action: **VOTED:** The Board voted 3-0 to find that removal of earth exceeding 1,000 cubic yards from the Site would adversely impact the quality and quantity of the nearby drinking water surface supplies (i.e., the Stony Brook and the Stony Brook Reservoir), as determined in the actions taken regarding Waiver Requests 2 and 3, above.

VOTED: The Board voted 3-0 to deny this waiver request based upon the above finding and for the same reasons determined and detailed in the actions taken regarding Waiver Requests 2 and 3, above.

5. SECTION VI.D.2 BUSINESS B DISTRICT DIMENSIONAL REQUIREMENTS

Request: WAIVER OF CERTAIN DIMENSIONAL REQUIREMENTS:

- A. Waiver to exceed minimum street setback on easterly side of lot along Sibley Road for a portion of the building and along northerly side of lot along Boston Post Road & Sibley Road for retaining walls (see table, below);
- B. Waiver to exceed minimum lot line setback along westerly property lines for ledge face;
- C. Waiver to exceed maximum building coverage (see table, below);
- D. Waiver to exceed maximum floor to lot ratio (see table, below).

ITEM	EXISTING	REQUIRED/ALLOWED	PROPOSED
MIN. STREET SETBACK (FT)	34'±	25'	3.9'± East 0'± North Retaining Walls
MIN. LOT LINE SETBACK (FT)	82.7'±	10'	0'± West Ledge
MAX. BUILDING COVERAGE (%)	1.7%±	25%	50.5%±
MAX. FLOOR TO LOT RATIO	<0.02:1 ±	1:2	2:1 ±

ZBA Action: **VOTED:** The Board voted 3-0 to grant Waiver Request 5(A); to exceed Request 5(A) Minimum Street Setback (i.e., a 3.9' ± setback from the easterly lot lines of the Site and a 0' ± setback from the northerly lot lines of the Site), but for zoning dimensional purposes only; this vote does not alter the Board's findings and votes taken above regarding the negative impacts that the Project would have on water quality and quantity under other sections of the ZBL.

Request 5(B) **VOTED:** The Board voted 3-0 to find that protection of the watershed for Cambridge's drinking water sources is a local concern that outweighs the regional need for affordable housing and that no set of conditions to mitigate this concern were provided.

VOTED: The Board voted 3-0 to deny Waiver Request 5(B), to exceed Minimum Lot Line Setback, (i.e., a 0' ± setback from the westerly lot lines of the Site), for the reasons stated in the September 13, 2017 letter from The City of Cambridge (the "City"), abutter to the Site, which provides as follows:

The work proposed by the Applicant will go up to the property line abutting the City's watershed land and will involve a significant amount of blasting activity.... The City is concerned that the Stony Brook, the Stony Brook Reservoir, its abutting watershed land and nearby Zone A will be adversely impacted by this blasting activity. The applicant has not submitted sufficient information to allow the City to evaluate these potential impacts. (City of Cambridge proposed stormwater conditions, September 13, 2017, p.2)

VOTED: The Board voted 3-0 to deny this waiver without prejudice, in order to allow the Applicant, if the comprehensive permit relief were granted, to return to the Board to provide the Board with a geotechnical report from a qualified engineer and a blasting plan prepared by a qualified professional that establish that blasting on the Site less than 10' (and, indeed, as proposed, zero feet) from the westerly lot lines shared with the City of Cambridge's land to allow the Board to properly evaluate whether there is a set of conditions that would allow this waiver to be granted and still protect the integrity of the City of Cambridge's watershed land, the Stony Brook, the Stony Brook Reservoir, and the Zone A for the drinking water sources.

The Board reviewed proposed conditions in Cambridge's September 13, 2017 letter, as set forth on page 2 of an attachment thereto, but the Board found that the geotechnical report and blasting plan are necessary to determine whether the waiver can be granted and still be consistent with local needs.

Request 5(C) **VOTED:** The Board voted 3-0 to accept the findings of the Horsley Report, which highlighted the adverse impacts of replacing recharge areas with impervious surfaces. “Impervious surfaces prevent water from entering the soil and transmit the stormwater runoff downstream towards the water supply source, in a sense short-circuiting the natural treatment processes associated with an undeveloped buffer zone...According to the requested waivers, the project will cover over 50% of the lot. Lot coverage and specifically impervious coverage is a critical standard with respect to water supply protection. Loss of natural vegetation and [coverage by] impervious surfaces within critical water resources buffer zones are widely recognized as critical water quality protection parameters.”(Horsley Report, pp. 4-5)

VOTED: The Board voted 3-0 to find that replacing over 50 percent of the lot area with impervious surfaces would adversely impact the quality of the nearby drinking water supplies presently available by eliminating existing groundwater recharge and the essential filtering functions of the soil and other geologic materials that would be disturbed and removed from the Site, as detailed in the actions taken in Waiver Requests 2, 3, and 4, above.

VOTED: The Board voted 3-0 to deny Waiver Request 5(C), to exceed Q Maximum Building Coverage (coverage of 50.5% where the required maximum coverage in Business District B is 25%), based upon the above findings.

Request 5(D) **VOTED:** The Board voted 3-0 to grant Waiver Request 5(D), to exceed the Maximum Floor to Lot Ratio (a ratio of 2:1 \pm where the maximum ratio in Business District B is 1:2), but for dimensional zoning purposes only, as this ratio impacts water quality and quantity protection negatively and does not alter the Board’s findings and votes taken above regarding the negative impacts that the Project would have on water quality and quantity under other sections of the ZBL.

6. SECTION VI.E BUSINESS B DISTRICT HEIGHT REQUIREMENTS; LOTS OF LESS THAN FIVE ACRES.WAIVER TO EXCEED 35’ OR 2 ½ STORIES (SEE TABLE, BELOW).

ITEM	EXISTING	REQUIRED/ALLOWED	PROPOSED
MAX. BUILDING HEIGHT FT. & STORIES	2.5 Stories \pm	35’ or 2.5 Stories, whichever is less	78’ \pm & 5 stories

Request: Applicant requests 78 \pm feet of height (rather than 35 feet) and 5 stories (rather than 2.5 stories).

ZBA Action: **VOTED:** The Board voted 3-0 to find that the Project has eight stories, consisting of five residential stories, two garage stories, and one story depicted as the “Lower Level,” where certain utilities would be located, as shown on the revised architectural plans, Sheet A2.0 (Exterior Elevations) of the Plan of Record.

VOTED: The Board voted 3-0 to find that the Plan of Record shows that seven of the eight stories would be visible as shown on the “North Elevation” of the revised architectural plans, Sheet A2.0 (Exterior Elevations) of the Plan of Record. Under §VI.E of the ZBL (Height Regulations), “Stories shall be measured from the floor level of the lowest story above grade,” and “In all cases, height shall be determined by measuring the vertical distance from the Grade Plane (as defined under §II (Definitions) of the ZBL) to the highest point of a building.”

VOTED: The Board voted 3-0 to grant the requested waiver to allow a maximum of 5 stories above grade. The Board voted 3-0 to determine that the garage floors and the floor of the “Lower Level” (as shown on the revised architectural plans, Sheet A1.0 (Lower Level Plan) of the Plan of Record) are “finished surfaces” for the purposes of the ZBL.

VOTED: The Board voted 3-0 to allow a maximum of 78’ of height from the Grade Plane, as defined under §II of the ZBL, for a maximum of 5 stories above grade, as measured from the floor level of the lowest story above grade, as defined under §II of the ZBL.

7.SECTION VIII.A.1.i OFF-STREET PARKING REGULATIONS; PARKING REQUIREMENT BY USAGE

Request: WAIVER TO REDUCE THE REQUIREMENT TO LESS THAN TWO SPACES PER DWELLING UNIT (SEE TABLE, BELOW).

ITEM	REQUIRED/ALLOWED	PROPOSED
Two spaces per dwelling unit.	150 units x 2 = 300 total spaces	197 spaces/ 150 units = 1.3 parking stalls per unit

Request: Applicant seeks 197 spaces instead of 300 and proposes 62 “tandem” spaces.

ZBA Action: **VOTED:** The Board voted 3-0 to allow the requested parking waiver from 300 to 197 parking spaces, configured as follows: 160 standard spaces; 6 handicap spaces; and 31 “tandem” spaces (31 continuously available spaces, with an additional 31 spaces not continually available

(i.e., blocked when the outer 31 spaces are used)), as noted on the revised architectural plans, Sheet A0.1 (Locus Plan, Drawing List, Project Narrative & Building Tabulations), and shown on Sheet A1.1 (P2 Parking Level Plan) and A1.2 (P1 Parking Level Plan) of the Plan of Record, but with the following conditions: (1) both parking spots in a tandem space (inner and outer) shall be assigned to the residents of a single (i.e., the same) dwelling unit; (2) all residents shall be issued parking stickers, and no parking shall be allowed without a sticker or a guest pass; and (3) the total number of stickers and guest passes issued and outstanding at any time shall not exceed 228, in order to ensure that the number of vehicles at the Site shall not exceed the number of available parking spaces.

8. SECTION XI.A SITE PLAN APPROVAL AS A PREREQUISITE

Request: Applicant requests waiver of the required Site Plan Approval from the Planning Board. Project is submitted under G.L. c. 40B, and Comprehensive Permit is required from the Weston Zoning Board of Appeals.

ZBA Action: **VOTED:** The Board voted 3-0 to grant the procedural request, with the comprehensive permit to constitute the required site plan review action, and any request to waive site plan review altogether is denied.

9. SECTION VIII.A.2 LOCATION AND SIZE OF AREA FOR EACH PARKING SPACE

Request: Applicant requests the waiver of the location and size of each parking area, including maneuvering and access for the tandem parking, and "...for maneuvering and for access to and from the parking area, [which] shall be continually available and shall be not less than 350 square feet in area."

ZBA Action: **VOTED:** The Board voted 3-0 to grant this waiver in accordance with the prior action taken regarding Waiver Request 7, above, but only with regard to the interior 31 parking spots of the 31 pairs of tandem parking spaces, and all other parking spaces (including the outer 31 tandem parking spaces) shall comply with location and size requirements.

10. WAIVER OF ALL FILING AND/OR APPLICATION FEES UNDER THE ZONING BY-LAW

Request: Applicant requests a waiver of any filing or application fees with the Planning Board, Zoning Board, Board of Selectmen, Building Inspector, and fees for any other town board or department concerning review of the project, including review of requested waivers.

ZBA Action: **VOTED:** See Fee Waiver Action above.

Weston General By-laws (“GBL”)

Article XI Material Removal By-law

1. SECTIONS 1-3
WAIVER OF PROHIBITION ON REMOVAL OF SOIL, LOAM, SAND OR GRAVEL

ZBA Action: **VOTED:** The ZBA voted 3-0 to deny this waiver request for the reasons stated above regarding the denial of zoning waiver relief under ZBL §V.H (Aquifer Protection Overlay Districts) and zoning relief under ZBL §V.1.3.a and b (Earth Removal and Earth Movement), above.

Article XXIII Scenic Roads By-law

1. SECTION V
WAIVER OF PROCEDURE FOR ACTIONS AFFECTING SCENIC STONE WALLS OR TREES

Request: Waiver of prerequisite application, prior written approval, and hearing of the Planning Board. Project is submitted under G.L. c. 40B, and Comprehensive Permit is required from the Weston Zoning Board of Appeals.

ZBA Action: **VOTED:** The ZBA voted 3-0 to grant the procedural waiver, with the ZBA’s decision to be the required action.

VOTED: The ZBA voted 3-0 to grant the substantive relief requested as shown on the Plan of Record.

Article XXVI Demolition Delay Bylaw

1. SECTIONS I-IX
WAIVER OF REQUIREMENTS FOR 12-MONTH DEMOLITION DELAY

Request: Applicant requests the waiver of 12-month demolition delay as efforts to preserve Sibley House off site have been rejected; applicant still working with Housing Partnership on possible relocation for affordable housing.

ZBA Action: **VOTED:** The ZBA voted 3-0 to find that preservation of the Sibley House at the Site is a local concern, because it is an important historical structure at the entry way to Weston on the historic Boston Post Road.

VOTED: The ZBA voted 2-1 (Larocque Dissenting) to find that preservation of the Sibley House structure at the Site is not a local concern that outweighs the regional need for affordable housing.

VOTED: The ZBA voted (3 to 0) to find that preservation of the Sibley House structure at an off-Site location is a local concern, but not one that outweighs the regional need for affordable housing.

VOTED: THE ZBA voted 3-0 to grant the waiver with the following conditions:

- (i) The Sibley House structure shall not be disturbed until and unless a comprehensive permit has been perfected for the Project
- (ii) The Sibley House structure shall not be disturbed unless and until excavation at the Site begins in full accordance with all comprehensive permit conditions; and
- (iii) The Applicant shall continue to use best efforts to preserve the Sibley House, preferably in Weston and, if not, then at a different location.

Building and/or Engineering Dept. Fees

Request: Waiver of any fees or costs of filing and/or review of application by the Building and/or Engineering Departments, and/or any other town board or department, and/or any peer reviewer fees for 12-month demolition delay.

ZBA Action: **VOTED:** See Fee Waiver Action above.

Article XXVII Stormwater and Erosion Control Bylaw

Request: On August 11, 2017, the Applicant’s stormwater consultant, Allen & Major Associates, Inc., submitted detailed requests regarding Article XXVII, the Stormwater and Erosion Control By-law of the GBL, and the Town of Weston Stormwater & Erosion Control Regulations promulgated thereunder, asserting that the Board should determine that these requirements do not apply or have been satisfied.

ZBA Action: **VOTED:** The Board voted 3-0 to determine that the Weston Stormwater and Erosion Control By-law and Regulations (including but not limited to the sections that incorporate the Massachusetts Stormwater Management Standards by reference (Stormwater & Erosion Control Regulations, Section 7.0 A.1)), apply to the Project and have not been satisfied and shall not be waived, as detailed below.

1. SECTION IV
APPLICABILITY. SUBSECTION C.2. MAJOR PERMIT

Request: Waiver of requirement for a Stormwater Management Permit from the Town of Weston Stormwater Permitting Authority (SWPA). Project is submitted under G.L. c. 40B, and Comprehensive Permit is required from the Weston Zoning Board of Appeals.

ZBA Action: **VOTED:** The ZBA voted 3-0 to grant the procedural request, and this decision shall be the action regarding the required permit, with no waiver of the requirement that a permit be obtained.

2. SECTION VI ADMINISTRATION. SUBSECTION C. MASSACHUSETTS STORMWATER HANDBOOK

Request: Waiver of requirement to comply with Massachusetts Stormwater Management Standard 3 (“Stormwater Standard 3”). Due to the existing soil conditions, a proposed infiltration system that infiltrates the required recharge volume may not be possible. The site will require the filing of a Notice of Intent (NOI) to the EPA for Construction General Permit (CGP) with discharge to Outstanding Resource Waters (ORW). The Applicant will coordinate with the Cambridge Water Department on the preparation of the required Stormwater Pollution Prevention Plan (SWPPP) and filing of the WM 15 - NPDES General Permit Notice of Intent per 314 CMR 4.00: Massachusetts Surface Water Quality Standards.

ZBA Action: **VOTED:** The Board voted 3-0 to find that the Applicant seeks a waiver from the Stormwater Standard 3 requirement that:

“Loss of annual recharge to groundwater shall be eliminated or minimized through the use of infiltration measures including environmentally sensitive site design, low impact development techniques, stormwater best management practices, and good operation and maintenance. At a minimum, the annual recharge from the post-development site shall approximate the annual recharge from pre-development conditions based on soil type. This Standard is met when the stormwater management system is designed to infiltrate the required recharge volume as determined in accordance with the Massachusetts Stormwater Handbook.” (The Stormwater Management Standards: Standard 3 (Recharge to Groundwater) Massachusetts Stormwater Handbook.)

VOTED: The Board voted 3-0 to find that Stormwater Standard 3 and its requirements are incorporated into the Town’s Stormwater Water Bylaw (General Bylaw XXVI) and the Town’s Stormwater Regulations.

VOTED: The ZBA voted 3-0 to adopt the finding of the Board’s stormwater engineering peer reviewer, in the Nitsch Report, as follows:

“Due to the depth of the detention system, it is unlikely that the soils and groundwater [on the Site at its proposed lower elevation] will be favorable for infiltration. It is recommended that other design approaches be evaluated to satisfy Massachusetts Stormwater Manual Standard 3.” (p.2)

VOTED: The ZBA voted 3-0 to adopt the following findings of the Board's peer review consultant, Hydrologist Scott Horsley, in the Horsley Report:

- The instant waiver request is due to the size and scale of the Project, not due to existing soil conditions. (Horsley Report p.2.)
- Standard 3 requires that predevelopment groundwater recharge rates be maintained to replenish groundwater supplies and to preserve groundwater baseflow rates to streams, vegetated wetlands, and drinking water supplies.
- Baseflow provides perennial flow to streams (Stony Brook) and wetlands and supports their critical plant communities between precipitation events and during droughts.
- Groundwater levels are dependent upon groundwater recharge rates.
- If recharge is reduced, water tables and groundwater flow rates will decline correspondingly.
- Because the Project is near a public water supply reservoir, the sustainable yield of the drinking water supply is directly dependent upon groundwater recharge rates and subsequent subsurface discharge to the reservoir.
- Groundwater moves very slowly compared to surface water flow and provides storage within soils that contribute to the reservoir. In this manner, the groundwater is an extension of the reservoir and provides additional storage within the subsurface.
- Groundwater recharge provides an important water quality function. Water that infiltrates from the land surface and down through the root zone and the underlying unconsolidated soils is filtered and treated on its pathway to the downgradient wetlands, streams, and reservoir.
- The existing site conditions provide a vegetated surface and underlying unconsolidated surficial materials that provide infiltration of precipitation and recharge of the underlying groundwater system that subsequently provides baseflow to the downgradient wetlands, stream and drinking water reservoir. This recharge process also provides a water quality function as described above.
- The Project proposes the removal of virtually all of this vegetated surface and underlying surficial materials, thereby eliminating this important recharge and filtration function. (Horsley Report, pp. 2-3)

VOTED: The Board voted 3-0 to deny this waiver based upon the above findings and for the same reasons stated above regarding the denial of zoning waiver relief under ZBL §V.H (Aquifer Protection Overlay Districts), zoning relief under ZBL §V.1.3.a and b (Earth Removal and Earth Movement) and relief under GBL §XI (Earth Removal), as the Project would occur in the Zone A and would reduce recharge to the nearby drinking water supplies of the Stony Brook Reservoir and the Stony Brook, thereby adversely impacting their water quantity and quality; these are critical local concerns that outweigh the regional need for affordable housing and cannot be mitigated adequately all as noted above.

2. SECTION VI.E
ADMINISTRATION. SUBSECTION E. MASSACHUSETTS STORMWATER
HANDBOOK

Request Waiver of requirement for a Stormwater Management Permit from the Town of Weston Stormwater Permitting Authority (SWPA). Project is submitted under G.L. c. 40B, and Comprehensive Permit is required from the Weston Zoning Board of Appeals.

ZBA Action: **VOTED:** The Board voted 3-0 to grant the procedural request, and this decision shall be the action on the required permit, with no waiver of the requirement that a permit be obtained.

4. SECTION VI.F
ADMINISTRATION. SUBSECTION F. SWPA APPROVAL PROCESS.
SUBSECTION 2. PUBLIC HEARING PROCESS

Request: Waiver of requirement for a Stormwater Management Permit hearing from the Town of Weston Stormwater Permitting Authority (SWPA). Project is submitted under G.L. c. 40B, and Comprehensive Permit is required from the Weston Zoning Board of Appeals

ZBA Action: **VOTED:** The Board voted 3-0 to grant the procedural request, and this decision shall be the action regarding the required permit, with no waiver of the requirement that a permit be obtained.

5. SECTION VII
PERFORMANCE STANDARDS Stormwater Standard 6

Request Waiver of Stormwater Standard 6 (“Stormwater Standard 6”) requirement to meet local stormwater & erosion control performance standards outlined within the Town of Weston Stormwater & Erosion Control Regulations. Project is submitted under G.L. c. 40B, a Comprehensive Permit is required from the Weston Zoning Board of Appeals. The site will require the filing of a Notice of Intent (NOI) to the EPA for Construction General Permit (CGP) with discharge to Outstanding

Resource Waters (ORW). The Applicant will coordinate with the Cambridge Water Department on the preparation of the required Stormwater Pollution Prevention Plan (SWPPP) and filing of the WM 15 - NPDES General Permit Notice of Intent per 314 CMR 4.00: Massachusetts Surface Water Quality Standards.

ZBA Action: **VOTED:** The Board voted 3-0 to find that:

1. This request seeks a waiver of all local stormwater standards.
2. The Town's Stormwater Bylaw (General Bylaw Article XXVII) and Stormwater Regulations incorporate the DEP Stormwater Standards, including Stormwater Standard 6.
3. The Project would discharge stormwater to the Zone A and within 400 feet of City of Cambridge drinking water sources.
4. Stormwater Standard 6 expressly provides that "Stormwater discharges to a Zone 1 or Zone A are prohibited unless essential to the operation of a public water supply."
5. Table CA-2 of the Standards, entitled "Stormwater Discharges Near or To Outstanding Resource Waters Including...Surface Water Sources for Public Water Systems," provides that, "Unless essential to operation of a public water system, stormwater BMPs [Best Management Practices] are prohibited within Zone A."
6. The Zone A is the 400-foot buffer from the bank of a drinking water source.
7. The bulk of the Project is within the Zone A, as shown on Sheet "PRE" (Pre-Development Watershed Plan), dated 8-11-17, under Section 5.0 (Drainage Site Plans) of the Applicant's Drainage Report, revised August 11, 2017, of the Plan of Record, which indicates that both the Site and the Project are almost entirely located in the Zone A.
8. The Project is unrelated to the operation of a public water supply.

VOTED: The Board voted 3-0 to adopt the following findings of its peer review consultant, Hydrologist Scott Horsley:

"The 400-foot protective buffer (Zone A) is a widely recognized drinking water protection provision" and the prohibition is "an integral tool to protect the Commonwealth's drinking water supplies. (Report, p.3.) He noted that, "The loss of naturally vegetated buffers and subsequent urbanization of land within critical water resource buffer areas has been widely recognized as a threat to water quality." He noted that when land in the protected buffer area is developed, "what once was a pollutant sink (i.e., a place that can detain and assimilate many pollutants) becomes a stormwater and pollutant source. Impervious surfaces prevent water from entering the soil and transmit the stormwater runoff downstream towards the water supply source.... This limits or eliminates the time and opportunity for beneficial biological, chemical, and physical processes that naturally filter and protect water quality. Riparian vegetated buffers the last line of defense before overland or shallow subsurface flow enters

streams, rivers, wetlands, lakes and reservoirs are arguably the most important ecosystems in the watershed in relation to water supply protection.” (Horsley Report, p. 4.)

VOTED: The Board voted 3-0 to find that the City of Cambridge requested that the Board deny the comprehensive permit relief because the protection of the City’s drinking water is of paramount importance. In a letter of April 6, 2017, the City of Cambridge Office of the City Solicitor (“OCS”) wrote:

“The City...has concerns with the Applicant’s Project in light of the Project’s scale and its close proximity to watershed land owned by the City. The protection of public water supplies is a valid public interest that the Weston Zoning Board of Appeals (‘ZBA’) may consider in deciding whether to issue a comprehensive permit to the Applicant for this Project. Cf. Goddard v. Bd. of Appeals of Concord, 13 Mass. App. Ct. 1001, 1002 (1982) (suggesting protection of groundwater is valid public interest local boards can consider). In light of these concerns, the City respectfully requests that the ZBA deny the Applicant’s comprehensive permit application or impose the following conditions upon its issuance: (1) the Applicant should be required to comply with the requirements of the Town’s Stormwater and Erosion Control Bylaw...” [Items 2 and 3 deal with concerns regarding the Applicant’s proposed sewer system and requirements that the Applicant restrict access to the City’s property by trespassers].

In a letter of May 22, 2017 to the Board, the OCS wrote as follows:

“As indicated in the [Applicant’s] Drainage Report, the proposed stormwater system will result in a surficial discharge that will flow overland to the City’s watershed land and ultimately to the Stony Brook Reservoir. Further the location of the discharge would be on a portion of the Site that is within ‘a 400 foot lateral distance from the upper boundary of the Bank’ of the Stony Brook Reservoir, which is a Class A Surface Water Source. See 310 CMR 22.02(1); 314 CMR 4.05(3)(a). Thus the pertinent area of the Site where the surficial stormwater discharge would be located is Zone A land. Additionally, as the surficial stormwater discharge from the proposed stormwater system is not ‘essential to the operation of the [City’s] public water supply,’ such discharge is prohibited. 314 CMR 9.06(6)(a)(6).”

The OCS, the City’s Water Department, and the City’s stormwater consultant continued to engage in extensive discussions with the Applicant and its stormwater consultant during the 40B process in an attempt to mitigate the effects of the Project and to adequately protect the quality and quantity of the City’s drinking water supplies, but even as late as the final day of the public hearing, and despite submitting a lengthy list of conditions designed to protect the City’s public drinking water supplies,

the City still had serious concerns about the Project. In a letter of September 13, 2017, the OCS wrote:

“Please note that the City’s paramount concern with respect to the Applicant’s Chapter 40B application is the protection of the City’s public water supply in light of the close proximity of the Applicant’s proposed construction work to the Stony Brook and Stony Brook Reservoir, both of which the City uses for its public water supply. Although the City supports...the development of affordable housing...the City has serious concerns with several aspects of the Applicant’s Chapter 40B application.”

VOTED: The Board voted 3-0 to find that the enforcement of Stormwater Standard 6, prohibiting the Applicant’s stormwater discharges into a critical water resource buffer area where natural vegetation and soils act to maintain the benefits of groundwater recharge and filtration, and thus to preserve and protect the water quantity and quality of Cambridge’s drinking water supplies, is critically important, and these interests are a local concern that outweighs the regional need for affordable housing and cannot be adequately mitigated.

VOTED: The Board voted 3-0 to deny this waiver request based upon the findings set forth above and for the reasons regarding the denial of a waiver from the requirements of Stormwater Standard 3, as well as those stated regarding the denial of zoning waiver relief under ZBL §V.H (Aquifer Protection Overlay Districts), zoning relief under ZBL §V.1.3.a and b (Earth Removal and Earth Movement), and relief under GBL §XI (Earth Removal), all set forth above.

Stormwater & Erosion Control Regulations

1. SECTION 4.0
APPLICABILITY

Request Waiver of requirement for a Stormwater Management Permit from the Town of Weston Stormwater Permitting Authority (SWPA). Project is submitted under G.L. c. 40B, and Comprehensive Permit is required from the Weston Zoning Board of Appeals.

ZBA Action **VOTED:** The Board voted 3-0 to grant the procedural aspect of the waiver request, with this decision to be the action required for this permit, and voted 3-0 to deny any request for a waiver of the requirement that a permit be obtained.

2. SECTION 5.0
APPLICATION PROCEDURES FOR STORMWATER MANAGEMENT PERMITS

Request: Waiver of requirement for a Stormwater Management Permit from the Town of Weston Stormwater Permitting Authority (SWPA). Project is

submitted under G.L. c. 40B, and Comprehensive Permit is required from the Weston Zoning Board of Appeals.

ZBA Action **VOTED:** The Board voted 3-0 to grant the procedural aspect of the waiver request, and this decision shall be the action required for the required permit, with no waiver of the requirement that a permit be obtained.

3. SECTION 7.0
DESIGN STANDARDS; A. STORMWATER MANAGEMENT DESIGN
AND PERFORMANCE CRITERIA; SUBSECTION 1.a. Stormwater Standards 3 and 6

Request: Waiver of requirement to comply with Massachusetts Stormwater Management Standard 3, which is incorporated into the Town's local by-law and regulations and includes provisions to prevent or minimize the loss of annual recharge to groundwater. Due to the existing soil conditions, a proposed infiltration system that infiltrates the required recharge volume may not be possible. The site will require the filing of a Notice of Intent (NOI) to the EPA for Construction General Permit (CGP) with discharge to Outstanding Resource Waters (ORW). The Applicant will coordinate with the Cambridge Water Department on the preparation of the required Stormwater Pollution Prevention Plan (SWPPP) and filing of the WM 15 - NPDES General Permit Notice of Intent per 314 CMR 4.00: Massachusetts Surface Water Quality Standards.

ZBA Action **VOTED:** The Board voted 3-0 to deny this waiver from Stormwater Standard 3 for the same reasons set forth above regarding the prior denials of waivers from the requirements of Stormwater Standards 3 and 6 and the denials of the requested waivers from the requirements of the Aquifer Protection Overlay Districts and the Stormwater and Earth Removal and Earth Movement Bylaws and regulations.

Request: At the close of the public hearing, the Applicant requested a waiver from Stormwater Standard 6.

ZBA Action: **VOTED:** The Board voted 3-0 to find that Stormwater Standard 6 is incorporated into the Town's Stormwater Bylaw (General Bylaw Article XXVII) and the Town's Stormwater Regulations.

VOTED: the Board voted 3-0 to find that Stormwater Standard 6 prohibits stormwater discharges to a Zone A unless the discharges are essential to operation of a public water supply.

VOTED: The Board voted 3-0 to find that this Project is not related to operation of a public water supply in any way.

VOTED: The Board voted 3-0 to deny the requested waiver from Stormwater Standard 6 for all of the reasons stated above regarding denial

of zoning and general bylaw relief with regard to the Aquifer Protection Overlay Districts and Earth Removal and Earth Movement requirements, as well as the findings and votes taken hereunder not to waive Stormwater Standards 3 and 6, as protection of the Zone A to safeguard the sources of drinking water quality and quantity is of paramount importance and is a local concern that outweighs the regional need for affordable housing and cannot be adequately mitigated for the reasons detailed above in the prior stormwater and Earth Removal and Earth Movement and Aquifer Protection Overlay Districts denials.

4. SECTION 7.0
DESIGN STANDARDS; A. STORMWATER MANAGEMENT DESIGN AND
PERFORMANCE CRITERIA; SUBSECTION 1.e

Request Waiver of requirement due to the existing soil conditions to comply with the stormwater runoff volume being less in the post-development condition than in the pre-development condition. The site will require the filing of a Notice of Intent (NOI) to the EPA for Construction General Permit (CGP) with discharge to Outstanding Resource Waters (ORW). The Applicant will coordinate with the Cambridge Water Department on the preparation of the required Stormwater Pollution Prevention Plan (SWPPP) and filing of the WM 15 - NPDES General Permit Notice of Intent per 314 CMR 4.00: Massachusetts Surface Water Quality Standards.

ZBA Action: **VOTED:** The Board voted 3-0 to deny this waiver for the same reasons set forth above regarding the denial of waivers from the requirements of Stormwater Standards 3 and 6 and the requirements of the Aquifer Protection Overlay Districts and Earth Removal and Earth Movement bylaws and regulations.

5. SECTION 7.0
DESIGN STANDARDS; A. STORMWATER MANAGEMENT DESIGN AND
PERFORMANCE CRITERIA; SUBSECTIONS 2.a.iv & 2.b

Request: Waiver of requirement due to the existing soil conditions to comply with the stormwater runoff volume being less in all storms in the post-development condition than in the pre-development condition, stormwater infiltration systems being located 2 feet above high groundwater, and stormwater infiltration systems being surrounded by existing pervious material. The site will require the filing of a Notice of Intent (NOI) to the EPA for Construction General Permit (CGP) with discharge to Outstanding Resource Waters (ORW). The Applicant will coordinate with the Cambridge Water Department on the preparation of the required Stormwater Pollution Prevention Plan (SWPPP) and filing of the WM 15 - NPDES General Permit Notice of Intent per 314 CMR 4.00: Massachusetts Surface Water Quality Standards.

ZBA Action: **VOTED:** The Board voted 3-0 to deny this waiver for the same reasons set forth above regarding the denial of waivers from the requirements of Stormwater Standards 3 and 6 and for the reasons set forth above for the denial of the Aquifer Protection Overlay Districts and Earth Removal and Earth Movement relief and because it is probable that the lowest point of the Project would be too close to the seasonal high groundwater levels.

SWPA and/or Conservation Commission Fees

Request Waiver of any fees of the SWPA, Conservation Commission, Building Department, or any other town board or department for any review of the project's stormwater management design and performance criteria, construction and/or implementation.

ZBA Action: **VOTED:** See Fee Waiver Action above.

Board of Health Regulations and Guidelines

1. CHAPTER VI
GUIDELINES FOR SEPTIC DESIGN AND INSTALLATIONS

Request The Applicant stated throughout the public hearing that the septic guidelines are not applicable as the Project's wastewater system will be in excess of 10,000 gpd and as the system will not be a subsurface disposal system and that MassDEP has jurisdiction. Applicant agreed to a condition proposed by City of Cambridge to provide approval from MassDEP or document(s) from MassDEP that local approval is not required, and to provide further information concerning adequate provisions for removal of sewage from WWTF in event of operational failure; however, just as the public hearing closed, the Applicant asked for a waiver of "all Board of Health Regulations."

ZBA Action **VOTED:** The Board voted 3-0 to find that the WWTF would have a effluent design flow of 25,850 gallons per day, which would create an effluent design flow of 9.5 million gallons per year. See, "Conceptual Design Executive Summary for Proposed Wastewater Treatment and Evaporation Facilities," prepared for 104 Stony Brook LLC by Stantec Consulting Services, Inc., 5 Burlington Woods Drive Suite 210, Burlington, MA 01803, at p. 1. The actual effluent flow would likely be less, but would certainly exceed 10,000 gallons of effluent flow per day, which would mean that at least 3.6 million gallons of effluent flow would be generated at the Site per year and the amount would likely be higher.

VOTED: The Board voted 3-0 to find that the revised architectural plans, Sheet A2.0 (Exterior Elevations) of the Plan of Record, indicate that the floor elevation of the WWTF would be at or near the same elevation as the surface of the Stony Brook, which is located within 400 feet south of the Project. The Board did not have sufficient information to evaluate the

elevation of the surface of the nearby (within 400 feet) Stony Brook Reservoir.

VOTED: The Board voted 3-0 to find that any accidental leakage from the WWTF could and very likely would flow directly to seasonal high groundwater under the proposed building or to and then through fissures in the ledge and/or the remaining soil under the proposed building and then into the Stony Brook and to the Stony Brook Reservoir, causing contamination of the City of Cambridge’s water supply.

VOTED: The Board voted 3-0 to find that the effluent evaporators would operate on a continuous basis (i.e., 24 hours per day/365 days per year) in order to keep up with the effluent generated at the Site, and this type of operation would be subject to mechanical failure. The September 13, 2017 letter to the Board from the City of Cambridge City Solicitor’s Office noted that the City is concerned that, “The capacity of the evaporator unit assumes that the units will operate continuously for 24 hours/day. It should be noted that the long operating hours of the evaporator units could potentially increase the risk of failure, and the repair time and/or lead time for equipment/parts will likely far exceed the storage time [of the treated water storage tank].”

VOTED: The Board voted 3-0 to find that mechanical failures happen, as do accidents, despite diligent efforts, and the location of the WWTF in the Zone A (i.e., within 400 feet of a drinking water supply and at an floor elevation that is likely close to the seasonal high ground water and at or near the same elevation as the surface of the nearby drinking water supply) would create a high likelihood of contamination of the nearby drinking water supply if a mechanical failure or an accident were to occur, as leaked contaminants could and likely would either:

- (i) flow directly to the seasonal high groundwater under the proposed building and then to the nearby Stony Brook (within 400 feet) and then to or directly to the nearby (within 400 feet) Stony Brook Reservoir; or
- (ii) flow through ledge fissures or through the unconsolidated geologic materials under the proposed building and either flow to the groundwater below and then to the nearby surface waters or flow through the ledge or other materials to the nearby (within 400 feet) surface waters.

VOTED: The Board voted 3-0 to find that no specific Board of Health (“BOH”) regulations were identified by the Applicant to be waived.

VOTED: The Board voted 3-0 to adopt the findings of Engineer John Chessia, set forth in his July 6, 2017 Report at p. 19, ¶6, that, a

“wastewater treatment plant [as well as stormwater BMP’s and stormwater discharges...] are prohibited in the Zone A of a Surface Water Supply.”

VOTED: The Board voted 3-0 to adopt the findings of the City of Cambridge OCS set forth in the attachment to its letter of September 11, 2017: “The evaporation of treated sewerage within Zone A land is an unprecedented approach. Current state air pollution regulations only cover emissions from permitted treatment facilities which are prohibited in Zone A lands.”(p. 4)

VOTED: The Board voted 3-0 to deny any waiver from the local BOH regulations that require that septic tanks shall be outside of a building and a minimum distance from the building foundation.

VOTED: The Board voted 3-0 to deny the blanket waiver request without prejudice to a later request for specific relief.

Board of Health Fees Waiver of any fees associated with any review of the project or any component thereof by the Board of Health.

ZBA Action **VOTED:** See Fee Waiver Action above

BUILDING PERMIT AND PEER REVIEWER FEES

Request Waiver of all building permit fees, including but not limited to fees for Building Permit Application Sections 1-6 and 8, and of all peer reviewer fees for any peer reviewers engaged by the Building Inspector and/or any other town board or official.

ZBA Action: This request was orally withdrawn. See Waiver Action Above. As to peer review fees, the ZBA notes that the Building Official relies upon the Town Engineer in those instances in which the Town Engineer has the expertise and availability to provide peer review; and, if the expertise and/or availability does not exist, the Applicant must return to the Board to seek relief from any peer review costs that are imposed relating to local permits and approvals that were not part of this decision.

SEWER CONNECTION AND ALL OTHER SEWER RELATED FEES

Waiver of all fees related to sewer, including but not limited to connection. While the WWTF does not require connection to sewer, the Applicant requests waiver of all fees that could have been or may be assessed.

ZBA Action: **VOTED:** The Board voted 3-0 to deny this waiver request as no fees were identified by the Applicant, but without prejudice to the Applicant making a future, specific request to the Board to waive a fee for a specific permit or approval.