



**TOWN OF CONCORD
BOARD OF APPEALS**

COPY

**Record, Decision, and Comprehensive Permit
292 & 294 Baker Avenue, Concord, MA**

The APPLICATION of NOVO RIVERSIDE COMMONS LLC (the "Applicant") for a Comprehensive Permit is granted pursuant to G.L. c. 40B to construct a two hundred and one (201) unit multi-family residential rental community, with fifty-one (51) units being affordable, at 292 and 294 Baker Avenue, Concord, Massachusetts (the "Site").

I. THE PROJECT

Property: The subject "Property", or "Site", is a 10.2-acre parcel of land depicted as Lot B on the Approved Plans, which is a portion of a 64.97-acre property currently known and numbered as 300 & 310 Baker Avenue (Concord Assessor's Parcel ID #3791-1).

Applicant: NOVO Riverside Commons LLC. The term "Applicant" shall also include the Applicant's successors and assigns.

Owner: CD 211 Property LLC, by virtue of a deed recorded with the Middlesex South Registry of Deeds in Book 74476, Page 431, with a principal place of business c/o Taurus Investment Holdings, Two International Place, Suite 2710, Boston, Massachusetts 02110.

Project Eligibility: By letter dated August 18, 2023, the Massachusetts Housing Finance Agency ("MassHousing") issued a project eligibility letter (MassHousing ID No. 1192) (the "Project Eligibility Letter"), pursuant to the Federal Home Loan Bank of Boston New England Fund ("NEF") Program where MassHousing serves as the Subsidizing Agency, to the Applicant to build no more than two hundred one (201) rental housing units at the Property, with not less than fifty-one (51) of such units to be restricted as affordable for low-or moderate income persons or families, with such units to be marketed and rented to eligible households whose total household annual income may not exceed 80% of Area Median Income ("AMI"), adjusted for household size, as determined by the US Department of Housing and Urban Development, along with other MassHousing requirements.

Application: On August 21, 2023, the Applicant filed an "Application" for a Comprehensive Permit with the Town of Concord Board of Appeals (the "Board").

The Board: The following Board members attended all public hearing sessions or missed one session and reviewed a recording or transcript of the missed session and all materials submitted: Theo Kindermans, Chair; Ravi Faiia, Vice Chair; Elizabeth Akehurst-Moore, Clerk. Thomas Swaim, Associate Member and Elizabeth Dwyer Leonard, Associate Member, participated in the hearings but did not vote.

Approved Plans: The plans and specifications listed in **Exhibit A** which are approved by the Board as a part of this Comprehensive Permit.

Decision Date: On April 11, 2024, Theo Kindermans, Chair, Ravi Faiia, Vice Chair, and Elizabeth Akehurst-Moore, Clerk, voted to issue a Decision (by a vote of 3 to 0), to approve the Project, with conditions, and grant the Requested Waivers as set forth below.

Exhibits: Exhibit A, as described in this Decision, is incorporated herein by reference.

II. RECORD OF PROCEEDINGS

1. The Applicant filed an application for a Comprehensive Permit, pursuant to M.G.L. c. 40B, §§ 20-23, with the Board on August 21, 2023, requesting approval to construct two hundred one residential units to be located within two buildings, on a site containing approximately 10.2 acres, to be known and numbered as 292 Baker Avenue and 294 Baker Avenue, in Concord, Massachusetts, to be called “NOVO Riverside Commons” (i.e., the “Project”). The Project will be a rental housing Project.
2. A public hearing of the Board was duly advertised on September 5, 2023 and September 12, 2023 in the Lowell Sun, and was also duly advertised on September 8, 2023 in the Concord Bridge. The public hearing was opened on October 26, 2023 and continued to November 30, 2023, January 11, 2024, February 14, 2024, March 11, 2024, March 26, 2024, and April 11, 2024. In addition to the public hearings, the Board conducted a duly-noticed site visit on October 31, 2023. All dates of the hearing were hosted both in-person at the Harvey Wheeler Community Center Auditorium or the 1st Floor Meeting Room at 141 Keyes Road and on the video teleconferencing platform Zoom, with the exception of the March 26, 2024 public hearing, which was only conducted on the video teleconferencing platform Zoom.
3. Sitting as voting members of the Board and present throughout the hearing were Theo Kindermans, Chair; Ravi Faiia, Vice Chair; and Elizabeth Akehurst-Moore, Clerk.
4. The Board received and deliberated upon the items of record at the above-listed hearings and meetings and the following Decision incorporates the testimony received from the public, municipal departments, boards and commissions, and representatives of the Applicant and of the public, and sets forth the Board’s findings, states the Board’s actions, and lists the conditions the Board voted to include in this Decision at its meeting on April 11, 2024.
5. Upon the conclusion of the public hearing on April 11, 2024, the Board voted to **GRANT** the application of NOVO Riverside Commons LLC for Comprehensive Permit, under Massachusetts General Laws Chapter 40B, to construct a 201 unit multi-family residential rental community with 51 units being affordable, at the Property, together with related infrastructure and amenities, all in accordance with the requirements set forth in the MassHousing Project Eligibility Letter dated August 18, 2023, and **GRANT** the waivers requested as set forth below.

III. JURISDICTIONAL FINDINGS

1. The Applicant is a Massachusetts limited liability company having a principal place of business c/o Taurus Investment Holdings, Two International Place, Suite 2710, Boston, Massachusetts 02110.
2. The Applicant is qualified to make an Application for a Comprehensive Permit because it is a limited divided organization as defined under 760 CMR 56.02 by virtue of receiving the Project Eligibility Letter, dated August 18, 2023, from MassHousing (MassHousing ID No. 1192) pursuant to the Federal Home Loan Bank of Boston New England Fund (“NEF”) Program where MassHousing serves as the Subsidizing Agency, and by virtue of its agreement to restrict its profit to be set forth in the Regulatory Agreement by and between the Applicant and Mass Housing; thus satisfying the requirements of 760 CMR 56.04(1)(a).

3. The Site is comprised of a 10.2-acre parcel of land, which is a portion of the 64.97-acre property currently known and numbered as 300 & 310 Baker Avenue (Concord Assessor's Parcel ID #3791-1).
4. The Applicant has demonstrated that it has site control of the Site, as evidenced by an Option Agreement, dated June 16, 2023, between Applicant and Owner; and it has been determined by MassHousing in the Project Eligibility Letter that the Applicant has site control; thus, satisfying the requirements of 760 CMR 56.04(1)(c).
5. The Site is located within the Industrial Park A zoning district; multi-family residential use is not an allowed use in this zoning district.
6. The Applicant has submitted a complete application and other information as required by, and in accordance with, the requirements of the Act, the regulations at 760 CMR 56.00 et. seq. (the "Regulations"), and the Board.
7. The Town of Concord had not met any of the statutory minima, as set forth in M.G.L. c. 40B s. 20 or 760 CMR 56.03(3) through 56.03(7) as of the date of the application. The number of low- or moderate-income housing units in the Town of Concord is 9.96% and constitutes less than ten per cent (10%) of the Town's total housing stock according to the latest decennial census of the Town and as reported in the Executive Office of Housing and Livable Communities ("EOHLC's", previously the Department of Housing and Community Development's, "DHCD's") Subsidized Housing Inventory as of June 29, 2023.
8. As proposed and approved, twenty five percent (25%) of the two hundred one (201) dwelling units or fifty-one (51) units (the "Affordable Units") shall be reserved for rent to households earning no more than eighty (80%) percent of the Area Median Income, adjusted for household size, for the Boston-Cambridge-Quincy HMFA (HUD Metro FMR Area).
9. The Board finds that the Project is "consistent with local needs" and addresses "Local Concerns" as defined in the Regulations.

IV. FINDINGS ON APPLICATION

1. The Applicant submitted sufficient information concerning an assessment of impacts to municipal services resulting from the proposed development.
2. The Board received comments from various departments and boards of the Town of Concord including the Planning Board, the Fire Department, the Public Works Department, the Concord Transportation Advisory Committee, the Diversity, Equity, and Inclusion Commission, and the Division of Natural Resources.
3. The type of housing proposed- rental units is greatly needed in the community and region and will provide housing options to a range of individuals and families.
4. Pursuant to M.G.L. c. 40, § 53G, the Board retained Greenman-Pedersen, Inc. ("GPI") to conduct peer reviews of the civil, stormwater, and traffic engineering elements of the Application and Davis Square Architects to assist in peer review of architectural elements of the Application, with such reviews at the Applicant's expense.

5. The Board also accepted the assistance of Judi Barrett of Barrett Planning Group LLC as a consultant through a Chapter 40B technical assistance grant provided by the MassHousing Partnership.
6. The Board heard public comment at several hearing sessions and accepted public comment by mail, email, and hand-delivery during the hearing.
7. On November 6, 2023, GPI submitted a preliminary peer review report regarding traffic engineering at the site. Hurley Associates, Inc., on behalf of the Applicant, noted in its November 28, 2023 letter to the Board that the Applicant would respond to concerns raised in the initial traffic report before the January 2024 Board hearing. On January 2, 2024, VHB, on behalf of the Applicant, submitted a letter to the Board assessing the traffic impacts of the Project. GPI submitted further written comments regarding traffic impacts on February 9, 2024, and again on March 11, 2024. In that letter, GPI noted that, although it had not yet received responses from the Applicant's consultant regarding the comments in its two previous letters, GPI determined that the Applicant had adequately addressed all of GPI's comments relating to GPI's Traffic Impact Assessment with the exception of a commitment to traffic mitigation.
8. The Applicant has agreed to provide \$100,000 towards future construction of improvements to be undertaken by the Town at the intersection of Main Street and Baker Avenue and the Board has confirmed that such offer is appropriate traffic mitigation.
9. On January 30, 2024, GPI submitted a preliminary peer review report of the Applicant's site and stormwater management plans. On March 22, 2024, the Applicant submitted revised plans and stormwater drainage report in response to these comments to the Board.
10. The final recommended conditions of these peer reviews and of the Town departments/divisions and boards/committees are included in the Conditions below. The Board finds that those conditions, and all other conditions in this Decision, address substantial Local Concerns that outweigh the regional need for affordable housing and are necessary for the preservation of public health, safety, and the environment.
11. The Applicant has voluntarily incorporated into the Site Plans an elevated wooden boardwalk of approximately 224' to connect the at-grade Site trail system to the future Assabet River Bridge and Trail and stated the Site trail system will be open to the general public.
12. On March 22, 2024, the Applicant submitted a comprehensive set of updated architectural, civil, elevation, lighting and landscaping plans, reflecting the cumulative updates to such plans as amended throughout the hearing process. The plans and specifications as approved by the Board are listed in **Exhibit A**, attached hereto and incorporated herein, and collectively constitute the "Approved Plans".
13. The Applicant submitted an initial list of requested waivers with its Application, which was subsequently amended within the public hearing process. At the March 24, 2024 public hearing, the Board voted to grant such waivers as described below.

14. During the course of the hearings, the Board sought and received comments from Town Boards, Departments, Commissions and other Town staff, from its peer review consultants, and the public as noted above. The Applicant has addressed these comments and issues adequately, and there are no outstanding issues, provided that the Project complies with the conditions set forth below.

V. REQUESTED WAIVERS

The Board's findings and actions on the Applicant's requested waivers follow below. The Board makes no findings regarding, and does not grant, any waivers not requested in the Approved Waivers below. The Board grants only those waivers described below in this section of the Decision.

1. Waiver from Concord No New Construction of Utility Poles and Overhead Wires

Bylaw, Sections 1-5: No utility shall install or construct, except for direct one for one replacement or upgrading of existing facilities, any poles and overhead wires and associated overhead structures upon, along or across any public or private way within the parts of the Town listed in Section 2. The Applicant requests a waiver to allow overhead wires/poles on a temporary basis during construction to be governed by Comprehensive Permit. Accordingly, the Board hereby **GRANTS** this waiver.

2. Waiver from Concord Public Works Stormwater Regulations: Public Works

Department review for compliance with Concord Public Works Design and Construction Standards and Details ("Standards") regarding drainage and erosion and sedimentation control, with approval by the ZBA. No person shall commence, conduct, or continue any illicit discharge to, or illicit connection to, the storm drain system, or cause or allow others under its control to do so unless approved by Concord Public Works through a Right-of-Way Permit. The Applicant requests a waiver to allow Stormwater Management to be in compliance with MADEP Stormwater Management Policy as regulated under the Massachusetts Wetlands Protection Act and regulations at 310 CMR 10.00, as well as the requirements of the US EPA Construction General Permit for Massachusetts, all as provided in the Comprehensive Permit Decision. Accordingly, the Board hereby **GRANTS** this waiver.

3. Waiver from Concord Road Opening Bylaw:

No public way shall be opened for any purpose, nor shall any material be dumped or placed thereon or removed therefrom, nor obstruction or structure placed thereon or removed therefrom, nor any alteration made, nor shall any tree be planted thereon or removed, without first obtaining a written permit from the Commissioners of Public Works (acting as the Road Commissioners), and then only in accordance with its regulations. The Applicant requests a waiver to have the Board issue road opening permits (right of way and/or driveway permits) to perform work in accordance with CPW requirements and for purposes of installing curbing, modifying striping as shown on the Civil Plans as set forth in **Exhibit A**, constructing certain sidewalk segments within public right of ways as shown on the Site Plans and conditioned by the Comprehensive Permit. Accordingly, the Board hereby **GRANTS** this waiver.

4. Waiver from Sign Bylaw Section 8 & 10:

The Site is located in the Industrial Park A Zoning District and subject to limitations on the total sign area and type of signs permitted. The Applicant requests a waiver to allow for a) update to freestanding sign at Baker Avenue entrance to incorporate panel with NOVO Riverside addresses (292/294 Baker Avenue) and relocation of

Baker Avenue sign consistent with revised entrance drive location as depicted on the Approved Plans; b) update to freestanding sign at Baker Avenue Extension entrance to incorporate panel with NOVO Riverside addresses (292 & 294 Baker Avenue); and c) wall signs on each residential building (292 Baker Avenue and 294 Baker Avenue), all as shown on the Approved Plans and as may be conditioned within the Comprehensive Permit. The 300-310 Baker Avenue Approvals (as defined in the Comprehensive Permit Decision) to be modified to allow the signage on such real property to lawfully continue and exist and to co-exist with the Project signage all as shown on the Final Plans and described in the Comprehensive Permit Decision. Accordingly, the Board hereby **GRANTS** this waiver.

5. Waiver from Concord Wetlands Bylaw, Wetlands Bylaw Regulations & Wetlands Policies: No person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter any defined "resource areas" (including the 50-foot No Build Zone and the 25-foot No Disturb Zone) without a permit issued by the Concord Natural Resources Commission. The Applicant requests a waiver in their entirety. Wetlands approval to be governed by an Order of Conditions issued pursuant solely to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40 and State Wetlands Regulations at 310 CMR 10.00. Accordingly, the Board hereby **GRANTS** this waiver.

6. Waiver from Concord Zoning Bylaw, Section 1.3.2 Definitions: Affordable housing under the Bylaw is defined as "[a] dwelling unit that by deed restriction is and will remain (a) for sale and sold at a selling price that will result in an annual shelter cost (which for this purpose shall include, to the extent required by the applicable federal, state or local program, real estate taxes, insurance and mortgage interest) of not more than thirty percent (30%) of the annual household income of a qualified affordable housing unit purchaser; or (b) available for rent and rented at an annual rent (which for this purpose shall include, to the extent required by the applicable federal, state or local program, an appropriate allowance for utilities to the extent they are not otherwise included in the rent) that will result in an annual shelter cost of not more than thirty percent (30%) of the annual household income of a qualified affordable housing unit tenant; and/or, (c) a dwelling unit that qualifies and that will be included in the Affordable Housing Inventory for the Town of Concord that is maintained by the Massachusetts Department of Housing and Community Development or any successor entity. A qualified affordable housing unit purchaser or a qualified affordable housing unit tenant with respect to a unit is an individual or household with total annual income which qualified such purchaser or tenant under the appropriate provisions of the federal, state or local program applicable to the unit. The Applicant requests a waiver to define "affordable housing" as consistent with the definitions set forth in Chapter 40B Regulations at 760 CMR 56.03(3) of low to moderate income housing and as per the requirements of MassHousing under the NEF Subsidy Program. Accordingly, the Board hereby **GRANTS** this waiver.

7. Waiver from Concord Zoning Bylaw, Section 3 (Subsections 3.1, 3.2), Section 4, Table I – Principal Use Regulations, Section 5, Accessory Uses, (Subsections 5.1, 5.2, Table II – Accessory Use Regulations, and Subsection 5.4 (temporary accessory uses and structures): --No land shall be used or building or other structures erected or modified in any district for any use not set forth in Section 4, Table I, except accessory uses permitted pursuant to Section 5 and nonconforming uses as provided in subsection 7.1. It is the intent of this Bylaw to prohibit in any district any use, which is not specifically permitted, as well as any use, which is denoted in Section 4, Table I, by the word "no". --Accessory uses are permitted only in

connection with lawful principal uses. Where a principal use is allowed under special permit, its accessory use is also subject to the provisions and limitations of that special permit. --In all districts except the residential districts, the Planning Board may, by special permit, authorize the use of a trailer, modular container transportable by trailer or other similar vehicle or mobile structure as a temporary office for not more than two (2) years provided that adequate parking is provided for the office use. The Applicant requests a waiver to allow use of the Site to allow for 201 Multifamily dwelling units with accessory uses, including without limitation, vehicular/bicycle parking, utilities, management/leasing office, resident indoor and outdoor common area spaces, resident community rooms, solar uses and solar panels on structures, reciprocal rights of access with Concord Meadows, signage, the removal and movement of earth incident to the construction of the Project, and other appurtenant uses customary to residential uses, all as may be depicted in the Final Plans. The Applicant also requests a waiver to allow the use of a temporary construction/marketing trailer(s) use/structure commencing prior to construction commencement through Project construction completion (to be located on the Property or at 300-310 Baker Avenue). Moreover, such existing uses and/or improvements on the parcel identified as Lot A on the Site Plans together with existing approvals issued for the same (collectively, the "Existing Approvals") be deemed modified so as to allow the existing uses and structures on Lot A to lawfully continue and co-exist with the proposed Project uses and improvements at the Property, all as shown on the Site Plans and as provided in the Comprehensive Permit Decision. Accordingly, the Board hereby **GRANTS** this waiver.

8. Waiver from Concord Zoning Bylaw, Section 6 (Dimensional Regulations), Subsections 6.1, 6.2, and Table III, Dimensional Regulations: The minimum lot frontage is 50 ft. on a private interior street constructed as part of a development of lot, or 200 ft. on an existing public way. No parking may be placed within the minimum side yard and rear yard except where joint parking areas are permitted by the Planning Board through site plan approval. The Maximum Height permitted is 40 ft., but not more than three stories excluding basements, subject to Section 6.2.11 which excludes chimneys, spires, towers, and other projections not used for human occupancy or storage which may extend above such height limits above. The Applicant requests a waiver to allow Lot frontage of 155.95 feet on Baker Avenue, to allow parking within the minimum side yard, and to allow waivers of maximum building heights for the buildings shown on the Approved Plans and as to be finally adjusted within the construction level drawings and specification of up to 67 feet for the building at 292 Baker Avenue and 72 feet for the building at 294 Baker Avenue in order to accommodate the five (5) and six (6) story residential buildings, and a waiver to allow five (5) residential stories for 292 Baker Avenue and six (6) residential stories for 294 Baker Avenue. Accordingly, the Board hereby **GRANTS** these waivers.

9. Waiver from Concord Zoning Bylaw, Section 6.2.9 Landscape Buffer: Side yards, rear yards and the other lot lines noted in Table III shall be suitably landscaped to reduce the visual impact of the principal use upon adjacent property by the use of trees, shrubs, walls, fences, or other landscape elements. Where the developed area adjoins land developed for residential use, suitable landscaping shall consist of a substantially sight-impervious screen of evergreen foliage at least eight (8) feet in height or planting of shrubs and trees complemented by a sight-impervious fence of at least five (5) feet, but not more than eight (8) feet, in height, or such other type of landscaping as may be required under site plan approval. In all developments, to the extent practicable, existing trees shall be retained and used to satisfy the provisions of this Section 6. The Applicant requests a waiver to allow the landscape buffer to be as depicted on the

Final Plans; those existing trees to be retained as depicted on the Final Plans. Accordingly, the Board hereby **GRANTS** this waiver.

10. Waiver from Concord Zoning Bylaw, Section 7.2 – Floodplain Conservancy District:

Any person who desires to use land within the Floodplain Conservancy District for a use permitted subject to review by the Board shall submit a written application for a special permit to the Board, with copies to the Planning Board and Natural Resources Commission. Compensatory storage is to be provided at ratio of 1.5:1 (see Section 7.2.6.3), which may be reduced to ratio of 1:1 upon a finding that the reduced ratio allows for overall improvement to site, such as reducing volume of structure in floodplain, improving stormwater management or improving natural environment. The Applicant requests a waiver to allow all work, uses and structures within the floodplain to comply with Massachusetts State Building Code, as well as comply with conditions and terms of an Order of Conditions issued pursuant to the State Wetlands Protection Act, MGL c. 131, s. 40, and State Wetlands Regulations at 310 CMR 10.00, and any other applicable state and federal permits. Accordingly, the Board hereby **GRANTS** this waiver.

11. Waiver from Concord Zoning Bylaw, Section 7.3 – Wetlands Conservancy District:

Development of a site or property that has wetlands located thereon shall be required to comply with any Order of Conditions issued under the Wetlands Protection Act and/or the Town's Wetlands Bylaw. The Applicant requests a waiver to allow all work, uses and structures within the Wetlands Conservancy District to comply with a Wetlands Order of Conditions issued pursuant to the State Wetlands Protection Act, MGL c. 131, s. 40, and State Wetlands Regulations at 310 CMR 10.00, but not the Town's Wetland Bylaw. Accordingly, the Board hereby **GRANTS** this waiver.

12. Waiver from Concord Zoning Bylaw, Section 7.5 – Earth Removal and Fill: The removal or filling of soil, loam, peat, sand, gravel or stone (herein, "earth") from or into any property not in public use is prohibited in all districts, except when incidental to and in connection with construction of a building or street or other activity authorized by this Bylaw. No earth removal or filling permit shall be required for moving earth within the limits of a lot or contiguous lots in the same ownership, if no such moving shall take place across or within a street. Earth removal or filling in excess of 1,000 cubic yards of earth requires a special permit issued by the Board. The Applicant requests a waiver to allow earth removal or filling to be conducted pursuant to a Wetlands Order of Conditions issued under the State Wetlands Protection Act (M.G.L. c. 131 s.40) and State Wetlands Regulations under 310 CMR 10.00, and other conditions to be governed by Comprehensive Permit. Accordingly, the Board hereby **GRANTS** this waiver.

13. Waiver from Concord Zoning Bylaw, Section 7.7 Off Street Parking, Loading, and Design Standards., incl. Subsections 7.7.1, 7.7.2, 7.7.2.3, and Table IV, Minimum Parking, and 7.7.3 Parking Design Standards: Two (2) spaces per dwelling unit or one and one-half (1-1/2) spaces per dwelling unit for subsidized low- and moderate-income housing or elderly housing developments is required. The Board may grant relief from Section 7.7 from other parking and loading requirements pursuant to 7.7.2.12. Parking Design Standards for space size including compact spaces, accessibility, lighting, landscaping, bicycle parking, driveways and circulation. The Applicant requests a waiver to allow for a total of 284 on-site parking spaces, or an average of 1.4 spaces per dwelling unit and the parking design to be as shown on the Final Plans and as conditioned within Comprehensive Permit, together with the ability for

shared/overflow parking reciprocal rights on the adjacent 300-310 Baker Avenue parcel. Accordingly, the Board hereby **GRANTS** this waiver.

14. **Waiver from Concord Zoning Bylaw, Section 11.2 – Building Permit:** No structure or part thereof shall be constructed, altered, or moved without a permit from the Building Inspector. The Building Inspector shall not grant such permit if such construction, alteration or movement would be in violation of any of the provisions of this Bylaw, nor shall any officer of the Town of Concord grant any permit or license for the use of any land or structure if such use would be in violation of this Bylaw. The Applicant requests a waiver to the extent that Zoning Bylaw requirements for Building Permit are superseded/waived by the Comprehensive Permit Decision. Accordingly, the Board hereby **GRANTS** this waiver.

15. **Waiver from Concord Zoning Bylaw, Section 11.3 – Certificate of Occupancy:** No use or occupation of land for any purpose for which a certificate of occupancy is required shall be made, in whole or in part, until such a certificate has been issued by the Building Inspector stating that the use of the land and structure, if any, complies with this Bylaw and other applicable codes in effect at the time of issuance. The Applicant requests a waiver to the extent that Zoning Bylaw requirements for Certificate of Occupancy are superseded/waived by the Comprehensive Permit Decision. Accordingly, the Board hereby **GRANTS** this waiver.

16. **Waiver from Concord Zoning Bylaw, Section 11.9 – Bylaw Construction:** This Bylaw shall not interfere with or annul any other Town Bylaw, rule or regulation, which is more restrictive, except where this Bylaw is more restrictive, it shall control. The Applicant requests a waiver to the extent that Comprehensive Permit Decision grants waivers/exceptions from the applicability of specific provisions of the Zoning Bylaw and general Bylaws. Accordingly, the Board hereby **GRANTS** this waiver.

VI. DECISION AND CONDITIONS FOR APPROVAL

This Comprehensive Permit shall be a master permit which is issued in lieu of all other local permits or approvals that would otherwise be required, except for permits required under state law such as Building Permits and Certificates of Occupancy under the State Building Code; provided, however, the Applicant shall pay all local fees for such permits or approvals in effect as of the date of the filing of the comprehensive permit application, including but not limited to building permits, inspections, water connections, and curb cuts, unless such fees are specifically waived or reduced by this Decision, or unless otherwise arranged to be paid by or on behalf of the Applicant.

For the foregoing reasons, the Town of Concord Zoning Board of Appeals votes, by a vote of 3 in favor and 0 opposed, to **GRANT** approval of the application of NOVO Riverside Commons LLC for a Comprehensive Permit (including the Approved Waivers) for the Project consisting of two hundred one (201) rental housing Units and other improvements shown on the “Approved Plans” (as defined below) on the Property pursuant to Chapter 40B, subject to each and every one of the following conditions:

VII. CONDITIONS

A. Regulatory Conditions

1. All of the Project's units shall be rental units unless a change to the tenure of the proposed units is approved in accordance with 760 CMR § 56.07(4)(a).
2. The development shall be limited to 201 rental units, comprised of 81 one-bedroom, 99 two-bedroom, and 21 three-bedroom.
3. Fifty-one (51) dwelling units (or 25% of the total number of units if a different number of units is constructed) within the apartment community (hereinafter, the "Affordable Units") shall be restricted in perpetuity for rental to households whose maximum income does not exceed eighty percent (80%) of area median income for the Boston-Cambridge-Quincy HMFA (HUD Metro FMR Area), as published by EOHLIC.
4. The Applicant shall construct and make available for lease affordable and market rate units proportionately based on the 75/25% ratio.
5. The Affordable Units shall be interspersed throughout the Project at original construction amongst units and shall have approximately the same bedroom ratio or mix as the other Units in the Project as designated by the Applicant by agreement with the Subsidizing Agency, all in accordance with the Subsidizing Agency's Letter of Final Approval. The Affordable Units shall be indistinguishable from the unrestricted rental rate units as viewed from the exterior, with the exception that some units may have balconies, and some may not.
6. The Applicant shall annually recertify to the Subsidizing Agency, or less frequently as may be required by the Subsidizing Agency, the continuing eligibility of any tenant in an Affordable Unit. If a previously eligible tenant becomes ineligible to occupy an Affordable Unit, the Applicant may charge the tenant a market rate rent; however, the Applicant shall comply with the Subsidizing Agency's requirements for converting another unit to an Affordable Unit, with such process and requirements to be further detailed in and as approved by the Subsidizing Agency in the Regulatory Agreement. Upon request, the Applicant shall provide the Town with all necessary information to determine whether the required affordability levels are in place.
7. A springing affordable restriction and regulatory agreement, in a form mutually acceptable to the Town, Town Counsel, and the Applicant, and in a form and substance reasonably acceptable to the Subsidizing Agency (the "Local Regulatory Agreement"), shall be recorded with the Middlesex South Registry of Deeds against the Site before issuance of any occupancy permit for the Project. The Town shall send a draft of the Local Regulatory Agreement to the Applicant within sixty (60) days after the Concord Town Clerk issues a Certificate of No Appeal on the Comprehensive Permit Decision.
8. The Local Regulatory Agreement shall (a) become effective only if and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires, or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency; (b) require that the Project shall remain a rental project so long as it does not comply with the Zoning Bylaw; (c) require that at least 25% of the apartments shall be rented in perpetuity to low- and moderate-income households as those terms are defined in M.G.L. c. 40B, §§ 20-23; (d) restrict or limit the dividend or profit of the Applicant if and as required under M.G.L. c. 40B and 760 CMR 56.00, et. seq.; and (e) restrict the number of allowed units as set forth in this Comprehensive Permit. If this Comprehensive Permit is modified, the Applicant

and the Town shall modify the Local Regulatory Agreement as necessary to conform it to the modified Comprehensive Permit.

9. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant.

10. While the Regulatory Agreement with the Subsidizing Agency (or one with another Subsidizing Agency) is in effect, the Subsidizing Agency shall be responsible for monitoring compliance with affordability requirements pursuant thereto. However, the Town may request, and the Applicant shall provide, all information that was provided to the Subsidizing Agency, and the Town may take any enforcement measures reserved to the Town under G.L. c. 40B and 760 CMR 56.00 regarding excess profits and affordability.

11. If and when the Local Regulatory Agreement takes effect, the affordability requirements shall be enforceable by the Town in accordance with 760 CMR 56.00.

12. Nothing in this Decision shall be deemed to limit the Town's authority to enforce this Comprehensive Permit in the legal exercise of its zoning enforcement powers. If and when the Town becomes responsible for monitoring the affordability requirements for the Project, the Applicant shall pay the Town a monitoring fee that is consistent with the monitoring fees required by the Subsidizing Agency.

13. To the extent allowed by the Subsidizing Agency and applicable law, the Applicant shall provide local preference categories for the maximum allowable percentage of Affordable Units as determined by the Subsidizing Agency, as requested by the Town during the initial lease-up of the Project. The Town shall be responsible for demonstrating the need for local preference to the Subsidizing Agency in order for the Subsidizing Agency to approve a local preference category. The Applicant's selected affordable housing administrator shall provide examples to the Town regarding what the Subsidizing Agency has commonly accepted from other municipalities to demonstrate the need for a local preference. The Town shall retain responsibility for preparing the demonstration of local need, and the affordable housing administrator shall submit such demonstration to the Subsidizing Agency.

14. If the Subsidizing Agency approves a local preference, the Applicant shall implement this local preference pursuant to procedures approved by the Subsidizing Agency and that comply with all applicable law. The costs associated with the marketing of units in the Project, including the advertising and processing for the Affordable Units, shall be borne by the Applicant.

15. The Applicant shall cooperate with the Town's preparation of any documentation required for approval of the local preference categories by the Subsidizing Agency. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or EOHLA, then this condition shall be void.

16. The Applicant shall annually submit to the Town copies of all documents and information regarding its costs and revenues from the Project that it is required to provide to the Subsidizing Agency.

17. The Town, by and through the Board and the Building Inspections Division, shall have continuing jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
18. Before the issuance of a building permit, the Applicant shall obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and shall provide evidence of such Final Approval to the Building Inspections Division and the Town. At the discretion of Town departments and officials with jurisdiction, permits for demolition, excavation, foundations, site infrastructure/utilities, and other site preparation work may be approved prior to Final Approval.
19. The Applicant shall notify the Board of Appeals in writing of any proposed change to the Project which the Building Commissioner determines to be material, and if the Board determines that the change is substantial, it shall require a public hearing and modification of this Comprehensive Permit by the Board of Appeals, all as set forth in 760 CMR 56.05(11). Any such change that the Board of Appeals determines or that is deemed to be insubstantial shall be automatically incorporated into this decision by reference.
20. The Applicant shall comply at all times with all provisions of its Affirmative Fair Housing Marketing Plan (the "AFHMP") including, without limitation, the initial lottery and other tenant selection procedures, all as required by the Guidelines for M.G.L. c.40B Comprehensive Permit Projects applicable to the Project promulgated by EOHLA (the "40B Guidelines").
21. The Applicant shall obtain a wetlands order of conditions issued pursuant to the State Wetlands Protection Act (MGL c. 131, Section 40) and regulations pursuant to 310 CMR 10.00 by the Natural Resources Commission (NRC) (the "Wetlands Order"), and the "Final Plans" (as defined under Section VII.C.13 below) for the Project are hereby modified to conform to the Wetlands Order which the Board has deemed an insubstantial change within the meaning of 760 CMR 56.05(11) unless the Building Commissioner has determined that such changes result in a change in building footprint, loss of parking spaces, or otherwise may result in a material public health, safety or design issue which would otherwise be referred to the Board for determination in accordance with 760 CMR 56.05(11).
22. Subject to the foregoing, the Applicant shall submit to the Board and the Building Inspections Division fully coordinated architectural, civil engineering/stormwater, structural, and landscaping plans prior to the issuance of a building permit as provided under Section VII.C.13.
23. The Project shall be constructed in accordance with the Final Plans and the Conditions in this Decision. The Applicant shall comply with all local by-laws, rules, and regulations of the Town of Concord and its boards, officers, and commissions unless expressly waived in this Decision.
24. Any time during site work or construction, the Applicant shall coordinate with the State Police and the Concord Police Department on the use of police details for construction vehicle activity on Elm Street/Concord Turnpike (Route 2) if it has been determined necessary by the State Police or Concord Police Department.
25. At all times, the Applicant shall require all construction worker vehicles to park at the Site. Parking of construction worker vehicles on any public street is prohibited.
26. The Town of Concord may use Building Inspections Division staff and/or retain a Consulting Building Inspector for this Project to review the plans, issue permits, inspect construction activities and ensure compliance with this Comprehensive Permit. The Applicant

shall be responsible for the reasonable costs associated with this consultant. Unless otherwise stated, the Board may designate an agent or agents to take any actions or make any decisions described herein, provided, however, if third party consultants are retained to perform certain reviews, such reviews may only be undertaken to ensure that the work described in the Final Plans is consistent with the conditions within this Decision, shall be performed in a timely manner and at a reasonable cost for work consistent with the scope and cost for such work based upon third party reviews or monitoring with respect to comparable projects in the area, and shall also provide in advance, a proposed scope of work and associated cost ascribed to such work.

B. Conditions to be Satisfied Prior to the Commencement of any Site Work

Prior to the commencement of any site work activities (including site clearing, tree removal, grading, etc.) on the Property (collectively, the "Site Work"), the Applicant shall comply with the following:

1. Submit to the Town Planner for distribution to Town Departments for review and approval a Construction Management Plan ("CMP") for the site. Particular attention shall be given to vehicle and pedestrian safety and the movement of construction vehicles on to and off the Property. The CMP shall, at a minimum, address the following matters:

a. Hours of construction - Construction shall only occur Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m., except that during the months of June through August, Construction Activities may continue until 7:00 p.m., and there shall be no construction activity on Federal holidays. Once exterior construction of a building is substantially completed (including installation of windows or temporary inserts), interior construction on weekdays and Saturdays may commence at 7:00 a.m. and continue to 8:00 p.m. Work outside these hours shall be permitted only if and as allowed by applicable local bylaws and/or with the express permission of the Building Inspections Division.

b. Truck routes

- i. number of truck trips
- ii. hours of operation for truck trips
- iii. size of and specification of trucks
- iv. plans to mark truck with identification placards

c. Trash and debris removal

d. Construction Phasing and Schedule including timing and phasing of construction site clearing; construction of roadways and utilities; construction of buildings, etc.

e. Safety protection measures and fencing employed to protect the movement of pedestrians and vehicles within the Site, the adjacent property and along the adjacent roadways.

f. Communications, including the Contractor's representative(s) available 24/7 and emergency contacts

g. Construction Staging

- i. Staging areas
 - ii. Site office trailers
 - iii. Storage trailers/containers
 - iv. Open storage and stockpile areas
 - v. Delivery truck holding areas
 - vi. Re-fueling areas
 - vii. Porta-potties
2. Install the erosion and sedimentation controls and coordinate through the Town Planner a pre-construction meeting with Town staff to review proposed work and safety fencing and protocols shown on the Construction Safety and Sequencing Plan. Following the meeting, the Applicant shall install all required safety fencing and protocols to the satisfaction of the Fire Department.
3. Provide to the Building Inspections Division, CPW Engineering, and Police Department written notification of the approximate volume to earth to be removed and approval from the Chief of Police as to the days and hours of operation and type of vehicle to be used on any street for removal of earth. Unless modified during staff review of construction management, trucks removing earth shall enter the Site through the driveway for 300-310 Baker Avenue off Baker Avenue Extension from Route 2 and shall exit by Baker Avenue Extension or Baker Avenue with no right turns from the Site allowed onto Baker Avenue. This information shall be provided at least forty-eight (48) business hours prior to any removal of earth.
4. Provide a copy of the EPA's Notice of Intent General Permit (NPDES) and executed Stormwater Pollution Prevention Plan (SWPP), and the Erosion Control Plan (ECP), to the CPW Engineering Division for review. Both a hard copy and electronic (pdf) copy shall be provided to CPW Engineering Division.
5. Retain a qualified independent environmental monitor (EM) to ensure proper operations of all sediment and erosion control measures throughout the duration of the Project. The EM shall also be responsible for overseeing invasive species removal and replanting efforts. The name and resume of the qualified EM shall be provided to the CPW Engineering and Natural Resources Divisions for review and approval at least two weeks in advance of any site work. At a minimum, the EM shall be a "qualified person" with a minimum of three years professional environmental experience in construction monitoring and invasive species control efforts and shall meet the qualifications outlined in sec. 4.4.1 of the EPA Construction General Permit. The EM shall provide the Engineering and Natural Resources Divisions with site evaluation/ inspection reports at the frequency detailed in the SWPPP (i.e., weekly, after storms).
6. Meet with CPW Water & Sewer Division to review the proposed scope of water utility work and sufficiently demonstrate that:
 - a. Existing water service infrastructure can be assessed, updated, and connected to the Project in accordance with the CPW Water & Sewer Division's design and construction standards.

- b. Water demands can be minimized via demand management tools that may be codified in a Water Use Impact Report (conservation plan) and Water Customer Data Sheet.
- 7. Receive an Order of Conditions, or Superseding Order of Conditions, issued under the Wetlands Protection Act, and shall comply with all conditions placed on the Project as they become applicable, and provide a copy of a recorded Order of Conditions, or Superseding Order of Conditions, to the Natural Resources Division and the Building Inspections Division.
- 8. Record with the Middlesex South Registry of Deeds the Comprehensive Permit Decision and provide a copy of the recorded Decision to the Building Inspection Division and Town Planner.
- 9. Provide to the Building Inspections Division:
 - a. The company, name, address and business telephone number of the general contractor or its agent that is available 24/7 who shall have overall responsibility for construction activities on site;
 - b. A copy of a municipal lien certificate showing that all taxes, assessments and charges due on the Site have been paid;
 - c. Certification that all required federal, state and local licenses and permits for construction of the Project have been obtained;
 - d. Evidence that Dig-Safe was notified at least 72 hours before commencing the work, if applicable.
 - e. At least 48 hours written notice. If activity on the Site ceases for longer than one month, notice shall be given again before work is resumed.

C. Conditions to be Satisfied Prior to the Issuance of a Building Permit

Prior to the issuance of a Building Permit, the Applicant shall comply with the following:

- 1. Submit to the Fire Department for review and approval a 241 Construction Fire Safety Plan which includes 24/7 camera surveillance of the site during the entire Project construction.
- 2. Provide the Concord Municipal Light Plant ("CMLP") with a detailed electrical load letter. The letter shall include calculations, voltage requirements, and the proposed service size in order to properly size the transformer and related equipment.
- 3. Provide CMLP a digital copy of the utility plans in AutoCAD format. This will allow CMLP to issue an electrical and Town fiber communication design and issue an estimate for CMLP's construction costs. The estimated cost for CMLP's portion of the job will be paid for in advance by either the contractor, developer, and/or property owner as per CMLP's terms and conditions. It is the responsibility of the Applicant to coordinate with Comcast and/or Verizon if additional communication facilities are to be installed.
- 4. All electrical metering shall be approved by the CMLP Meter Supervisor. Metering shall be hot sequence unless an alternative is permitted by CMLP.
- 5. Submit to the CPW Water & Sewer Division, for review and approval, an application for any proposed water service installation. The application shall include the following:

- a. Identification of a CPW Water & Sewer Division licensed Drain Layer who will be responsible for water installation activities.
 - b. Two full size copies of the approved water utility plan. (Note: separate applications must be provided for each commercial unit having separate water meters to be served by Town water.)
 - c. For each separate metered establishment proposed to be served by Town water, a plumbing plan shall be provided including:
 - i. Meter bypass detail (with allowance for CPW Water & Sewer Division issued security lock).
 - ii. Design Data Sheets for all required cross-connection control devices. The devices shall not be installed without approval from the CPW Water & Sewer Division.
 - d. An approved Water Use Impact Report (conservation plan) and Water Customer Data Sheet which will determine sizing of the water meter and water system connection fee.
6. Water Design. Submit a water service design conforming to the CPW Water & Sewer Division Water System Design and Construction Standards.
7. Water Design. Provide to the CPW Water & Sewer Division proof that legal rights have been secured by the Applicant in order to connect water services (both domestic & fire for the Project development, to the existing privately owned and maintained water infrastructure within the #300 Baker Ave. campus property (Map 9E, Block 3794 Lot 1).
8. Water Design. Provide for the CPW Water & Sewer Division's review, proof (with supporting documentation) that the existing privately-owned water infrastructure has suitable hydraulic capacity to support the flow demand to the subject Project development building structures, #292 Baker Ave. & #294 Baker Ave.
9. Sewer Design. Submit a sewer design conforming to the CPW Water & Sewer Division Sewer System Design and Construction Standards.
10. Sewer Design. Provide to the CPW Water & Sewer Division proof that legal rights have been secured by the Applicant in order to discharge the proposed sewage flow from the Project development to privately owned and maintained sewer infrastructure within the #300 Baker Ave. campus property (Map 9E, Block 3794, Lot 1).
11. Sewer Design. Provide for the CPW Water & Sewer Division's review, proof (with supporting documentation) that the existing privately-owned sewer infrastructure has acceptable structural integrity, and has the appropriate size and slope to provide the proposed sewer capacity to the subject Project development building structures, #292 Baker Ave. & #294 Baker Ave.
12. Sewer Design. Prepare and submit to the CPW Water & Sewer Division an engineering evaluation of the public and private sewer infrastructure that is expected to receive the proposed sewage flow from this development, given the volume of wastewater flow anticipated from the Project. The capacity evaluation shall consideration of:
- a. The existing gravity sewer infrastructure from the tie-in manhole on-site to the Assabet Sewer Pumping Station; and

- b. The impact of the Project's flow on the running time of the pumps for the Assabet Sewer Pumping Station

13. Submit detailed construction drawings to the Consulting Building Permit Inspector and the Building Inspections Division to ensure that the Approved Plans are consistent with the Comprehensive Permit, with local requirements not waived in the Comprehensive Permit, and with state and federal codes, and upon the approval of the Building Inspections Division of the same, shall be deemed to be the "Final Plans."

14. The Applicant shall submit a final lotting or Approval Not Required plan in a form endorsable by the Board acting within its authority under G.L. c.40B, §§20-23; and such plan to be endorsed and thereafter recorded with the Middlesex South Registry of Deeds.

D. Conditions that Must Be Followed During the Construction Process

- 1. Prior to the issuance of a foundation sign-off for each building, the Applicant shall install in consultation with the Fire Department a temporary address number.
- 2. Prior to the construction of any combustible material, the Applicant shall have a licensed professional conduct an inspection and test of the existing hydrants and provide that report to the Fire Department. If the report indicates any maintenance issues, the Applicant shall correct those issues and have the hydrants re-inspected and tested with a revised report submitted to the Fire Department.
- 3. Following the completion of the construction of the second-floor deck for each building, the Applicant shall install and have inspected by the Fire Department a monitored fire alarm system and battery carbon monoxide detectors.

E. Conditions that Must be Satisfied Prior to the Issuance of Any Certificate of Occupancy

This Decision expressly contemplates that the Project may be constructed to allow for completion and occupancy of one building prior to the completion of the second building.

- 1. Prior to the issuance of a certificate of occupancy for either building constructed at 292 or 294 Baker Avenue, unless otherwise provided below, the Applicant shall comply with the following:
 - a. Any new hydrants shall be inspected and tested by a licensed professional and found in good working order. This report shall be provided to the Fire Department.
 - b. Install and maintain an NFPA compliant fire alarm and protection system for the building, along with a radio box that reports directly to the Fire Department within the building for which an occupancy permit is sought.
 - c. Pay for a third-party consultant for plan reviews and inspections per the Massachusetts Comprehensive Fire Safety Code 527 CMR 1.00.
 - d. Submit to the Town a check payable to the Town of Concord in the total amount of \$100,000 (One Hundred Thousand Dollars) towards the funding of the safety improvements at the Main Street/Baker Avenue/Cottage Street intersection in coordination with the recommendations of the Board's Traffic Peer Reviewer at GPI; such traffic mitigation fund shall be deemed fully funded and no additional traffic

mitigation fee shall be required at the time a certificate of occupancy is issued for the second building.

- e. Submit an as-built plan stamped by a Massachusetts licensed Professional Engineer to CPW Engineering, the Town Planner, the Natural Resources Director, CMLP and the Building Inspections Division of the Site including grading, elevations of all drainage infrastructure (e.g., inverts, rims), driveway/parking grades, pavement, pavement marking, signage, utilities, EV parking, structures, building elevations, and other pertinent information. A certification letter signed by a Professional Engineer shall outline any material deviations from the design plans and certify that there will be no negative impacts as a result of those deviations. This submittal shall be provided a minimum of two weeks prior to applying for final occupancy to ensure adequate review time. One hard copy and one electronic copy, in the form of both AutoCAD and PDF Files, shall be provided to CPW-Engineering. Additionally, to ease review, the as-built items shall be bold while all other plan items shall be screened down.
 - f. A means for 24/7 access to the proposed electric room as depicted on the Architectural Plans shall be provided. A key or other method shall be provided to CMLP by the Applicant for emergency response and to allow CMLP to maintain CMLP-owned equipment.
 - g. An application for a parking garage to serve 300-310 Baker Avenue property shall be submitted to the Town and permitted, and the parking garage substantially constructed at 300-310 Baker Avenue by the owner thereof.
2. Prior to issuance of a final Certificate of Occupancy for the entire Project, Applicant shall:
- a. provide to the Town Planner for review and approval a post-construction photometrics study to verify the lighting levels are in substantial conformance with the approved Lighting Plan. If the lighting levels are found not to be in substantial conformance, the Applicant shall make appropriate modifications to reduce the light levels and provide an additional photometrics study to the Town Planner for review and approval.
 - b. the Town Planner shall verify that all plants shown on the approved Planting Plan have been installed. Any proposed minor modification or substitutions shall be reviewed and approved by the Town Planner prior to installation.
3. No Certificate of Occupancy for any building or phase shall be issued until the infrastructure or common facilities or common improvements specified in this Decision and set forth on the Final Plans are constructed and installed so as to adequately serve said building or phase, or adequate security has been provided, reasonably acceptable to the Town Planner and the Board's legal counsel, and approved as to form by the Board's legal counsel, to ensure the completion of such improvements. No such performance guarantee shall be requested until all stormwater drainage facilities and the base course of the pavement have been installed. The choice of performance guarantee shall be governed by the provisions of M.G.L. c. 41, § 81U (excluding the statutory covenant which shall not apply in this matter) and shall be approved as to form by the Board's legal counsel. The Town Planner shall notify the Building Commissioner, in writing, of such completion or performance guarantee. The Applicant shall have all statutory choices of performance guarantees available under M.G.L. c. 41, §81U at all

stages of construction up until request for certificate of occupancy. Requests to reduce the surety may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The surety retained shall be based on the work remaining.

4. If determined applicable by CMLP, the Applicant shall provide a utility easement for review and approval by CMLP. The Applicant shall record the approved easement with the Middlesex South Registry of Deeds and shall provide copies of the recorded documents to CMLP. The individual underground electric services are owned and maintained by the property owner and will require approval from the Town of Concord Electrical Inspector.
5. Prior to the issuance of a Certificate of Occupancy for the second building, the Applicant shall provide to CPW-Engineering and the Natural Resources Director for review and approval the Long-Term Operations and Maintenance Plan (LTOMP) for the stormwater drainage system in both a hard copy and electronic (pdf) copy. At the time the LTOMP is submitted for review, the Applicant shall also provide an operation, maintenance, and inspection agreement (Agreement) which outlines the permanent maintenance responsibilities of all elements of the on-site stormwater drainage system, including all catch basins, infiltration chambers, trench drains, drainage manholes, pipes, sediment forebays, bioretention areas, level spreaders and all appurtenances. The Agreement shall also designate the responsible party for the removal of snow from all on-site parking spaces within 24 hours of the end of a storm and for maintaining all elements of the on-site stormwater drainage system and specify that the LTOMP inspection and monitoring reports be submitted annually to CPW-Engineering and the Natural Resources Director.
6. Submit to the CPW Water & Sewer Division a full-size record drawing (Arch D), created in accordance with Division standards, for review prior to finalizing the drawing. Once the draft is approved, the Applicant shall submit to the CPW Water & Sewer Division the final record drawings as electronic copies in the form of CAD and pdf files.
7. Furnish to the CPW Water & Sewer Division Water Demand Minimization Affidavit(s) to demonstrate work was performed in accordance with the approved demand mitigation measures.
8. The Applicant shall stripe a STOP line and a 100-foot centerline on the Concord Meadows driveway approach to Baker Avenue Extension.
9. Complete the following measures to improve sight lines between the Baker Avenue site driveway and the adjacent railroad crossing:
 - a. Clear brush and trees within the public right-of-way and on the site, as necessary, to maximize sight lines to the rail crossing approaching from both directions;
 - b. Restripe the pavement markings leading to the crossing from both directions;
 - c. Extend the median leading to the crossing from the north on Baker Avenue by approximately 20 feet; and
 - d. Install appropriate railroad crossing warning signage in advance of the crossing, consistent with MUTCD guidelines.
10. Notwithstanding anything to the contrary in this Decision, the Building Commissioner is authorized, but is not obligated, to issue temporary certificates of occupancy for the buildings.

11. The Applicant will ensure that NOVO Riverside Commons tenants shall have the right of access to, and use of, the 300-310 Baker Avenue recreational activity court areas, portions of the parking facilities and driveway access to Baker Ave. Extension pursuant to an easement upon terms and conditions to be agreed to by both the Applicant and CD 211 Property LLC.

F. Other Conditions

1. The Project will comply with the Fossil Fuel Ban Bylaw (as amended by Article 32 of the Town Warrant for the 2024 Annual Town Meeting (ATM)) to the extent that Bylaw is amended by voters at the 2024 ATM, receives all other required approvals, and becomes final, otherwise the Project will comply with the Fossil Fuel Ban Bylaw as previously approved by Town Meeting to the extent such previously approved Fossil Fuel Ban Bylaw is approved by the Attorney General's Office and becomes final.
2. Due to the scale of this project, the Applicant shall pay for a third-party consultant for plan reviews and inspections per the Massachusetts Comprehensive Fire Safety Code 527 CMR 1.00, consistent with the requirements of other third party reviews as described above.
3. The Applicant will not use or install, or allow anyone else to use or install, artificial or synthetic turf in any recreational areas either at the Project or at 300/310 Baker Avenue.
4. At no time shall EV charging stations be permitted two levels below grade at the Project.
5. At all times, an electric vehicle fire blanket shall be maintained on-site in the underground garage an EV fire blanket.
6. At no time shall an energy storage system ("ESS") be permitted to be placed below grade or within either building of the Project.
7. The landscaping shall be installed as shown on the Final Landscape Plan. The landscaping as depicted on the Final Landscape Plan shall be maintained in a healthy condition in perpetuity, normal maintenance excepted.
8. Each Affordable Unit shall be provided with one surface parking space for no charge, and the Applicant is entitled to charge a rental fee for all other parking spaces.
9. Upon request, the Applicant shall provide the Town of Concord with copies of all affordability monitoring reports it provides to the Subsidizing Agency.
10. The Applicant shall implement a Transportation Demand Management (TDM) program that includes the following measures:
 - a. The property manager will be assigned as the on-site Transportation Coordinator (TC) to coordinate TDM strategies and be a resource to tenants of available alternative transportation options;
 - b. The TC will post information regarding public transportation services, maps, schedules, and fares in common areas within the Project;
 - c. The TC will provide residents information relative to available public transportation services, bicycle and walking alternatives, and commuter options;
 - d. The TC will provide information to all residents upon move-in on joining NuRide, a program which rewards individuals for making "green" trips, assists in finding ride-share

matches, and offers a guaranteed-ride-home in emergency situations to those commuting via walking, bike, transit, or rideshare;

- e. The TC shall provide educational information that encourages alternative means of travel through tenant newsletters and bulletins, which shall include information on bicycling and other green commuting events and services offered by the Town.
- f. The Applicant shall provide a mail drop within each residential building at a central location.

11. Upon completion of construction, there shall be no on-site storage of fuels, oils, automotive fluids, fertilizers, pesticides, insecticides, herbicides, cleaning chemicals, and other hazardous material of significant concern, other than quantities for vehicular or domestic use.

12. The Applicant has volunteered to construct an approximately 224-foot trail (the "Trail Connector") in addition to the 936 +/-foot at-grade trail system for the Project (the "Project Trail"), as shown on the Approved Plans, to connect to the location of the proposed Town Assabet River Bridge and Trail proposal. Said trail work shall be phased as follows:

- a. As the first phase, the Applicant shall construct the 936+/-foot Project Trail, extending westward from Baker Avenue as shown on the Approved Plans, and shall substantially complete the Project Trail prior to the issuance of the certificate of occupancy for the second-to-be-completed building in the Project; and
- b. In recognition that a portion of the 224-foot Trail Connector will be located on land subject to a recorded conservation restriction and subject to the jurisdiction of the Wetlands Protection Act, the Applicant shall commence construction of the Trail Connector and prosecute the same to completion with diligence upon written notice to proceed from the Town and confirmation from the Town that such construction is legally permitted. If design or permit modifications are required in order for the Trail Connector and the Town's portion of the Town trail/bridge project to have matching or harmonious widths, grades, and horizontal and vertical locations, the Applicant shall reasonably cooperate with the Town to refine the design of the Trail Connector connection to the Town's portion of the Town trail/bridge project and seek any necessary approvals for the Trail Connector under the Wetlands Protection Act. For the avoidance of doubt, any such redesign shall not require the Applicant to construct more than 224 feet of Trail Connector.
- c. If an amendment to the existing recorded conservation restriction is necessary for the Trail Connector, the Applicant agrees to cooperate (i.e., upon its review, sign relevant applications, submittals or acknowledgements) as necessary for the Town to revise the existing conservation restriction. Applicant has not volunteered any financial contribution and shall not be deemed to volunteer to provide any engineering or surveying in-kind contributions other than those relating solely to the Property as necessary to assist the Town in its preparation of necessary revision to the existing conservation restriction plan, including the Property's baseline documentation.
- d. Upon completion of the Trail Project, the Applicant has volunteered to work with the Town to grant rights of public access over the Applicant's Site on such terms and conditions as are mutually acceptable to the Town and Applicant.

13. The Applicant shall be responsible for maintaining all improvements within the Project, including, but not limited to, drainage systems and structures, sewer system, water lines, the pavement surface, sidewalks, boardwalks, tenant amenities, curbing, fire hydrants, and other required utility improvements in a satisfactory manner. All such items and systems shall remain private.

14. This Comprehensive Permit shall control the development of the Project and, to the extent of any inconsistency between this Comprehensive Permit and any other instrument, document or agreement delivered as part of the Application for this Comprehensive Permit, the terms, conditions and limitations of this Comprehensive Permit and the Regulatory Agreement incorporated by reference herein shall, in that order, govern and control. No provision hereunder shall be used or construed to conflict with direct programmatic concerns of State funding and regulatory authorities consistent with the holdings in *Board of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 748 (2010), or amendment to G.L. Chapter 40B, §§20-23.

15. This Comprehensive Permit may be assigned or transferred only in accordance with the provisions of 760 CMR 56.05(12)(b), except that the Applicant is authorized to transfer this Comprehensive Permit to a related entity which shall be considered an insubstantial change within the meaning of 760 CMR 56.05(11), provided the Applicant complies with the requirements of 760 CMR 56.05(12)(b).

16. At the Applicant's election and in order to facilitate Project financing, the Applicant may elect to change the current subsidy/financing program of the Federal Home Loan Bank of Boston's New England Fund Program ("NEF") administered by MassHousing by replacing the same with the subsidy offered through the Local Initiative Program ("LIP") administered by the Massachusetts Executive Office of Housing and Livable Communities ("EOHLC"). If an application for a change in subsidy is filed with the EOHLC and approved by the EOHLC, the Board agrees that such change in subsidy constitutes an insubstantial change within the meaning of 760 CMR 56.05(11) if there are no other Project changes proposed at the time and provided that any such change in financing is conditioned on the Project's and Applicant's continued compliance with all conditions and requirements of this Comprehensive Permit.

17. The existing uses and structures on 300-310 Baker Avenue and approvals therefor (collectively, the "300-310 Baker Approvals") are hereby modified so as to allow the uses and structures on 300-310 Baker Avenue to lawfully continue to exist and to co-exist with the Project uses and related Project improvements at the Property, including the Project signage, designated recreational uses, parking reciprocal rights, and all depicted utilities and access, to the extent shown on the Approved Plans and as allowed and conditioned in the Comprehensive Permit herein.

G. Construction and Bonding Conditions

1. The Applicant shall authorize the Building Inspections Division, the Board, and agents of the foregoing to enter the Site during construction of the Project to determine compliance with the provisions of this Decision. The Town's agents shall provide reasonable notice prior to entry, except in the case of exigent circumstances or emergency. The Town's agents shall comply with applicable health and safety requirements such as hardhat, safety glasses, and work boot requirements.

2. During construction, at the end of each workday, the Applicant shall ensure that all erosion control measures are in place and secure all materials and equipment. Upon completion of all work on the Site and before as-built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations, and the Applicant shall notify the Building Inspections Division in writing of the final disposition of the materials.
3. Covered dumpster(s) shall be used during construction to keep debris within the Site, and the Applicant shall be responsible for the prompt removal of any debris which escapes enclosure. Use of the dumpster(s) shall be limited to the duration of the active construction period.
4. Within 45 days of the completion of construction, the Applicant's site engineer of record shall certify that the Project was constructed in substantial conformance with the Final Plans and this Decision.
5. All onsite catch basins, detention basins, infiltration systems, and other stormwater management facilities shall be cleaned at the end of construction. Thereafter, the Applicant shall be responsible for maintaining the on-Site stormwater management facilities in accordance with generally accepted practice.

H. Validity, Modification, and Appeal

1. In the event an authority of appropriate jurisdiction determines that any provision of this Decision is illegal and unenforceable, such provision may be severed and stricken from this Decision without affecting the validity of the remaining provisions of this Decision.
2. This Comprehensive Permit shall not be final until the Town Clerk certifies that no appeal has been filed. The Applicant shall provide proof of recording with the Middlesex South Registry of Deeds to the Town Planner and the Building Inspections Division.
3. This Comprehensive Permit shall lapse three (3) years from the date of grant thereof, which shall not include such time required to pursue or await the determination of an appeal, if a substantial use has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Notwithstanding the foregoing, this Comprehensive Permit shall be entitled to extension rights in accordance with 760 CMR 56.05(12)(c).
4. Violation of any of the conditions of this Decision shall be grounds for revocation of the Decision, or any building or occupancy permit granted hereunder. If at any time the Applicant is not in compliance with this Decision and any permit issued by the Town, the Building Commissioner may order that the project be stopped, and occupancy revoked until the noncompliance is corrected; provided, however, that prior to revocation or such work stoppage, the Applicant is provided with prior notice of the same and a reasonable opportunity to cure.
5. By acceptance of this Comprehensive Permit Decision, the Applicant acknowledges the binding effect of the conditions of the Decision.

COPY

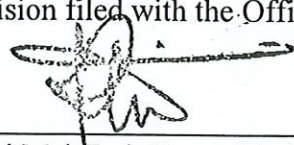
6. Based upon the Board's vote to approve this Comprehensive Permit, the Board authorizes the Clerk of the Board to execute this Decision on behalf of the Board.

Dated this 16 day of April, 2024.

Concord Board of Appeals


By: Elizabeth Akehurst-Moore
Its: Duly authorized Clerk

Decision filed with the Office of the Town Clerk:


Kaari Mai Tari, Town Clerk

4/16/24
Date

I, Clerk of the Town of Concord, Massachusetts hereby certify that no notice of appeal was received during the twenty days next after receipt and recording of the Decision from the Board of Appeals of the approval of the Comprehensive Permit, or, if an appeal was taken, that a final decree has been entered by the Court sustaining the approval of the Comprehensive Permit or the appeal taken has been dismissed by the Court.

Kaari Mai Tari, Town Clerk

Date

EXHIBIT A – Approved Plans

The “Approved Plans” are collectively listed as follows:

A. Architectural Plans. The buildings containing the Units are shown on a set of signed and stamped architectural plans including elevation, floor and units plans, consisting of twenty-three (23) sheets, entitled “NOVO Riverside Commons, 292 & 294 BAKER AVE., CONCORD, MA,” dated May 22, 2023 (Rev. March 22, 2024) unless otherwise shown, including the following:

1. A-000 Cover Sheet;
2. A-001 Conceptual Rendering;
3. A-002 294 Baker Conceptual Rendering;
4. A1-000 292 Baker Unit Mix;
5. A1-100 292 Basement Podium Parking Plans;
6. A1-101 292 Floor Plans;
7. A1-102 292 Floor Plans;
8. A1-103 292 Floor Plans;
9. A1-104 292 Affordable Unit Floor Plans;
10. A1-150 292 Enlarged Amenity Plan;
11. A1-200 292 Building Elevations;
12. A1-201 292 Building Elevations;
13. A1-300 292 Building Sections;
14. A2-000 294 Baker Unit Mix;
15. A2-100 294 Floor Plans;
16. A2-101 294 Floor Plans;
17. A2-102 294 Floor Plans;
18. A2-103 294 Floor Plans;
19. A2-104 294 Affordable Unit Floor Plans;
20. A2-150 294 Enlarged Amenity Plan;
21. A2-200 294 Building Elevations;
21. A2-201 294 Building Elevations;
22. A2-300 294 Building Sections; and,
23. A-600 Typical Units.

Collectively, the architectural plans listed herein are hereinafter defined as the “Architectural Plans” unless otherwise described herein.

B. Civil Plans. The buildings containing the Units, as well as a depiction of other improvements as part of the Project, are shown on the following signed and stamped engineering plans, consisting of thirteen (13) sheets, entitled “NOVO Riverside Commons, 292 & 294 Baker Avenue in Concord, Massachusetts (Middlesex County),” dated May 22, 2023 (Rev. March 21, 2024), along with a set of swept path analysis plans, consisting of eight (8) sheets, entitled “NOVO Riverside Commons, 292 & 294 Baker Avenue, Concord, Massachusetts,” dated May 22, 2023 (Rev. November 2023), unless otherwise shown, and stormwater management report, prepared for Taurus Investment Holdings, LLC by Beals & Thomas, Inc., including the following:

1. Cover Sheet (C1.0);
2. Notes, References and Legend (C1.1);
3. Site Preparation Plan (C1.2);
4. Topographic Plan, dated April 1, 2014 (Rev. March 21, 2024) (TP1);
5. Topographic Plan, dated April 1, 2014 (Rev. March 21, 2024) (TP2);
6. Topographic Plan, dated April 1, 2014 (Rev. March 21, 2024) (TP3);
7. Lotting Plan, dated May 22, 2023 (PL);
8. Layout and Materials Site Plan (C2.1);
9. Grading and Drainage Plan (C3.1);
10. Utilities Plan (C4.1);
11. Site Details (C5.1);
12. Site Details (C5.2);
13. Site Details – Flood Compensation Sections and Elevation (C5.3);
14. Concord FD Ladder 1 Swept Paths (1);
15. DL-23 Drop-Off Swept Paths (2);
16. Accessible Parking Swept Paths (1);
17. Ambulance/Delivery Swept Paths (2);
18. Concord Fire Ladder 1 Swept Paths (3);
19. Trash Removal Swept Path (4);
20. WB-40 From Baker Ave Swept Path (5);
21. WB-40 To Baker Ave Swept Path (6);
22. Stormwater Management Report, NOVO Riverside Commons, 292-294 Baker Avenue Concord, Massachusetts,” dated September 19, 2023 (Rev. March 21, 2024), prepared for NOVO Riverside Commons, LLC by Beals & Thomas, Inc.

Collectively, the site engineering plans, swept path plans and stormwater report listed herein are hereinafter defined as the “Civil Plans” unless otherwise described herein.

C. Landscaping and Lighting Plans. The landscaping and lighting plans and specifications including the depiction of other improvements as part of the Project are shown on the following signed and stamped landscape plans, consisting of twelve (12) sheets, entitled “292 & 294 Baker Avenue in Concord, Massachusetts – Zoning Board Submission Set,” dated March 22, 2024, unless otherwise shown, prepared by Hawk Design, Inc., including the following:

1. Cover Sheet;
2. Site Master Plan (L1.1);
3. 292 Baker Avenue Typical Planting Plan (L1.2);
4. Pond Restoration Planting Plan (L1.3);
5. 292 Baker Avenue Courtyard Planting Plan (L1.4);
6. Site Lighting Plan (L2.1);
7. Site Lighting Specifications (L2.2);
8. Conceptual Amenity Area Sketches (L3.1);
9. Conceptual Amenity Area Sketches (L3.2);
10. Site Section A-A, 292 Baker Avenue;
11. Site Section B-B, 294 Baker Avenue; and,
12. Site Section C-C, 294/300 Baker Avenue.

Collectively, the site landscaping and lighting plans listed herein are hereinafter defined as the "Landscape Plans" unless otherwise described herein.

Collectively, the Civil Plans, the Architectural Plans, and Landscaping Plans shall hereinafter be defined as the "Approved Plans" unless otherwise described herein.