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BRAintree, MA

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**TOWN OF BRAINTREE
ZONING BOARD OF APPEALS**



**FEBRUARY 10, 2020
COMPREHENSIVE PERMIT DECISION
ZBA APPLICATION: (40B-2017-02)**

**PARKSIDE CONDOMINIUMS
383-385 WASHINGTON STREET/0 STORRS AVENUE AND ALVES WAY
APPLICANT: 383 WASHINGTON STREET, LLC**

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Date Application Filed: February 14, 2017

Application Type: Comprehensive Permit - MGL Chapter 40B Sections 20-23, including Approval Not Required Subdivision Plan - MGL Chapter 41 Sections 81(L) (M) and (P)

Applicant: 383 Washington Street, LLC (the "Applicant")
c/o The Holland Companies
Paul Holland, Principal
519 Albany Street, Suite 200
Boston, MA 02118

Subsidizing Agency: MassHousing (*Anticipated Perm. Financing (NEF Bank- South Shore Bank)*)

Location of Property: 383-385 Washington Street; 0 Storrs Avenue and Alves Avenue
Braintree, Massachusetts ("The Property")

Assessors' Reference: Portion of: Assessor Plan 2028, Plots 31 and 32-A

Zoning of Property: General Business

Zoning Overlay: Village District

Area of Property: The existing site consists of Two (2) Assessor lots and the Alves Way private layout for a total area of 114,193 Sq. Ft.

An Approval Not Required Subdivision Plan was filed with the Comprehensive Permit Application that includes the creation of a lot for this Development that is 20,327 Sq. Ft.

Description of Project: The Comprehensive Permit seeks to construct two (2) townhouse-style buildings for total of eight (8) home-ownership units, 25% of which will be designated as affordable to households at or below 80% of the Area Median Income (AMI) (the "Project"). One building contains 5 units fronting on Storrs Avenue and one building contains 3 units behind it to the South. The Development also includes a total of 21 vehicle parking spaces (16 within the garages and driveways of the units and 5 exterior for guests and resident overflow), along with associated drainage, landscaping, utility and lighting improvements.

Residential Units Mix:

<u>No. of Units</u>	<u>Unit Type</u>	<u>No. Affordable Units</u>	<u>No. Market Units</u>
8	3 - Bedroom	2	6

No Handicapped Accessible Units are provided.

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Members Participating: Stephen Karll (Chair), Richard McDonough, Michael Ford and Gary Walker (Alternate) (the “ZBA” or the “Board”) Member Ford was absent from the hearing held on August 1, 2019 but filed a certification of compliance with G.L. c. 39, Sec. 23D with the Town Clerk on August 9, 2019, which was read into the record at the Board’s August 23, 2019 hearing. Member Walker was absent from the hearing held on October 23, 2019 but filed a certification of compliance with G.L. c. 39, Sec. 23D with the Town Clerk on November 6, 2019, which was read into the record at the November 20, 2019 hearing session.

Members Voting: Stephen Karll (Chair), Richard McDonough and Michael Ford

Public Hearing Sessions: March 13, 2017 Public Hearing Opened

- Zoning Board of Appeals (ZBA) Asserts “1.5% GLAM Safe Harbor”

March 23, 2017 ZBA Files Safe Harbor Notice with Department of Housing and Community Development (DHCD)
April 4, 2017 Applicant challenges Safe Harbor Notice with DHCD
May 4, 2017 DHCD denies ZBA Safe Harbor
May 22, 2017 Safe Harbor Initial Pleading for Interlocutory Appeal Filed with Housing Appeals Committee (HAC)
June 27, 2019 HAC Interlocutory Decision on Safe Harbor Issued – HAC found ZBA failed to satisfy its burden of proof to substantiate 1.5% GLAM safe harbor

August 1, 2019 Public Hearing Resumed – Member Ford Absent

- See Extension Agreement from Applicant filed with Town Clerk July 23, 2019.

September 23, 2019 Public Hearing Session

- Member Ford certified compliance with M.G.L. c. 39, Sec. 23D Re: August 1, 2019 Public Hearing

October 7, 2019 No Testimony Taken

- Mutually Agreed to extension of time to close the Public Hearing from November 17, 2019 to December 6, 2019

October 23, 2019 Public Hearing Session - Alternate Member Walker Absent

November 20, 2019 Public Hearing Session

- Alternate Member Walker certified compliance with M.G.L. c. 39, Sec. 23D Re: October 23, 2019 Public Hearing

December 2, 2019 Public Hearing Session

December 4, 2019 No Testimony Taken

- Mutually Agreed to extension of time to close the Public Hearing from December 6, 2019 to December 17, 2019

December 16, 2019 Public Hearing Session

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- Mutually Agreed to extension of time to close the Public Hearing from December 17, 2019 to January 9, 2020

January 6, 2020 Public Hearing Session

January 8, 2020 Public Hearing Session

- Public Hearing is Closed

January 27, 2020 Deliberation Session

February 10, 2020 Deliberation Session

Deadline to Close Public Hearing: November 17, 2019 with Extensions thru January 9, 2020

Public Hearing Closed: January 8, 2020

40 Day Decision Deadline: February 17, 2020

ZBA Vote on a Decision: February 10, 2020

Decision Filed with Town Clerk: February 13, 2020

I. PROCEDURAL HISTORY

On February 14, 2017, the Applicant filed a Comprehensive Permit Application, under General Laws Chapter 40B, Sections 20 – 23 for a residential development at 383-385 Washington Street and 0 Storrs Avenue. The development consists of eight (8) home-ownership units of which two (2) will be low/moderate income units (at or below 80% AMI). A Project Eligibility Letter was issued by the Massachusetts Housing Finance Agency (“MassHousing”) on February 10, 2017.

1. Notice of the public hearing was published in The Patriot Ledger on February 24, 2017 and March 3, 2017, and notice was sent by U.S. mail to all interested parties on February 24, 2017 and posted in Town Hall as required by G.L. c. 40A §11.
2. The public hearing was opened on March 13, 2017, at which time the Board verbally invoked a safe harbor pursuant to 760 CMR 56.03(3)(b), asserting that the Town had 1.5% of its general land area (“GLAM”) dedicated to affordable housing. The Board notified DHCD and the Applicant in writing of its invocation of this safe harbor on March 23, 2017. On April 4, 2017, the Applicant appealed the Board’s assertion to the Department of Housing and Community Development (“DHCD”), who, later on May 4, 2017, issued a determination finding that the Town has not satisfied the GLAM Safe Harbor. Thereafter, the Board filed an interlocutory appeal of this determination to the Housing Appeals Committee (“HAC”) on May 22, 2017, which stayed further proceedings pending the outcome of the appeal per 760 CMR 56.03(8)(c). On June 27, 2019, the HAC issued its Decision on the Interlocutory Appeal Regarding Applicability of Safe Harbor, finding that the Board had not met its burden of proving that the Town had achieved the 1.5% general land area safe harbor and ordering the proceedings before the Board to resume and a Public Hearing to be opened in 30 days. The Board filed a Motion for Reconsideration and Request to Re-Open the Hearing before the Committee with

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the HAC on July 8, 2019, which the Applicant opposed. The HAC issued a decision denying the Motion for Reconsideration on October 11, 2019.

3. Notice of the resumed public hearing was advertised in The Patriot Ledger on July 16, 2019 and July 23, 2019 and notice was sent by the Department via U.S. mail to all interested parties on July 18, 2019 and posted in Town Hall as required by G.L. c. 40A §11. Pursuant to a mutually agreed to extension of the 30-day deadline to resume the public hearing, it was resumed on August 1, 2019.
4. At the resumed public hearing, the Board voted to reaffirm its position that the Town had achieved a safe harbor as at least 1.5% of the Town's general land area is dedicated to affordable housing, and the Board voted to reserve its rights to further assert this safe harbor, upon the conclusion of this public hearing in accordance with 760 CMR 56.03.
5. The Project is proposed for a portion of the Property at 383-385 Washington Street and 0 Storrs Avenue, which is located in the General Business Zoning District and in the Village Overlay District.
6. The Project is located on a portion of the Properties noted above (Current Size 114,193 Sq. Ft./Proposed Project Size 20,327 Sq. Ft.) that are located in North Braintree Square, with access off of Washington Street via the Parking Way and Storrs Avenue. The location is surrounded by office, residential, religious, education/recreation, retail, fast food and restaurant, all types of service and automotive.
7. The portion of the property that is proposed to be utilized for the Comprehensive Permit is approximately 50% paved and was formerly owned by Dave Dinger Automotive Repairs and Herb Chambers Automotive and Collision Centers. This portion of the property has historically been used for the parking of vehicles associated with the previous automotive uses and the current use is open-air parking by abutting businesses and a local private catholic high school in conjunction with their athletic fields.
8. During the public hearing, the Applicant's Principal, Paul Holland, was present and represented by Attorneys Peter L. Freeman, and Ilana M. Quirk of Freeman Law Group, LLC and a 40B Consultant, Lynne D. Sweet of LDS Consulting Group. The Applicant had the following subject matter consultants:

Civil Engineering	James W. Burke P.E. of DeCelle-Burke-Sala
Architect/Lighting	Marquis (Mark) G. Major R.A. of VMY Architects LLC
Traffic Engineering	Jeffrey S. Dirk P.E., PTOE, FITI of Vanasse & Associates, Inc.
Fire Engineering	Kevin S. Hastings P.E., LEED AP of Hastings Consulting
Landscape Architect	LeBlanc Jones Landscape Architects, Inc.

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9. The Board on February 17, 2017 and on February 27, 2017 notified Town departments, local boards and committees of this Comprehensive Permit Application filed on February 14, 2017 and circulated the Application materials and revised/updated materials to the appropriate Departments and received the following comments:

DATE	DEPARTMENT	COMMENT
February 17, 2017	Treasurer/Collector - Barbara Walls	Property is in Good Standing
February 27, 2017	Health Division – Amy L. Carey	Various Board of Health Comments
February 27, 2017	Building Division – Russell Forsberg	No Objections to Proposal
March 1, 2017	Public Works – James Arsenault	Concerns with Trip Generation Volumes, Loss of Parking on Washington Street, Site Distances and Mitigation
March 6, 2017	BELD – Sean Murphy	Plans Do Not Meet BELD Approval
March 7, 2017	Historical Commission – Elizabeth Mees	No Jurisdiction – No Comment
March 9, 2017	Engineering Division – Robert Campbell	Concerns with Utilities/Easements, pedestrian connection along the Parking Way, Storrs Avenue mitigation and lack of on-site open space.
March 10, 2017	Police Department – Lt. Sean M. Lydon	Recommends Favorable Action with concerns noted
March 13, 2017	Fire Department – Chief James O’Brien	Objects to design due to concerns about Accessibility to the Property and Parking Way Access Restrictions

All documents and exhibits received from Town departments, local boards and committees during the public hearing are contained in the Zoning Board of Appeal’s files as listed above in the Table.

10. Based on the length of time to pursue the safe harbor appeal and the fact that Applicant updated some of the submission documents, on August 5, 2019 the Board re-distributed the revised Application Materials to all Town departments and local boards and committees. The Board received written comments from the following departments:

DATE	DEPARTMENT	COMMENT
August 6, 2019	Treasurer/Collector - Barbara Walls	Property is in Good Standing
August 8, 2019	Health Division – Amy L. Carey	Various Board of Health Comments
September 13, 2019	Fire Department – Deputy Chief Sawtelle	Continued Concerns as Noted March 13, 2017
September 19, 2019	Fire Department – Deputy Chief Sawtelle	Turning Radius Materials requested
September 23, 2019	Engineering Division – Robert Campbell	Traffic Concerns, wants to see updated Turning Movements when school in session. Still has concerns and additional concerns as noted in March 8, 2017 Memo.
October 22, 2019	Stormwater Division – Cynthia B. O’Connell	Various Comments/Concerns related to erosion controls, Design and Drainage Plan Content and Operations and Maintenance Plans.

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DATE	DEPARTMENT	COMMENT
November 19, 2019	Water and Sewer Division – Lou Dutton	Dept. has Water and Sewer capacity for the Project at this time, all units must be separately metered and backflow for suppression system must be provided
November 19, 2019	Police Department – Lt. Robert Joseph	Impact on already congested area, complex may become a cut through and sufficiency of parking questioned
November 26, 2019	Stormwater Division – Cynthia B. O’Connell	Revised Materials do not address several comments from October 22, 2019 Letter

All documents and exhibits received from Town departments, local boards and committees during the public hearing are contained in the Zoning Board of Appeal’s files as listed above in the Table.

- In August of 2019, the Board retained Ron Muller P.E., Principal and Kristen Braun, Associate with Ron Muller & Associates of Hopkinton, Massachusetts to serve as the Board’s Transportation and Traffic Peer Review consultant and Deborah W. Keller P.E. Senior Project Manager with Merrill Engineers and Land Surveyors of Hanover, Massachusetts as the Board’s Stormwater/Drainage Peer Review consultant. The Board secured all Peer Review Services and the Applicant funded all of the Peer Review expenses Pursuant to G.L. c. 44, §53G. The Peer Review consultants issued the following comments and reports to the Board.

DATE	FROM/PEER TOPIC	COMMENT
September 13, 2019	Muller – Transportation and Traffic	Concerns and Questions related to: Parking reduction, use in school existing conditions data, evaluate shift from 2016 to 2019, future conditions comments, traffic operations analysis comments, Sight distance Evaluation, pedestrian connection via Parking Way, Fire Access and school bus stop locations.
September 23, 2019	Merrill - Stormwater/Drainage	First Peer Review: Concerns and Questions related to: Stormwater Regulations Sections 1, 2 3 and 4 and MASS DEP Stormwater Standards 1, 2, 3, 4, 8, 9 and 10 as well as several other comments related to the plans and calculations.
October 22, 2019	Merrill - Stormwater/Drainage	Second Peer Review: Comments on revised Plans and Stormwater Calculations dated October 16, 2019. Continued Concerns as noted previously, some items have been resolved. Concerns and Questions related to: Stormwater Regulations Sections 1, 2 3 and 4 and MASS DEP Stormwater Standards 1, 2, 3, 4, 8, 9 and 10 as well as several other comments related to the plans and calculations.
October 31, 2019	Muller – Transportation and Traffic	The revised materials address some of the concerns raised. Comments related to Mitigation, provide on street parking plans, sight line conditions, 23.5 Ft. wide drive aisle, plans should show pavement and sign controls for STOP, sidewalk connection from site to Parking Way to Washington and Fire Department Access still must be addressed.

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DATE	FROM/PEER TOPIC	COMMENT
November 27, 2019	Merrill - Stormwater/Drainage	Third Peer Review: Comments on revised Plans dated November 18, 2019 and Revised Stormwater Calculations dated November 23, 2019. Minor Concerns remaining, plans require revisions.
November 27, 2019	Muller – Transportation and Traffic	Suggested Mitigation Conditions
December 2, 2019	Merrill - Stormwater/Drainage	Email Correspondence With Peer Review Engineer and the Applicant’s Engineer and additional questions to be answered.
December 9, 2019	Muller – Transportation and Traffic	Email clarification regarding public inquiry. Item resolved.
January 3, 2020	Merrill - Stormwater/Drainage	Fourth Peer Review: Minor Plan Revisions required. Meets all applicable state and local design standards and criteria

12. The Assistant Director of Planning and Community Development issued memoranda/reports on the following dates: March 10, 2017 (1.5% Safe Harbor), March 23, 2017 (Safe Harbor Notice), September 19, 2019 revised to September 23, 2019 (Transmittal to ZBA), November 19, 2019, revised to December 2, 2019, January 2, 2020 and January 6, 2020 (Waivers) and January 3, 2020 (Project Update)

13. Public Comment

The Board received several comments from the public, in writing and verbally. Written comments are listed below, and verbal comments are memorialized in the minutes of the Board’s hearings.

Written Public Record

March 5, 2017	Letter in Support	Caritas Communities – Braintree, MA
July 31, 2019	Request to Delay Public Hearing Due to Vacation	John T. Haran Jr., Resident
September 23, 2019	Letter in Opposition	Anthony Preston, Resident
December 16, 2019	Several Concerns in Opposition	Jill Coyle, Resident
January 6, 2020	Several Concerns in Opposition	Jill Coyle, Resident
January 8, 2020	Several Concerns in Opposition	Cathy Mosesso, Resident

Public Hearing Record

The Board conducted several sessions during the Public Hearing in which several residents provided comments related to traffic congestion, fire safety and access, vehicle access, drainage, cut through traffic, density, overall size, lack of on-site recreation/open space, disruption to area businesses, water and sewer capacity, parking and snow storage. Most of the public comments were in opposition to the Project. A couple of comments regarding drainage were positive.

PLEASE SEE THE BOARD MEETING MINUTES FOR A RECORD OF ALL PUBLIC COMMENT

II. APPLICATION MATERIALS/REPORTS/INFORMATION AND PLANS

The Comprehensive Permit Application for Parkside Apartments, filed on February 14, 2017, included the following plans, reports and submissions as either part of the submission, part of the Peer Review Process or necessitated through other means or requests during the Public Hearing process.

1. Zoning Board of Appeals Application Form
2. ZBA Zoning Computation Form
3. Gatehouse Media Authorization Form
4. Narrative Description and Development Summary for Parkside Apartments, Braintree, Massachusetts
5. Application to MassHousing for Chapter 40B Project Eligibility/Site Approval
6. MassHousing Project Eligibility/Site Approval letter dated February 10, 2017
7. Property Deed dated December 27, 2012 that was stamped in at the Norfolk County Registry of Deeds on December 28, 2012 for the Property and description of Land and ownership entity, including plans to transfer to a "limited dividend organization".
8. Site Engineering Report (Includes Stormwater Calculations)
Prepared By: DeCelle-Burke-Sala
Dated: February 2, 2017, revised to October 7, 2019 and November 23, 2019 and December 31, 2019

9. Site Plan

Plan Set Title: Parkside Apartments and Parkside Condominiums
Proposed Chapter 40B Residential Project
383-385 Washington Street
Braintree, Massachusetts

Prepared By: Decelle-Burke-Sala

Dated: February 2, 2017 and Revised in 2019 as noted below;

<u>Sheet</u>	<u>Title</u>	<u>Revised On</u>	<u>Final Revision</u>
1	Cover Sheet	October 16, November 18 & December 2	December 18, 2019
2	Existing Conditions	October 16, November 18 & December 2	December 18, 2019
3	Construction Management	October 16, November 18 & December 2	December 18, 2019
4	Proposed Subdivision	October 16, November 18 & December 2	December 18, 2019
5	Proposed Site Layout	October 16, November 18 and December 2 and 18	January 6, 2020
6	Proposed Site Grading	October 16, November 18 and December 2 and 18	January 6, 2020
7	Proposed Site Utilities	October 16, November 18 & December 2	December 18, 2019
8	Proposed Utility Profile	October 16, November 18 & December 2	December 18, 2019
9	Construction Details	October 16, November 18 & December 2	December 18, 2019
10	Construction Details	October 16, November 18 & December 2	December 18, 2019
	Proposed Average Grade Elevation		January 6, 2019

10. Narrative Description of Design Approach

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11. Architectural Plans

Prepared By: VMY Architects LLC
Plan Set Title: Comprehensive Permit Submission
Parkside Condominiums (Buildings B and C)
383-385 Washington Street
Braintree, Massachusetts
Dated: February 6, 2017

<u>Sheet</u>	<u>Title</u>
T-1	Title Sheet
A-1	Plans
A-2	Elevations & Dwelling Unit Section

12. Waiver List, Lot 2 - Parkside Townhouses, Braintree, MA

Dated: Undated and Revised to November 3, 2019, December 19, 2019
and January 7, 2020 Letter and Email

13. Application to MassHousing for Chapter 40B Project Eligibility/Site Approval
Financial Information – Initial Pro Forma

14. MassHousing – Sustainable Development Criteria and Scorecard

15. Environmental & Energy Phase I and Phase II Environmental Site Assessment (Executive Summary),
dated January 17, 2013 was part of the original Application Submission and subsequently the full report
was filed August 7, 2019, also dated January 17, 2013.

16. Parkside Condominiums Braintree – Affordable Housing Marketing Plan – February 2017

17. Statement of Qualification of the Developer, Property Owner and Consultants including Resumes

18. Transportation Impact Assessment, Correspondence and Peer Review Responses

Parkside Apartments and Condominiums
383 – 385 Washington Street
Braintree, Massachusetts

Prepared by: Vanasse & Associates, Inc.
Report Dated: Draft and Final February, 2017, July 2019 and October 18, 2019
Peer/Correspondence Dated: September 20, 2019, (2) September 23, 2019, October 29, 2019,
December 9, 2019

19. Certified Abutters List – Dated February 1, 2017 and revised to July 18, 2019

20. Copy: Zoning Board of Appeals Presentation by the Holland Companies August 1, 2019

21. Applicant Response to Stormwater Peer Review

Prepared By: Decelle-Burke-Sala
Dated: October 16, 2019, November 23, 2019, Email December 2, 2019 and
December 18, 2019

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22. Lighting Plan and Details

Prepared By: VMY Architects LLC
Plan Set Title: SL-1 Site Lighting Photometric Plan
Parkside Apartments and Condominiums
385 Washington St Apartments Braintree, MA
Dated: November 18, 2019
Details: Cut Sheets (Wall Packs and Pole Lighting)
Dated: Received November 20, 2019

23. Fire Access and Circulation Plans and Memorandums

Plan Title: Emergency Vehicle Access Sketch (2 Pages)
Parkside Apartments and Parkside Condominiums
Proposed Chapter 40B Residential Project
383-385 Washington Street
Braintree, Massachusetts
Prepared By: Decelle-Burke-Sala
Dated: February 2, 2017 and Revised to August 21, 2019, September 23, 2019,
October 16, 2019, October 18, 2019, October 30, 2019 and December 11, 2019

24. Proposed Sight Distance

Plan Title: Storrs Avenue
Parkside Apartments and Parkside Condominiums
Proposed Chapter 40B Residential Project
383-385 Washington Street
Braintree, Massachusetts
Prepared By: Decelle-Burke-Sala
Dated: September 23, 2019

25. Landscaping Plan

Prepared By: LeBlanc Jones Landscape Architects, Inc.
Plan Set Title: Parkside Apartments
Braintree, MA

<u>Sheet</u>	<u>Title</u>	<u>Date</u>	<u>Revision</u>
L100	Overall Planting Plan	November 15, 2019	November 22, 2019
L200	Planting Details	November 8, 2019	

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III. Relief from Local Rules, Regulations and Bylaws

The Applicant shall comply with all bylaws, rules and regulations of the Town of Braintree unless: (1) specifically waived hereunder; or (2) as set forth elsewhere in this Decision. Nothing herein may be construed as a waiver of any applicable state or federal law.

No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of any local fee or charge has been granted. These waivers are granted to the extent necessary for the Applicant to construct the Project as shown on the Final Plans, which are those revised plans presented to the Board in this proceeding. Any subsequent revision to the Final Plans, including but not limited to revisions that are apparent in the Final Plans approved by the Subsidizing Agency that require additional or more expansive waivers of any local by-laws or regulations must be approved by the Board in accordance with 760 CMR 56.05(11).

The following specific waivers are granted as and to the extent set forth below:

<u>Regulations Governing the Subdivision of Land</u>	<u>Regulation/Requirement</u>	<u>This Comprehensive Permit Project Provides</u>	<u>Granted Yes or No</u>
Section III A	Application Submission and Fees Procedural in Nature	Submission of the ANR Plan as part of the Comp. Permit, with no separate Application or Fees	YES 3:0:0
Section III C	Review and Decision Process Procedural in Nature	This ANR Plan will be reviewed and voted on as part of the Comp. Permit	YES 3:0:0
Section III D	Extension Procedural in Nature	The statutory time frames allotted for ANR endorsement are not applicable in this case and the Comp. Permit time frames apply	YES 3:0:0
<u>Braintree Zoning Bylaw</u>	<u>Regulation/Requirement</u>	<u>This Comprehensive Permit Project Provides</u>	<u>Granted Yes or No</u>
Section 135-201A	The Building Inspector shall issue no permit unless the plans, specifications and intended use of the premises comply in all respects with the provisions of the Braintree Zoning Bylaw Procedural in Nature	The Braintree Zoning Bylaw does not apply to this Development	YES 3:0:0
Section 135-203	Special Permit and Site Plan Review Requires Planning Board Approval Procedural in Nature	Comp. Permit so neither is Required and The Zoning Board of Appeals is the Comp Permit Granting Authority	YES 3:0:0
Section 135-204	Zoning Board of Appeals Procedural in Nature	The Zoning Board of Appeals is ALSO the Comp Permit Granting Authority	YES 3:0:0

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Comprehensive Permit Decision**

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<u>Braintree Zoning Bylaw</u>	<u>Regulation/Requirement</u>	<u>This Comprehensive Permit Project Provides</u>	<u>Granted Yes or No</u>
Section 135-302	Use and Structures to Comply with Density and Use Requirements Procedural in Nature	The Braintree Zoning Bylaw does not apply to this Development	YES 3:0:0
Section 135-401	Permit Granting Authority Procedural in Nature	The Zoning Board of Appeals is ALSO the Comp Permit Granting Authority	YES 3:0:0
Section 135-407	Variances Procedural in Nature	Comp. Permit so not required. All deviations from the Braintree Zoning Bylaw are reviewed through the Comp. Permit Process.	YES 3:0:0
Section 135-502	Site Plan Review Requirement Procedural in Nature	Comp. Permit so not required and all Site Plan Review Components are reviewed through the Comp. Permit Process.	YES 3:0:0
Section 135-503	Special Permit Procedures Procedural in Nature	Comp. Permit so not required and all Special Permits are reviewed through the Comp. Permit Process.	YES 3:0:0
Section 135-601	Table of Principal Uses Procedural in Nature	Use Special Permit for Multi-Family Dwellings in a General Business District. Comp. Permit so not required and all Special Permits are reviewed through the Comp. Permit Process.	YES 3:0:0
Section 135-613C	Village Overlay District Applicability Procedural in Nature	Overlay Districts to not Apply to Comp Permits	YES 3:0:0
Section 135-613D	Village Overlay District Permitted Uses Procedural in Nature	Use Special Permit for Multi-Family Dwellings in a General Business District applies in Village Overlay. Comp. Permit so not required and all Special Permits are reviewed through the Comp. Permit Process.	YES 3:0:0
Section 135-613F(2)	Village Overlay District Dimensional Requirements	<p>A waiver from the maximum setback requirement is required. The setback shown on the Plans is 22 Ft. where a maximum of 15 Ft. is allowed.</p> <p>A waiver is required from the side setback range of 0 to 10 Ft. The minimum side yard setback shown on the Plans is 7.5 Ft.</p> <p>A waiver is required from the rear yard setback. The setback shown on the Plans is 6.7 Ft. where 20 Ft. is required.</p> <p>A waiver is required from the front yard setback range of 0 to 10Ft. The minimum front setback shown on the Plans is 6.9 Ft.</p>	YES 3:0:0

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<u>Braintree Zoning Bylaw</u>	<u>Regulation/Requirement</u>	<u>This Comprehensive Permit Project Provides</u>	<u>Granted Yes or No</u>
Section 135-613G	Village Overlay District Submission Requirements Procedural in Nature	Submission of all materials and plans are part of the Comp. Permit, with no separate Application or Fees	YES 3:0:0
Section 135-701 and 135-701 Notes	General Business District Dimensional Requirements	A waiver from the Lot Width Requirement of 100 Ft. is required. The Lot Width shown on the Plans is 79.05 Ft. A waiver from the front yard setback requirement of 10 Ft. is required. The front yard setback shown on the Plans is 6.9 Ft. A waiver from the rear yard setback requirement of 20 Ft. is required. The rear yard setback shown on the Plans is 6.7 Ft. A waiver from the side yard setback requirement of 10 Ft. is required. The side yard setback shown on the Plans is 7.5 Ft.	YES 3:0:0
Section 135-705	Multifamily Dwellings Minimum Lot Area Density per Bedroom Count 7,000 SF for each 3 Bedroom 7,000 SF for each 3 Bedroom 8 Units = 56,000 Sq. Ft. Lot Area Required Based on Unit Mix 56,000 Sq. Ft.	This Comp Permit exceeds the maximum allowed density and provides for the Following land area. Lot Size = 20,327 Sq. Ft. Based on the lot size, each unit provides for about 2,541 Sq. Feet of Land, which equals a density of 17.14 Units per Acre.	YES 3:0:0
Section 135-705	Multifamily Dwellings Minimum Open Space of 2,000 Sq. Ft. per Unit or a total of 16,000 Sq. Ft.	This Comp. Permit Does not provide the minimum 2,000 Sq. Ft. of Open Space that is required per Unit, it provides 635 Sq. Ft. per Unit for a total of 5,080 Sq. Ft.	YES 3:0:0
Section 135-711B, C, D, E	Site Plan Review Multifamily Procedural in Nature	Site Plan Review is required for all Multifamily Developments. Comp. Permit so not required and all Site Plan Review is conducted through the Comp. Permit Process.	YES 3:0:0
Section 135-808B	Standards for Parking Requires that all spaces are independent and does not allow for tandem parking.	Tandem Parking will be provided with a parking spaces in each townhouse garage and a space behind it in the driveway.	YES 3:0:0
Section 135-1201B	Grading Regulations A Grading Permit review would be included as part of the Special Permit/Site Plan Review. Procedural in Nature	Comp. Permit so not required and all Grading Review is conducted through the Comp. Permit Process. The Site is a Net fill of 3,107 Cubic Yards.	YES 3:0:0
Section 135-1201G	Grading Regulations Procedures for Application Procedural in Nature	Submission of all materials and plans are part of the Comp. Permit, with no separate Application or Fees	YES 3:0:0

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**Parkside Condominiums
Comprehensive Permit Decision**

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<u>Braintree Zoning Bylaw</u>	<u>Regulation/Requirement</u>	<u>This Comprehensive Permit Project Provides</u>	<u>Granted Yes or No</u>
Section 135-1201H(5)B	Grading Regulations Excavation Procedural in Nature	There may be temporary excavation below seasonal groundwater for utility installations that would be back filled.	YES 3:0:0
Section 135-1201H(7)C	Grading Regulations Grading Standards This Section requires a slope of 24 inches over 1Ft. for the first 6 ft. around the building.	Minimum Grading at building is 50 Inches to 1 Ft. or 2%	YES 3:0:0
Section 135-1201H(12) a-d	Grading Regulations Grading Standards Setbacks	This Section requires that all cuts and fills be certain distances from the property line but allows them to be waived by constructing a retaining wall, which is being constructed.	YES 3:0:0
N/A	Waive All Town Fees Associated with the Development of the Affordable Units	The total estimated Fees requested to be waived is about \$13,128.00	NO 3:0:0

IV. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by M.G.L. c. 40B, §§ 20-23 and its implementing regulations, 760 CMR 56.00 et seq., the Board’s Comprehensive Permit Regulations dated October 25, 2016, and by all governing Town ordinances, bylaws and regulations. The Board also considered evidence and testimony presented at the public hearings and comments submitted by the Applicant and/or its representatives, Town departments, local boards and committees as well as the Board’s peer review consultants and residents.

A. Jurisdictional Requirements

The Board finds that the Applicant has adequately demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:

1. The Applicant has indicated in its application that it will conform to the limited dividend requirements of G. L. c. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 519 Albany Street, Suite 200, Boston, MA 02118.
2. The Applicant has received a written determination of Project Eligibility from the Massachusetts Housing Finance Agency (“MassHousing”) dated February 10, 2017, a copy of which was provided to the Board with the original application.
3. The Applicant has “Site Control” pursuant to M.G.L. Chapter 40B section 21 and 760 CMR 56.04 (1) in that the Property is currently owned by 383 Washington Street LLC, the Applicant, who intends to transfer the Property to a related limited dividend organization, Braintree Parkside Apartments, LLC, pursuant to an option agreement. The Applicant provided a copy of the deed dated December 27, 2012 that was stamped in at the Norfolk County Registry of Deeds on December 28, 2012 for the Property.
4. The Applicant has agreed to execute a Regulatory Agreement that limits its profits in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by the Department of Housing and Community Development (“DHCD”).

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B. Statutory Minimum for Low and Moderate Income Housing

Based on the Subsidized Housing Inventory maintained by the Department of Housing and Community Development, as of February 14, 2017, the Town of Braintree has 7.81% of its available housing units dedicated to low and moderate-income households.

The Board maintains that the Town has 1.5% of its general land area dedicated to affordable housing and therefore qualifies for a safe harbor pursuant to 760 CMR 56.03(3)(b) ("Safe Harbor"). The Board voted to assert this Safe Harbor at the initial public hearing on March 13, 2017, but in a letter dated May 4, 2017 the Department of Housing and Community Development determined that the Town had not achieved this Safe Harbor. The Board appealed this determination to the Housing Appeals Committee, who issued an Interlocutory Decision Regarding Safe Harbor on June 27, 2019, finding that the Town had not met its burden of proving that this Safe Harbor had been achieved and ordering the Board to reconvene its proceedings on this application. The Board filed a Motion for Reconsideration and to Re-Open the Hearing before the Committee on July 8, 2019, which was denied on October 11, 2019. On August 1, 2019, the Board resumed the public hearing but also voted to re-assert its position that the Town has 1.5% of its general land area dedicated to affordable housing as provided in 760 CMR 56.03(3)(b), notwithstanding the Interlocutory Decision on Safe Harbor rendered by the Housing Appeals Committee on June 27, 2019 and further voted to reserve its rights to challenge the Interlocutory Decision Regarding Safe Harbor in any further appeal pursuant to 760 CMR 56.03(8)(c).

C. Civil Engineering/Site Design/Building Design

The Board finds the Applicant has not demonstrated that they have satisfied all of the concerns of the Town Engineer pursuant to his letters dated March 9, 2017 and September 23, 2019. The comments relate to water and sewer design, caution during construction given the location of the existing sewer easements, provisions for a pedestrian connection from the development(s) via the Parking Way to Washington Street, concerns that the proposed signal timing mitigation at the Storrs Avenue/Washington and Elm Streets intersection will eliminate green time on the main artery (Washington Street) and the lack of on-site passive and active open recreational areas for residents of the Project.

The Board finds that in order to complete the Project 3,107 Cubic Yards of Fill Material will need to be imported to the Site.

The Board finds that the Project is accessed via Storrs Avenue, a public way, and over a right of way (owned by the Applicant), known as Alves Way, provided on an abutting proposed 70-unit Comprehensive Permit development, also owned by the Applicant. The property can also be accessed via a 225 Ft. long private right of way off Washington Street, known as the Parking Way, which is not owned by the Applicant. The site contains a sewer easement along the westerly property boundary and serving the Project site as well as the adjacent Archbishop William's athletic field, the 70-unit proposed Comprehensive Permit development on adjacent property also owned by the Applicant, and multiple properties beyond this site. The Board further finds that the proposed development necessitates the need for access, drainage, water, sewer, gas and electric easements as well as extreme caution around existing easements during site work.

The Board finds the condominiums are townhouse-style units with 2.5 stories for a maximum height of 39.6 Feet.

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D. Stormwater Management Issues

The Board finds there are extensive public concerns about historical down-stream flooding.

The Board finds the Applicant has mitigated the rate of stormwater run-off leaving the site through detention and infiltration of a watershed area that includes upstream properties, and therefore, the post-development rate of flow for all storm events will be reduced by as much as 7.83 CFS less than current rates of flow. In fact, the Board finds that the Project, as proposed, will capture stormwater run-off on-site, detain it and treat it through a subsurface infiltration system, which is an improvement over current conditions.

The Board finds this topic was subject to a Peer Review and the Board is satisfied that the Stormwater Management System Plan, Design and Calculations, as revised based on the Peer Review Consultant's recommendations, are acceptable.

E. Transportation, Circulation, Pedestrian and Vehicular Safety

The Project will be accessed via Storrs Avenue, a public Town street, across a private access known as Alves Way, and via a 225 Ft. long private right of way off Washington Street, known as the Parking Way. The access at Storrs Avenue is located just over 300 feet west of the signalized intersection of Storrs Avenue and Washington Street. Alves Way is a private right of way access to the site also shared by three commercial condominium units at 14 Storrs Avenue and is also proposed to be shared with a 70-unit rental comprehensive permit Project, owned by the same Applicant. The Parking Way is a 20-foot wide easement, privately owned by party(s) other than the Applicant and grants the abutting properties along and to the rear of Washington Street and the Parking Way the right to pass. There is no sidewalk on the southerly side of the Parking Way. On the northerly side of the Parking Way, there is a limited stretch of sidewalk from Washington Street westerly 130 feet towards the Project site. Parking is not restricted along the Parking Way and historically, parking occurs on both sides of the Parking Way.

The Board finds the location of the development's access from the Parking Way and Storrs Avenue, creates an opportunity for vehicles stuck in traffic to cut through the site to bypass the intersection and use densely settled residential streets in the neighborhood to get to the highways and other points north. To discourage cut-through traffic, the Board finds the Applicant proposes to install a speed table within the drive aisle of the proposed 70-unit apartment development.

The Board finds that the Applicant will improve sight distance by removing existing tall vegetation along the Storrs Avenue access and replacing it with low-lying vegetation. The Board finds that in order to ensure appropriate sight lines at the Parking Way intersection, the Applicant would need to undertake striping and signage to restrict parking along the Parking Way and to prohibit parking for the first 20 feet of the Parking Way from its intersection with Washington Street, but the Applicant would need the permission of the property owner(s) to perform this work. These are required to ensure safe sight line distances for all vehicles and adequate fire apparatus access to the site.

The Board finds the Project provides for no accessible sidewalks compliant with the Americans with Disabilities Act (ADA) to Washington Street from the Parking Way entrance. The Board finds that the Applicant has not demonstrated the legal ability to alter the Parking Way, in a manner that would address the various concerns raised during the Public Hearing. They are not able to eliminate parking, widen the traveled way or provide for an ADA accessible sidewalk. In fact, the Board notes that the

Town Assessors' records indicate that the Parking Way is owned by others unrelated.

The Board finds this topic was subject to Peer Review, and the Board is satisfied that the Traffic Mitigation Design and Methodology used, and as revised based on the Peer Review Consultant's recommendations, are acceptable based on the traffic, municipal parking mitigation and pedestrian improvements along the Parking Way, subject to the consent of the owner(s), and sight line improvements the Applicant has agreed to perform along Storrs Avenue. Specifically, the Applicant proposes to design and implement an optimal traffic signal timing and phasing plan, that includes ADA and pedestrian improvements at the Storrs/Washington/ Elm Intersection which may improve the number of vehicles that can move out of Storrs Avenue but will revise the green light time at the other two approaches that will result in longer delays along the main artery (Washington Street) as well as additional vehicle stacking. Currently, this intersection overall operates at an overall Level of Service ("LOS") E.

The mitigated intersection will be improved to an overall LOS D. However, some of the approaches at the overall intersection will experience longer delays and a decrease in LOS.

The Board finds the current traffic congestion in and around the Storrs/Washington/ Elm Intersection to be fairly heavy in the AM Peak Period with approximately 1,900 cars utilizing the intersection and 1,982 cars utilizing the intersection in the PM Peak Period.

The Board finds that while the Projected AM and PM Peak Hour vehicle increase caused by the Project as represented in the Traffic Impact Assessment are not significant, any new trips in the network results in increased congestion.

The Board finds that the proposed access for this Project from Washington Street via the "Parking Way", which is a private 20 Foot wide right of way easement is also used to access the properties to the North and South at 381, 389, 391 and 395 Washington Street and the Municipal Parking Lot.

The Board finds that while no formal or legally binding parking easements are in place, as a practical matter, portions of this property were utilized by abutting (educational/recreational and religious) uses as off-street parking during peak parking demands of the abutting uses. The loss of the use of this property for said peak parking periods may result in additional vehicles parked in the abutting neighborhood.

The Board finds that the Braintree Police Department through written testimony and verbal testimony at the Public Hearing have noted that increases in traffic continues to be a concern.

G. Fire Access Issues

The Board finds the Fire Department has not expressed any negative aspects or public safety concerns related to life and fire safety or access to the townhouses.

The Board finds the Fire Department has physical access to three (3) sides of Building C and four (4) sides of Building B.

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The Board finds the construction and placement of these units is more in keeping with a single-family home, with direct access to each unit. In general the Project provides adequate fire access from Storrs Avenue in the event of a fire or life safety emergency, with the use of the Alves Way easement and circulation aisles designed for this Project, in conjunction with the drive aisles designed for the proposed 70-unit Comprehensive Permit development on the abutting site, also currently owned by the Applicant.

The Board agreed with the Braintree Fire Department and the Board's Traffic Peer Review consultant that access to the site from Washington Street onto the Parking Way will require a prohibition on parking for the first 20 feet of the Parking Way from the intersection with Washington Street. However, as noted above, the Applicant does not have control over the Parking Way to prohibit parking anywhere long the Parking Way.

G. Landscaping Design

The Board finds, as noted by the Town Engineer, that the Project provides no on-site recreation or open spaces areas for residents, except for the small private decks and porches attached to the units. The Board finds that open space, and in particular green space, is limited to required landscaped strips surrounding the buildings or serving as required landscaped buffers from lot lines. Townhouses consisting of three bedrooms each invite families, who need recreational area. The Board finds that the provision of recreational areas to accommodate the residents of this Project is a valid Local Concern and the Applicant has failed to provide adequate outdoor recreational area.

The Board finds that the Landscape Design will need to be continually replaced in the spring due to the use of landscaped areas for snow storage.

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H. Consistency with Local Needs

The Board finds that the Town has satisfied one of the statutory minima defined at 760 CMR 56.03(3)(b). Specifically, the Board finds that Subsidized Housing Inventory (“SHI) eligible units exist on sites comprising 1.5% of the Town’s general land area, pursuant to 760 CMR 56.03(3)(b). In the Interlocutory Decision on Safe Harbor issued by the HAC on June 27, 2019, the HAC calculated that 1.396% of the Town’s general land area was comprised of sites eligible for the Subsidized Housing Inventory maintained by DHCD. The Board finds that the Interlocutory Decision on Safe Harbor contained erroneous conclusions and omitted calculations of land area that the HAC conceded should have been included but for the fact that the HAC could not easily extrapolate and apply those land areas. The Board also finds that the HAC refused to allow the Town to present the calculations that the HAC was unable to extrapolate, thereby depriving the Town of its opportunity to demonstrate that the 1.5 % land area minimum had been achieved.

The Board re-asserted its position on having achieved this “safe harbor” at the resumed public hearing. Pursuant to 760 CMR 56.03, the Board again asserts that the Town has achieved this statutory minima and that denial of this comprehensive permit application is Consistent with Local Needs.

Upon a motion made and seconded, the Board voted (3-0-0) to approve the Approval Not Required (ANR) Plan creating a separate development lot for this Project. This Plan was endorsed by the Chair of the Board on February 10, 2020.

Upon a motion made and seconded, the Board voted (3-0) that the Parkside Condominium comprehensive permit for 8 townhouses, as proposed, is NOT Consistent with Local Needs, as defined by 760 CMR 56.02 because:

- The Project does not provide sufficient outdoor recreational areas for the intended residents.
- There are no conditions the Board can impose that would address these Local Concerns.
- 1.5% of the Town’s general land area is dedicated to affordable housing qualifying the Town for a “safe harbor.”

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V. Vote

By a vote of **3:0:0**, the Zoning Board of Appeals hereby **DENIES** the Applicant, 383 Washington Street, LLC, a Comprehensive Permit to construct eight (8) Home-ownership units on 383-385 Washington Street, Storrs Avenue and Alves Way in Braintree, MA, in accordance with G.L. c. 40B §§ 20-23 and its implementing regulations at 760 CMR 56.00 et seq., in accordance with the Plans and subject to the conditions herein.

RECORD OF VOTE

The following members of the Zoning Board of Appeals voted to DENY the Comprehensive Permit.

Member:	Vote:	Signature:
Stephen Karll, Chair	YES	
Michael Ford, Member	YES	
Richard McDonough, Member	YES	

The Board and the Applicant have complied with all statutory requirements for the issuance of this Comprehensive Permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Braintree Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

This Decision was filed in the office of the Town Clerk on 02/13/2020.

Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40B, §21 and Chapter 40A, §17, and shall be filed within twenty days after the filing of this decision in the office of the Braintree Town Clerk. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty days after the filing of this decision in the office of the Braintree Town Clerk.

The Comprehensive Permit granted by this Decision shall not take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty-day period or that any duly filed appeal has been dismissed or denied. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision shall be furnished to the Board.