

CITY OF WOBURN  
BOARD OF APPEALS

2012 OCT 11 PM 8:54

FINDINGS AND DECISION ON APPLICATION FOR  
MODIFICATION OF COMPREHENSIVE PERMIT  
WOBURN, MA 01801

RE: Application of Woburn 38 Development, LLC

Project Name: The Ledges at Woburn

Property: 1042 Main Street, Woburn, MA

Date: October 11, 2012

**I. PROCEDURAL HISTORY**

1. On or about October of 2000, Cir-San Realty Trust ("Cir-San") applied for a Comprehensive Permit under M.G.L. c.40B, §§20-23 for the construction of a six-story, 168-unit apartment building on a 9-acre site located primarily at 1042 Main Street, Woburn, MA containing 60 one-bedroom units and 108 two-bedroom units (the "Comprehensive Permit").
2. After a public hearing continued over several days, the Board of Appeals ("Board") denied the application and filed its decision with the City Clerk on October 11, 2001. Cir-San appealed the denial to the Housing Appeals Committee ("HAC") pursuant to M.G.L. c.40B, §22 which, after a 6-day *de novo* evidentiary hearing, issued a decision on June 11, 2003 vacating the Board's denial and directing the Board to issue a Comprehensive Permit with certain conditions.
3. On July 11, 2003, the Board appealed the HAC's decision to the Middlesex Superior Court. The Superior Court held a hearing on May 13, 2004 and issued a decision affirming the HAC's decision on June 10, 2004.
4. After the filing of motions for reconsideration and motions to strike by the parties, the Board filed a notice of appeal to the Massachusetts Appeals Court on November 4, 2004. On May 31, 2006, the Appeals Court issued its decision affirming the HAC's decision ordering the issuance of the Comprehensive Permit. The Board's request for further appellate review by the Supreme Judicial Court was denied on September 14, 2006.
5. Upon the entry of judgment after appeal on October 19, 2006, Cir-San's Comprehensive Permit became final and was valid for 3-years. In 2009, the Board granted a 2-year extension of the Comprehensive Permit.

6. On February 28, 2011 Cir-San conveyed the property and rights under the Comprehensive Permit to Woburn 38 Development, LLC (the "Applicant"), 1621 State Street, New Haven, CT 05611 by a deed recorded with the Middlesex South Registry of Deeds in Book 56530, Page 451.
7. The Board denied a second request to extend the Comprehensive Permit which denial the Applicant appealed to the HAC. After a Conference of Counsel, the Board voted to agree to a remand of the matter and, on January 18, 2012, granted another 2-year extension of the Comprehensive Permit with conditions.
8. On February 6, 2012, the Applicant filed an application to modify the Comprehensive Permit to allow for the construction of the 168 rental units in a different configuration to be called "The Ledges at Woburn" located at 1042 Main Street, 7 Driftwood Drive and 0 Briarwood Road, Woburn (the "Project").
9. On February 21, 2012 the Board of Appeals found that the following aspects of the application were "substantial" changes in accordance with 760 CMR 56.087(4) and therefore, required a public hearing:
  - Change from one 6-story building to 4 freestanding structures, 50' in height with a clubhouse.
  - The proposal to construct 4 freestanding structures and a clubhouse alters the internal parking configuration and travel circulation on the site even though the same number of parking spaces (300) will be provided.
  - Proposed changes to the access road by increasing the grade of the access road from 8% to 9.5% however; the grade of the interior turns of the access road will reduced from 11.5% to 8.5%.
  - The original comprehensive permit assumed the removal of 120,000 cubic yards of earth material. The Applicant's initial estimate for the modification was a 25% increase in blasting for earth removal to accommodate the change in elevations.
  - The proposed access road will be wider at the intersection with Main Street to accommodate a left turn lane.
  - The drainage design has been revised to meet the current Mass DEP – Massachusetts Stormwater Handbook issued February 2008.
  - Emergency access via a 20-foot paved roadway with a 14% grade to be changed to a gated emergency access to Driftwood Drive via an 18' grassed paver with a 4% grade.

10. The Applicant originally entered into a purchase and sale agreement to convey the Comprehensive Permit to the Dolben Company, Inc. ("Dolben"), 150 Presidential Way, Suite 220, Woburn, MA 01801 on May 31, 2011, which purchase and sale agreement was amended and restated effective March 1, 2012.
11. As proposed, the Project would consist of 168 units with a mix of one and two-bedroom units in 4 freestanding structures, 50' in height, with a clubhouse and 300 parking spaces. Forty-two (42) of the units are proposed as affordable. The area of the Project consists of one 8.92 acres parcel of vacant land at 1042 Main Street as referenced by the Woburn Assessors as Map 8, Lot 20 (the "Site"). An additional parcel of land consists of 0.35 acres of land at 7 Driftwood Drive as referenced as Map 8, Lot 30, and is improved by a single family dwelling. The combined area of the Project is 9.27 acres of land although the parcel at 7 Driftwood Drive will only be modified to provide for an easement to allow for gated emergency access to the parcel at 1042 Main Street. Primary access to the Site will remain via Main Street/Rte. 38.
12. A duly advertised public hearing was opened on March 15, 2012, and continued to the following dates: April 18, 2012, May 23, 2012, June 20, 2012, July 18, 2012, August 15, 2012, and September 11, 2012.
13. The Board conducted a site visit on September 11, 2012.
14. The Applicant and the Board agreed to an extension of time for the closing of the public hearing and filing of the Board's decision. The public hearing was closed on September 11, 2012. The Board deliberated on this Decision on September 11, 18 and 26, and October 5 and 11, 2012.
15. The list of documents, plans and exhibits received during the public hearing is attached hereto as Exhibit A, and is incorporated by reference into this Decision.

## **II. FINDINGS**

### **A. General**

1. The Applicant has standing based upon the submission of the following pursuant to 760 CMR 56.04:
  - a. it is or will become a "limited dividend corporation" as that term is used in G.L. c. 40B, §21 and 760 CMR 56.04 (1) (a) in that it will execute a Regulatory Agreement that shall require the limiting of its profit to no more than twenty percent (20%) of total development costs.
  - b. evidence of a subsidy as required by 760 CMR 56.04 (1) (b) as indicated by a Project Eligibility Letter from MassHousing dated September 16, 2011.

c. The Applicant is the owner of the land and has "control of the site" as that term is used in 760 CMR 56.04 (1) (c).

2. The City of Woburn, according to the DHCD, has not achieved the statutory minimum set forth in G.L. c. 40B, §20 and or 760 CMR 56.03(3) in that affordable housing does not constitute more than 10% percent of the total number of dwelling units nor is 1.5% of the City's land area in affordable housing. The development of 168 rental units consistent with the application will not result in the commencement of construction of such housing on sites comprising more than three-tenths of one percent of such land area.
3. The Project is located in both the R-1 (Single Family) and the R-2 (Single and Two Family) Residential Zoning Districts, as established by the Woburn Zoning Ordinances.
4. The Board retained the following consultants to assist in the review of the Application to modify the Comprehensive Permit:

Civil/Traffic Engineering:

Robert Nagi, P.E.  
Karen Staffier, P.E.  
Vanasse Hangen Brustlin, Inc.  
101 Walnut Street  
P.O. Box 9151  
Watertown, MA 02471-9151

Blasting/Rock Slope Review:

Andrew McKown  
McKown Associates, LLC.  
39 Dodge Street, No. 296  
Beverly, MA 01915

5. The Board received comments from its consultants, and members of the public, including abutters to the Site, all of which have been made a part of the record of this proceeding and have been taken into consideration by the Board in rendering its decision.

B. Site Development

6. When originally permitted, it was estimated that development associated with construction of the Comprehensive Permit would require the removal of approximately 120,000 cubic yards of earth material, a process that was expected to take over two months, with a construction period of approximately 12 months. The Application stated that the Project would require the removal of an additional 25% or 150,000 cubic yards of earth material from the Site to accommodate changes in the elevations for the new design.



7. However, during the public hearing it was determined that the Applicant understated the additional cubic yards of earth material that would have to be removed in order to construct the Project, and that the actual amount to be removed would be significantly higher.

i. Proposed Modification Doubles or Triples Site Preparation Activities

8. The Applicant's consultant, Robert Sanda, a civil engineer with the Callahan Company performed a cut and fill analysis to determine the total export volumes and total truck trips associated with the earth removal required for the development of the Site, which analysis was presented in two parts, depending upon whether the stone was processed by a portable rock crushing plant (the "rock crusher") on Site, or removed from the Site in an unprocessed state and processed elsewhere. Regardless of whether the material is processed on site or not, Mr. Sanda informed the Board that the design approved under the Comprehensive Permit required a "cut quantity" of 118,852 cubic yards of ledge to be blasted. Under the proposed modified design, the "cut quantity" of ledge increased to 249,591 cubic yards of ledge to be blasted from the Site.
9. According to Mr. Sanda's reports, prepared in May 2012, the total export volume of earth material associated with the Project would be 357,632 cubic yards if the rock is crushed on Site, an increase of 298% over the cut quantity under the Comprehensive Permit, and 418,281 cubic yards if removed from the Site in an unprocessed state, an increase of 348% over the original cut quantity.
10. The original design, and application submitted to the Board in 2000, which resulted in the issuance of the Comprehensive Permit in 2006, makes no reference to rock crushing on site. There was no testimony on rock crushing on site in the HAC hearings on the original application, nor does the HAC decision on the original Comprehensive Permit reference rock crushing. In August 2011, the Applicant filed an application with the Woburn City Council for a special permit to remove an estimated 200,000 cubic yards of ledge from the Site, pursuant to Section 5.1. The Applicant subsequently withdrew its application from the City Council after the Board ruled on its request to extend the Comprehensive Permit.
11. Neither the Board nor the Applicant were able to cite any HAC decisions involving rock crushing activities in a residential zone in connection with a c. 40B comprehensive permit application. Neither the Board nor the Applicant were able to find any HAC decision involving a development that required blasting 250,000 cubic yards of ledge on a site with dozens of homes within a radius of 250-350 feet of the site.



ii. Blasting Activities Associated with Project

12. According to the Applicant's blasting contractor, David Saunders, of Saunders Drilling & Blasting, blasting activities create vibrations, and people in the neighborhood "will hear it and feel it" but that sensing blasting activity does not mean it would cause property damage. Mr. Saunders estimated that there would be 8-9 months of blasting activity, perhaps taking as long as 12 months to remove the estimated 200,000 cubic yards of ledge from the Site with an average of 1,500-2,000 cubic yards of ledge removed per day. The blasting plan would involve blasting up to 2 times per day, with each blast using 2,000-2,500 lbs. of explosives. According to Mr. Saunders the goal of the blasting plan was to remove the top 50 feet of the Site, in order to reduce a portion of the Site from an elevation of 220', with the center of the Site having an elevation of 160'. After the Applicant revised its estimate of the amount of ledge to be blasted from a "cut quantity" of 118,852 cubic yards to a cut quantity of 249,591 cubic yards, Mr. Saunders informed the Board that 12 months was still an accurate estimate of the time required to blast the ledge.
13. The City's blasting consultant, Andrew McKown, confirmed that air blast overpressure could rattle windows and that ground vibrations from the blasting are "ripples of energy" that neighbors may be able to feel.
14. The Applicant's consultant, Richard Groll, a seismologist and geologist, described another project that he had been involved with that was of similar size - the widening of 17 miles of Route 3. Mr. Groll informed the Board that the Route 3 project involved 500,000 cubic yards of rock. Mr. Saunders described his experience in blasting in areas of ledge in proximity to existing homes, including a Wakefield project involved removal of approximately 150,000 cubic yards of ledge off Green Street, where the blasting process took approximately 10 months.
15. Mr. Saunders also described blasting he did in close proximity to an apartment building involving the removal of approximately 50,000 cubic yards of ledge, a process that lasted approximately 3 months. Mr. Saunders stated that he has also been involved in larger projects with quantities of ledge removal akin to the cut quantity of the Project: an underground tunnel for the MWRA involved blasting 180,000 – 250,000 cubic yards, and construction of a highway off-ramp in Windham NH required blasting of 500,000 cubic yards.
16. Applicant's earth removal contractor, John Durkin of Onyx Corp., described the initial construction process as "mining our way up the hill" to construct the access road to the top of the Site, stating that the neighbors "will know we're here." Mr. Durkin described the rock crusher that could process the ledge blasted by Saunders as capable of crushing 1,200-1,500 tons of stone each day. Mr. Durkin estimated that it would take 8-12 months to export the ledge removed from the Site, using 50-60 truck trips per day, with each truck hauling 26 cubic yards of material. Mr. Durkin's estimates were made based on the removal of 200,000

cubic yards of ledge from the Site, and were made before Mr. Sanda re-calculated the cut quantity of the ledge increasing from 118,852 to 249,591 cubic yards. Mr. Durkin informed the Board that material removed from the Site while building the access road would not be crushed, but that rock crushing activities would commence when site preparation reached the top of the hill.

17. Mr. Durkin stated that in lieu of monetary payment, Onyx will be compensated for its work by being allowed to retain and sell earth materials excavated on the Site. Indeed only a small amount of the earth materials from the Site will be used in the construction of the Project with the majority of such materials being removed and/or sold from the Site. Mr. Durkin stated that he had been in discussions with 6 potential users of the stone crushed on site who would buy the crushed stone, including Aggregate Industries.

iii. Truck Traffic Associated with Removing Ledge From Site

18. The number of truck trips associated with the removal of earth materials for the Comprehensive Permit, based on Mr. Sanda's May 2012 analysis of 60 truck trips per day (round trip) would be 155 days for unprocessed earth material.
19. The number of truck trips associated with the removal of earth materials for the Project, based on Mr. Sanda's analysis of 60 truck trips per day (round trip) would be 223 days for processed earth material, or a total of 26,760 truck trips, and 276 days for unprocessed earth material, or a total of 33,120 truck trips.

iv. Construction Schedule for Project

20. After calculating the increased cut quantities and removal/export quantities, Mr. Sanda estimated the total time required to construct the Project. Development of the Project would require 1-2 months of site preparation, 9-10 months of exporting earth materials off-site; then 15-16 months to build the structures with a phased in building sequence. As a result, the time frame for construction of the Project would be increased from 12 months (for the Comprehensive Permit) to 28 months. In August, 2012, the Board asked Mr. Saunders, the blasting contractor to confirm his estimate of how long blasting would be done on the Site based on the increase in the cut volume to 249,591 cubic yards. Mr. Saunders confirmed that his initial upper estimate of 12 months to blast was accurate. Mr. Saunders' 12 month time-frame conflicts with the 9-10 months estimated by Mr. Sanda.
21. The Board's Consultant, VHB, advised that a construction schedule based on 60 truck trips each day removing material from the Site would require a "very efficient" process that allows for a truck to be on site, be filled, and depart within a 10-minute window.

v. Noise and Dust

22. Mr. Durkin provided the Board with a list of engine-powered construction equipment that would be used on Site: 2 articulated haul trucks to move materials on Site; 3 excavators; 2 wheel loaders; 1 bulldozer, 1 water truck and 1 portable rock crushing plant. This equipment does not include the trucks that will be used to make 60 trips per day to transport material off the Site, which were described to the Board as tri-axle trucks and trailer dump trucks.
23. Mr. Saunders stated that during the blasting phase of construction, he will have between 2-4 drill rigs operating on the Site, in addition to a bulk loading truck, which is similar to a small dump truck, used as an explosives delivery system.
24. The Applicant addressed the noise generated by the portable rock crusher in its presentation to the Board, but did not address the noise generated by any other equipment or the noise generated by the 60 truck trips per day.
25. Mr. Groll presented videos of him using equipment to measure decibel levels at a quarry where a rock crusher was operating in Leominster, MA, and also at the driveway area of 1042 Main St. The rock crushing activities that were filmed showed dust generation – both when the loader was backing up and as crushed material was dropped from the conveyor belt that was part of the portable rock crusher.
26. The decibel levels of the rock crusher were recorded by Mr. Groll on Patriots Day, 2012 (April 16<sup>th</sup>), with one excavator and one loader also in use with a portable rock crusher. The distance between the decibel meter and the rock crusher, was measured with a range finder, using sight lines. When the decibel meter was not in the sight line of the equipment, Mr. Groll walked to various locations and announced his distance from the rock crusher, but it was not clear how he measured the distances without using the range finder. When he was 450 feet from the excavator and conveyor belt of the crusher, within the sight line, the decibel readings ranged from 66-69. A back up alarm from the loader was clearly audible. When Mr. Groll moved behind a berm, the decibel level dropped to a range of 49-52, but it was not clear if the excavator or loader were in operation at the same time as the conveyor. The back-up alarm on the loader remained clearly audible – the decibel reading increased to 52-53 when the back-up alarm was audible. Similarly, when Mr. Groll was 78 yards from the conveyor (234 feet), within the line of sight, the decibel reading was 61-62, and increased to 65-67 when the back-up alarm on the equipment was audible.
27. Mr. Groll used a different sound measuring device at the street level of 1042 Main Street during the afternoons of Friday April 7, 2012 and Saturday April 8, 2012 for 15 minute increments. Rather than a single reading of decibel level as used for the rock crusher, the decibel reader he used on Main Street displayed both an “L” and “A” reading. The L readings were always higher than the A readings.

On both days, the L readings ranged from the mid 60s to 70s, with occasional peaks in the 80s, especially when wind noise was audible. As traffic passed by on Main Street, the readings would increase. In periods when there was little or no traffic, birds could be heard chirping in the background. During these quieter times, the A readings would drop down to the high 30s or low 40s, with the L readings remaining in the 60s or low 70s. On one occasion, Mr. Groll was able to video a tractor trailer going by as the L reading increased above 80. More typical traffic noise on Main Street was in the 60s for the L reading and mid 50s for the A reading.

28. Driftwood Drive is a cul-de-sac with homes located within the 250 and 350 foot radius of the Site. The Applicant did not measure the ambient sound at that location. The Board finds that ambient sound levels at Driftwood Drive would be, on average, lower than those at Main Street.

C. Effect on Abutters

29. The Applicant submitted a 250' and 350' property setback plan depicting 22 homes located with 250 feet of the Site, with another 11 homes located within 350 feet of the Site. A social club and other commercial properties are also located within either 250' or 350' feet of the Site.

30. The Board heard from abutters to the Site who shared their individual health concerns and issues including a veteran with Post Traumatic Stress Disorder (PTSD) who lives at 1050 Main Street, three houses away from the portion of the Site that will be transformed into the Site driveway/access road. He informed the Board that "I don't react well to blasting" and that he received treatment at the Bedford VA. His wife subsequently informed the Board that her husband had retired. Mr. Groll used the distance between 1050 Main Street and the proposed location for the rock crusher that would operate on the upper elevation of the Site, 350 feet, when he measured the decibel level of rock crushing activities in Leominster, MA since 1050 Main Street is home located closest to the proposed rock crusher; another direct abutter who resides at 1046 Main Street, informed the Board that she and her son suffer from asthma. At another meeting, this resident informed the Board that her husband works the night shift. A resident who lives ¼ mile from the Site stated that she telecommutes 3 days a week. This particular resident uses a wheelchair and expressed concern for noise and blasting activity interfering with her work. and expressed concern with being in her backyard and breathing in dust from the Site and having her use and enjoyment of her own property detrimentally affected. The resident of 1030 Main Street expressed concern about the effect that construction "in her backyard" would have on her 14 year old son who is autistic and has sensory issues stating that loud sounds set him off. She stated that she quit work to take care of her sons and her husband works the night shift. It has taken years of effort to get her son to the level of stability that he enjoys now, and that she doesn't know how he will react to blasting and loud noises. Her other son suffers from asthma and has a



compromised immune system due to EoE (eosinophilic esophagitis), an autoimmune disease which has caused him to miss a lot of school in the past. He is allergic to dust. Both of her sons are doing “awesome” now compared to years past, and she is “petrified” how the project will affect them and their health and well-being. All of the aforementioned abutters and residents expressed concern that their physical conditions will be exacerbated by the prolonged construction period, and its attendant disruptions.

31. Another abutter, who resides at 1024 Main Street, stated that he and family reside in the immediate area and own other homes located at 1022, 1026 and 1030 Main Street as rental property. 1030 Main Street is four houses away from the Site access road. This resident informed the Board that when there was work being done on Route 38 in a utility trench, his wife’s car was covered in dust just from a work done in a narrow trench, and he couldn’t imagine how much dust would settle on his properties from Site construction done beside his house, and behind it from an upper elevation. One of his tenants has already moved out and he is very concerned that he will not be able to retain current tenants or be able to rent the property during the construction of the Project. The resident of 48 Winter Street told the Board that she moved from one of the aforementioned properties and is concerned about the financial impact to the owners if they could not rent the properties. A resident of 1024 Main Street informed the Board that children like to play in the backyard and her 13 year old son keeps asking her what will happen to the backyard.
32. Saint Anthony’s Club which is located at 1020 Main Street, represented by Tony Fiorello, Manager, stated that the Club is the closest building to the elevated portion of the Site. Mr. Fiorello described various functions held during the day at the Club, particularly funeral gatherings and other social functions, and he expressed concerns for how people who are grieving and have just buried someone will react to blasting and construction noise, and that once construction starts, no one would want to use the Club for functions. He described the bocce court and horseshoe pit at the rear of the Club and expressed concern about the impact of dust and construction activities for club members who enjoy using these areas.
33. A resident of 1 Wheeling Street which is located diagonally across from Site, informed the Board that she made improvements and renovations to her home to accommodate her father, who uses a wheelchair, so that he could live with her. She cannot imagine her father living with her now – no peace at the house with the construction. She feels that she cannot sell her house, nor can she use it the way that she planned to because she wouldn’t want her father to be bothered by construction activities.



D. Basis for Denial

34. Drilling and blasting would be conducted simultaneously with the site preparation and rock removal with on-site processing of earth materials which will involve the operation of several pieces of construction equipment. The Board finds that the noise from such an operation will interfere with the abutters' quiet enjoyment of their property especially during the summertime months.
35. As the Project involves "mining" a road into the hill at 1042 Main Street and one year, if not longer, of blasting, together with more than a dozen pieces of construction equipment – all of which presumably will be equipped with back up alarms in accordance with OSHA regulations – the Project will create a loud cacophony of noise that would rise to the level of "noise pollution" under both Woburn's ordinance and Massachusetts law. The Board is unwilling to find that the direct abutters, a number of whom have special sensitivities to explosives, vibration, noise and dust, and two of whom work the third shift, must tolerate the disruption to their home life in order for the City to add 42 units of affordable housing to its housing stock, particularly where the Comprehensive Permit will create 42 units of affordable housing and a much less severe impact on the people who work and live in proximity to the Site.
36. The sound surveys performed by Mr. Groll provide useful information in analyzing the impact of the Project on people who live and work in the area. The loudest noise measurement (other than wind) taken at 1042 Main street was from a tractor-trailer that drove by Mr. Groll's location in between the rear corners of the two houses on either side of the Site driveway. The basic range of the L readings was between 65-75. The tractor trailer increased the reading to above 80. The noise level between the homes of the two closest abutters regularly dipped down to be "quiet" enough so that birds could be heard chirping in the background –the quietness was intermittent with the sound of traffic. The construction activity on the site- particularly 120 truck trips per day, make it very unlikely that there will be any relief from the noise, and few instances during the day when the neighborhood will have "quiet" times when birds can be heard chirping. This finding does not even take into account the noise generated by a portable rock crushing plant, as it was the consensus of the Board that rock crushing would not be approved on Site.
37. The Board finds that the construction timeline presented by Mr. Sanda represents the Applicant's goal, but is not necessarily an accurate reflection of the practicalities or realities of the construction process, particularly as Mr. Saunders estimated blasting to take a full year, while Mr. Sanda estimated it at 8-9 months. The 28-month estimate is, in reality, a 32-34 month estimate just by correcting the length of the blasting process.

38. Section 5.2 Additional Use Regulations of the Woburn Municipal Code, as amended, provides as follows: 1. General Requirements for All Districts, 1) There shall be no use of a building, structure or land in any district for a purpose that creates a nuisance by reason of the emission of odors, waste, fumes, dust, smoke, vibration, noise, light, radiation, or other causes. The Applicant did not request a waiver from this section of the Woburn Zoning Ordinance.
39. Section 5.2 Additional Use Regulations of the Woburn Municipal Code, as amended, provides as follows: 2. General Requirements for Residential Districts. Within any residential district, all non-residential uses shall comply with the following: All noise, odors, glare, or other objectionable features shall be controlled or otherwise contained within the premises, and all parking areas shall be effectively screened so as not to create any conditions which create a nuisance or otherwise adversely affect the health, safety, or welfare of the population within the district. The Applicant did not request a waiver from this section of the Woburn Zoning Ordinance.
40. The excavation and on-site processing of rock by Onyx Corporation for sale is not necessary for or related to the development of affordable housing but rather, is an industrial and commercial use which is incompatible with the surrounding residential neighborhood, and is prohibited in the R-1 and R-2 zoning districts by the Woburn Zoning Ordinance.
41. Many of the substantial changes identified by the Board will require more extensive site development work than that which would have been required for construction of the Comprehensive Permit. Specifically, the amount of earth materials being excavated and removed will be more than tripled, and there will be a more extensive site development and construction period, all of which will adversely impact the abutting residential neighborhood and general area of the Site in the form of blasting, dust, noise and construction traffic most especially, for those individuals and families that reside in direct proximity to the Site.
42. The Board finds that the more extensive construction period and its attendant disruptions will adversely affect the public health, welfare and safety of the direct abutters and in general, the surrounding residential neighborhood.
43. The Applicant stated that there was no alternative to the Board's request for consideration of less invasive or extensive site development.
44. The Board finds that the amount of blasting and the scope of site work for the Project is akin to the highway construction projects worked on by the Applicant's consultants in connection with the widening of Route 3 and the construction of the off ramp from Route 93 in New Hampshire. As such, the Project is not appropriately located in the residential district.

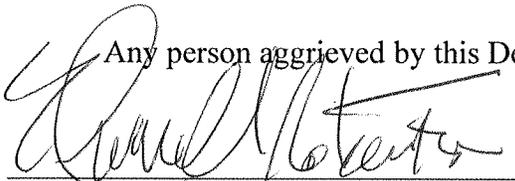
45. The Board gave due consideration to conditions that might mitigate the impact of the extensive construction period and its attendant disruptions, such as prohibiting the on-site processing of rock, but determined that the imposition such mitigation creates or increases adverse impacts elsewhere such as, increased truck trips and an even longer construction period.
46. The Board finds that despite meeting the requirements of any state regulations regarding noise, dust or air quality, that the site development, extensive construction period and its attendant disruptions will create a nuisance.
47. Although the design of the modified Project may be more aesthetically pleasing, where the number of affordable units will remain the same, the Board finds that the more extensive construction period associated with the modified Project and the attendant disruptions to abutters and the surrounding residential neighborhood are not mere inconveniences, but create local concerns which outweigh the need for such affordable housing.

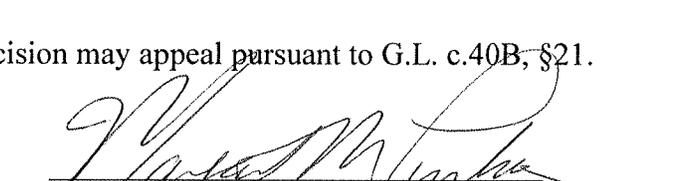
**III. DECISION**

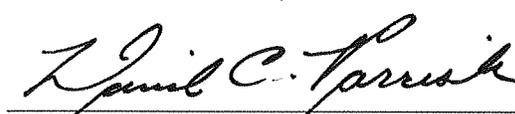
Upon a motion made and duly seconded, the Board voted (5-0) on September 26, 2012 to deny the application to modify the existing Comprehensive Permit and approved this Decision on October 11, 2012.

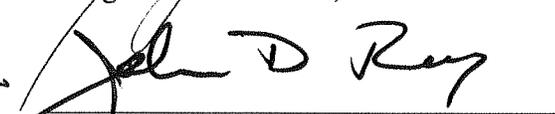
A copy of this decision will be filed with the City Clerk. Copies of this decision have been or will be mailed to all parties, persons or boards as required by the M.G.L. c.40B.

Any person aggrieved by this Decision may appeal pursuant to G.L. c.40B, §21.

  
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 Edward S. Robertson, Chair

  
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 Margaret M. Pinkham, Member

  
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 Daniel Parrish, Member

  
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 John D. Ray, Member

  
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 John J. Ryan, Member

## EXHIBIT "A"

## 1042 MAIN STREET - MODIFICATION

DATE:

2/7/2012

#	Date of Corr	Rec'd by ZBA	type of document	name of sender	content
1	01/18/12	01/19/12	Extension of Comp Permit	City Solicitor/Pet Atty	Extension w/conditions/timelines
2	02/07/12	02/07/12	Application for Modification	Regnante, Sterio & Osborne	Woburn 38 Development LLC
3	02/15/12	02/15/12	Memo	City Solicitor	RE: 40B Process
4	02/18/12	02/20/12	letter	Diane Autenzio	public concerns
5	03/12/12	03/12/12	letter	Diane Autenzio	public concerns
6	03/12/12	03/12/12	letter	Regnante, Sterio & Osborne	letter with sketches
7	03/14/12	03/14/12	letter	Deborah Parlee	public concerns
8	03/14/12	03/14/12	letter	Thomas McLaughlin	public concerns
9	03/15/12	03/15/12	Reasonable Concerns	Ald Michael Raymond	public concerns
10	03/15/12	03/15/12	presentation	TEC/Rebecca Brown	Traffic impact and Access Evaluation
11	03/15/12	03/15/12	presentation	Dolben Company	presentation
12	03/19/12	03/19/12	letter	Richard Longland	public concerns
13	03/26/12	03/25/12	add'l info	Allen & Major	follow up info
14	04/11/12	04/11/12	letter w/info	TEC/Rebecca Brown	traffic counts
15	4/12/2012	04/12/12	letter	Richard Longland	public concerns
16	04/13/12	04/13/12	letter w/info	Allen & Major	info on sewer/traffic/noise
17	04/17/12	04/17/12	letter	Deborah Parlee	public concerns
18	04/17/12	04/17/12	letter	State Rep Jim Dwyer	public concerns
19	04/18/12	04/18/12	DVD	Richard Groll	public concerns
20	04/18/12	04/18/12	DVD	Richard Groll	Ambient Studies 1042 Main St
21	04/18/12	04/18/12	Memo	City Solicitor	Jungle Road Video sound study Leominste
22	04/16/12	04/18/12	letter	Richard Groll	proposals for peer review
23	04/18/12	04/18/12	plan of Feb, 1966	Richard Groll	info on
24	04/19/12	04/19/12	letter	Petitioner	plan depicting sewer lines
25	04/25/12	04/25/12	letter w/info	Richard Longland	public concerns
26	04/30/12	05/01/12	letter	TEC/Rebecca Brown	updated traffic counts
27	4/302012	05/07/12	letter	Richard Longland	public concerns
28	04/30/12	05/07/12	letter	Lorraine Fallon	public concerns
29	05/01/12	05/01/12	letter	McKown Assoc	peer blast plan review
30	05/04/12	05/04/12	letter w/info	Richard Longland	request for citizens complaints
31	05/07/12	05/08/12	letter	Regnante, Sterio & Osborne	report fr Callahan
32	05/10/12	05/10/12	letter	Linda/Timothy Ahern	public concerns
				Robert Nagi/VHB	Peer Review

33	05/21/12	05/21/12	letter w/info	Deborah Parlee	add't quest/concerns
34	05/21/12	05/21/12	letter/info	Regnante, Sterio & Osborne	response on blasting
35	05/21/12	05/21/12	letter w/info	Regnante, Sterio & Osborne	redacted P&S
36	05/23/12	05/23/12	email w/info	City Solicitor	summary of meeting of VHB
37	05/23/12	05/23/12	letter w/info	Richard Longland	letter w/presentation
38	05/23/12	05/23/12	citizens presentation	David/Michael Fionda	citizens presentation
39	05/23/12	05/23/12	letter	Judith Matarazzo	public concerns
40	05/23/12	05/24/12	letter	Andrea Linehan	public concerns
41	05/23/12	05/23/12	Add'l Reasonable Concerns	Ald Michael Raymond	public concerns
42	05/23/12	05/23/12	letter	Linda Crowe	public concerns
43	05/24/12	05/24/12	text message	Linda Ahern	comment
44	05/29/12	05/29/12	letter	Jane Linn	public concerns
45	05/30/12	05/30/12	letter w/info	Judith Matarazzo	concerns w/info
46	06/02/12	06/04/12	letter	Diane Autenzio	public concerns
47	06/03/12	06/04/12	letter	Richard Longland	follow up concerns
48	06/05/12	06/06/12	letter/report	Regnante, Sterio & Osborne	Prelim Geotech Report
49	06/05/12	06/06/12	letter	Robert Nagi/VHB	Peer Review Update
50	06/11/12	06/11/12	report/plans	Allen & Major	requested add'l info
51	06/15/12	06/15/12	letter w/info	Regnante, Sterio & Osborne	Siesmologist info
52	06/18/12	06/12/12	letter	Linda/Timothy Ahern	public concerns
53	06/18/12	06/18/12	info	City Solicitor	info fr USEPA RE Olin site
54	06/18/12	06/18/12	report	McKown Assoc	rock cut slope report
55	06/18/12	06/18/12	report	City Solicitor/USEPA	Blasting/Olin site
56	06/19/12	06/19/12	letter w/info	Regnante, Sterio & Osborne	info RE Traffic/Weight limits
57	06/19/12	06/19/12	letter/report	Robert Nagi/VHB	Peer Review
58	06/19/12	06/20/12	letter	Carla/Robert McDonough	public concerns
59	06/20/12	06/20/12	letter	Diane Autenzio	public concerns
60	06/20/12	06/20/12	letter	Ed Flynn	public concerns
61	06/20/12	06/20/12	letter	Andrea Linehan	public concerns
62	06/20/12	06/20/12	letter	Lorraine Macario	public concerns
63	06/21/12	06/21/12	info	Regnante, Sterio & Osborne	blasting quantities table
64	06/22/12	06/22/12	letter w/info	Regnante, Sterio & Osborne	construction schedule
65	06/25/12	06/25/12	letter w/info	Regnante, Sterio & Osborne	equipment list
67	06/29/12	06/29/12	letter w/info	Regnante, Sterio & Osborne	revised equipment list
68	07/06/12	07/06/12	letter w/info	Regnante, Sterio & Osborne	supplemental information
69	07/05/12	07/10/12	letter	Allen & Major	input on drainage
70	07/11/12	07/12/12	info	Peter Donohoe, Tr Regnante, Sterio & Osborne	revised equipment list

71	07/13/12	07/11/12	e-mail	Regnante, Sterio & Osborne	revised equipment list
72	07/16/12	07/12/12	letter	Town of Wilmington	opposition RE truck route
73	07/17/12	07/17/12	letter	Robert Nagi/VHB	peer review comments
74	07/18/12	07/18/12	letter	Robert/Andrea Litchfield	public concerns
75	07/18/12	07/18/12	letter	Regnante, Sterio & Osborne	opinion letter
77	07/19/12	07/19/12	letter	Tasha Vincent	public concerns
78	07/20/12	07/23/12	follow up	VHB	follow up from consultants
79	07/20/12	07/20/12	letter w/info	Regnante, Sterio & Osborne	response to traffic concerns
80	07/20/12	07/20/12	letter w/info	Regnante, Sterio & Osborne	response to rock slope concerns
81	07/23/12	07/24/12	letter	Regnante, Sterio & Osborne	suggested site visit
82	07/28/12	07/30/12	letter	Rosie Stygles	public concerns
83	07/30/12	07/30/12	letter	Lorraine Macario	public concerns
84	08/02/12	08/02/12	letter w/info	Regnante, Sterio & Osborne	info RE dust/blasting
85	08/06/12	08/06/12	letter w/info	Allen & Major	submittal w/plans
86	08/06/12	08/06/12	info	Allen & Major	Drainage report
87	08/06/12	08/06/12	info	Allen & Major	operation/maintenance plan
88	08/08/12	08/08/12	email	Bob Collins	public concerns
89	08/09/12	08/09/12	questions/info for upcoming meeting	Regnante, Sterio & Osborne	request
90	08/12/12	08/13/12	letter	Woburn Neighborhood Assoc	public concerns
91	08/13/12	08/13/12	info	City Solicitor	updated MAPC info
92	08/13/12	08/13/12	letter	Rayne Macario	public concerns
93	08/13/12	08/14/12	letter	Linda Ahern	public concerns
94	08/14/12	08/14/12	letter	Claire Theobald	public concerns
95	08/15/12	08/15/12	proposed truck routes	TEC/Rebecca Brown	proposed truck routes
96	08/15/12	08/15/12	letter w/info	VHB	follow up summary
97	08/15/12	08/15/12	letter	Saunders Drilling/Blasting	response to Bds inquiries
98	08/15/12	08/15/12	letter	Miller Engineering	follow up rock face slope
99	08/26/12	08/27/12	letter	Barbara Socha	public concerns
100	08/25/12	08/27/12	letter	Ald Michael Raymond	forwarded public concern/questions
101	08/29/12	08/29/12	letter w/info	Regnante, Sterio & Osborne	Carbon Monoxide info
102	09/04/12	09/04/12	letter	McKown Assoc	peer review comments
103	09/10/12	09/10/12	letter	Regnante, Sterio & Osborne	comm w/Wilmington
104	09/10/12	09/10/12	information	Regnante, Sterio & Osborne	watershed study
105	09/11/12	09/11/12	letter	Allen & Major	response to VHB concerns
106	09/11/12	09/11/12	information	Allen & Major	neighborhood wa
107	09/11/12	09/11/12	letter	McKown Assoc	opinion letter
108	10/05/12	10/05/12	letter	Regnante, Sterio & Osborne	letter