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Shrewsbury, Massachusetts 01545-5338

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SHREWSBURY, MASS

**DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT
MODIFICATION
G.L. C. 40B, §§20-23**

APPLICANT: SMART GROWTH DESIGN, LLC (the "Applicant")

OWNER: HARTFORD REALTY TRUST OF SHREWSBURY, u/d/t
WDRD Book 8104, Page 299, Title Reference: WDRD
Book 8104, Page 312

PROPERTY: 526 Hartford Turnpike (the "Property")

DEVELOPMENT NAME: The Pointe at Hills Farm

DATE: October 14, 2021

I. PROCEDURAL HISTORY

1. On November 28, 2016, the Zoning Board of Appeals (the "Board") voted unanimously (5-0) to approve a Comprehensive Permit for a project known as "The Pointe at Hills Farm," located at 440 Hartford Turnpike ("Phase I") and at 526 Hartford Turnpike ("Phase II") with a number of conditions, including that "the Project shall consist of not more than two hundred and forty-eight (248) rental apartment units in six (6) structures not exceeding fifty feet (50') in height (as measured in accordance with the Town of Shrewsbury Zoning Bylaw), and other related residential amenities, all as shown on the Approved Plans."
2. The Comprehensive Permit decision was filed with the Town Clerk on November 29, 2016 and recorded at the Worcester Registry of Deeds in **Book 56492, Page 292**.
3. On July 29, 2019, the Board voted unanimously to approve an amendment to the Comprehensive Permit decision (as an insubstantial change) which approved an alternative sewer improvements condition, H. 10, as described in an Amendment to Decision on Comprehensive Permit Application, dated July 29, 2019 (the "First

Amendment”). The First Amendment was recorded with said Registry in Book 60943, Page 382.

4. On October 28, 2019, the Board voted unanimously to approve an extension of the term of the Comprehensive Permit decision for a period of two (2) years (i.e., to December 20, 2021), as reflected in a letter, dated November 12, 2019, to Francis Zarette, Manager, Smart Growth Design, LLC, from Paul George, Clerk, Zoning Board of Appeals (the “First Extension”). The First Extension is recorded at the Registry in Book 61462, Page 62.
5. On or about April 21, 2021, an application for a Comprehensive Permit Modification (the “Modification Application”) was received by the Shrewsbury Zoning Board of Appeals. The Modification Application sought a reduction in the the scale, scope and number of proposed units for “The Pointe at Hills Farm.” The owner sold the land area designated for “Phase I” located at 440 Hartford Turnpike in January 2021, and Smart Growth Design, LLC., 625 South Street, Shrewsbury, MA 01545 (or, the “Applicant”) proposes to develop “Phase II” of the Pointe at Hills Farm Comprehensive Permit located at 526 Hartford Turnpike. The site at 526 Hartford Turnpike will include 92 units, at least 23 units (25%) of which will be affordable (the “Project”), on a parcel of land, consisting of eight and ninety three one hundredths (8.93) acres, with a total open space area of seventy two (72%) percent (the “Property”), all as more particularly defined below.
6. The owner of the Property is Hartford Realty Trust u/d/t recorded at said Registry in Book 8104, Page 299, with a place of business located at 291 Grafton Street, Shrewsbury, MA 01545.
7. The Property is described in the Town of Assessors Maps as Tax Plate 48, Plot 009000, and is more particularly described in a deed recorded at the Registry in Book 8104, Page 312.
8. The Project is located on Hartford Turnpike (state highway Route 20), and is located within the Limited Industrial Zoning District. Nearby uses consist of a mix of commercial/industrial uses (on Hartford Turnpike) and single-family residential (located off Stoney Hill Road, which abuts the Project).
9. The Board’s public hearing on the Comprehensive Permit Modification was properly noticed in accordance with G.L. C. 40B, §§20-23, duly opened on April 26, 2021, and was continued to May 24, 2021, June 28, 2021, July 27, 2021, August 30, 2021, and September 27. The public hearing was closed on October 14, 2021.

10. The Applicant provided various materials, reports and revised plans throughout the course of the public hearing on the Comprehensive Permit Modification. A copy of the submittals is available in the Office of the Town's Building Inspector and the full list of submittals is attached hereto as Exhibit A.
11. During the public hearing, the Applicant was assisted primarily by its senior project manager Wayne Belec from Land Design Collaborative, LLC, its traffic consultant Courtney Sudak P.E., from Tetra Tech, and Raymond Willis, P.E., Onsite Engineering, Inc. The Board utilized the services of Justine Carroll, P.E., from Tata & Howard for water design and capacity issues, and Hillary Lacirignola P.E., from Weston & Sampson, for sewer design and capacity issues. Peer review was thorough and cooperative.
12. The opportunity for public input was provided at every hearing. The Board and Town staff reviewed the application, plans, and other submission material. The Board was mindful of the statements and comments of the applicant, the abutters, and the general public.

II. JURISDICTIONAL FINDINGS

13. The Applicant demonstrated its continued eligibility to submit an application for a Modification of a Comprehensive Permit to the Board as set forth in 760 CMR 56.04(1), and the Modification Application was reviewed in accordance with 760 CMR 56.05(11)- *Changes After Issuance of a Permit* as follows:
- a. On March 29, 2021, the Board heard a request from Smart Growth Design, LLC, to consider a reduction in the scope, scale and number of units as an insubstantial change to the previously approved Comprehensive Permit at 440 Hartford Turnpike and 526 Hartford Turnpike as granted by the Board on November 8, 2016, as amended as noted above.
 - b. On March 30, 2021 the Board, in accordance with 760 CMR 56.05(11) voted unanimously with four (4) in favor and zero (0) opposed to find the proposed modification to the previously approved Comprehensive Permit substantial in nature. The Board found that the proposed modifications were substantial in nature due to the size and scale of the proposed changes, including but not limited to the elimination of Phase I of the Project, impact on water and sewer infrastructure, traffic, and other conditions of the approved Comprehensive Permit Decision, dated November 28, 2016, as amended.
 - c. On April 1, 2021, the Applicant submitted an application for a Comprehensive Permit Modification. The application sought a reduction in the the scale, scope and number of proposed units for “The Pointe at Hills Farm,” on the subject property by eliminating “Phase I” located at 440 Hartford Turnpike from the Project. The Applicant proposes to develop the remaining portion of the Property through the Pointe at Hills Farm Comprehensive Permit (formerly known as “Phase II”) on the Property. The Project will include no more than ninety-two (92) units, at least twenty-three (23) of which (or 25%) will be affordable, on the Property.
14. The Town of Shrewsbury does not meet the statutory minima set forth in G.L. c. 40B § 20 and in 760 CMR 56.03(3) to 56.03(7):
- a. At the time of the filing of the application for a Comprehensive Permit, the number of low or moderate income housing units in the Town of Shrewsbury constituted 5.9% of the total year-round units in the Town, based on the most recent decennial census. Based upon the latest published Subsidized Housing Inventory for the Town of Shrewsbury (as of December 1, 2020), the number of low or moderate income housing units in the Town of Shrewsbury constitutes 6.4% of the total year-round units in the Town. Thus, the Town does not meet the 10 percent statutory minimum.

- b. The Town does not have information that there are existing affordable housing units that are on sites which comprise more than one and one half percent (1.5%) of the total land area of the Town which is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof).
- c. The granting of this Comprehensive Permit Modification will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town of Shrewsbury or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
- d. The Town of Shrewsbury has an approved Housing Production Plan pursuant to 760 CMR 56.03(4), but has not achieved certification of such plan.
- e. The Town of Shrewsbury has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5).
- f. The Project does not constitute a Large Project pursuant to 760 CMR 56.05(6).
- g. The Applicant's comprehensive permit application does not constitute a Related Application pursuant to 760 CMR 56.03(7).

III. FACTUAL FINDINGS

- 15. The Project is located on property at 526 Hartford Turnpike (state highway Route 20), also known as the Property.
- 16. The Board recieved a letter from the Applicant and its traffic consultant Courtney Sudak, P.E., of Tetra Tech addressing access and egress for 526 Hartford Turnpike, dated May 20, 2021.
- 17. The Board found that the proposal for access and egress for the Project which provided a driveway on Hartford Turnpike allowing full access (right in/left in) and full egress (right out/left out), and allowing emergency access only to and from Stoney Hill Road, did not require further alteration due to the proposed modification.
- 18. The Board also engaged in peer review of the impacts of the Project on the municipal water system.

19. The Board’s review of the municipal sewer system revealed several capacity issues that would either be created or exacerbated by the proposed Project.
20. The Board’s consultant found that the existing pipe under Route 9 near South Street was flat, and that no increased flow to this pipe was available. The pipe has since been replaced by the Appellant. The Board heard evidence from its consultant that the pump station at Stoney Hill Road cannot accept any additional flow without exceeding its capacity.
21. In addition to the capacity issues at the Stoney Hill Road pump station, the Board also identified capacity concerns with the Cherry Street pump stations. Proposed flows from the Project will require improvements to both pump stations.
22. In addition to the gravity sewer main under Route 9, the additional wastewater from the Project will cause the pipeline capacity of certain downstream gravity sewer segments to be exceeded. Including the gravity sewer main under Route 9, approximately 2,615 linear feet of sewer main requires upgrades and approximately 15,000 linear feet of sewer main requires cleaning and TV visual inspection to ensure adequate sewer service for the Project.
23. The Applicant’s engineer estimated that the cost of the necessary sewer upgrades to serve the Project is approximately \$1,200,000 (the specific upgrades are detailed below in Section H).
24. The Board’s sewer consultant informed the Board that the municipal sewer system is currently functioning within appropriate parameters, with no issues requiring immediate upgrades. The Board’s sewer consultant acknowledged that certain improvements are part of long-term planning for the Town, but that there are no immediate plans to conduct any upgrades of any of the portions of the sewer system discussed above. The Board’s sewer consultant provided its opinion that one hundred percent (100%) of the necessary upgrades to the municipal sewer system are attributable to the Project.
25. The Board finds that granting a Comprehensive Permit Modification, with the conditions and waivers contained below, is consistent with local needs.

IV. DECISION AND CONDITIONS

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby approves the Comprehensive Permit Modification to allow for the construction of 92 rental apartment units pursuant to Chapter 40B, §§ 20-23, in the Project described herein, subject to the conditions set forth below.

The conditions contained within the Comprehensive Permit decision filed with the Town Clerk on November 29, 2016 and recorded at the Worcester District Registry of Deeds in Book 56492, Page 292, as amended by the First Amendment and First Extension (collectively, the “Original Decision”), are hereby amended, restated and superseded in their entirety by the following conditions listed in this Decision and described as follows:

CONDITIONS

Upon Motion, duly seconded, the Board voted five (5) in favor to zero (0) opposed to grant this Comprehensive Permit Modification to the Applicant for the proposed Project, subject to the following Conditions:

General

A.1 Definitions.

The following definitions are incorporated into this Decision:

- a. “Final Plans” means the Approved Plans which: (i) are brought to construction level details; (ii) are submitted to the Board for review and administrative approval; (iii) which include the Final Engineering Drawings and Plans that conform to the requirements of this Comprehensive Permit; and, (iv) which incorporate the conditions herein and specification described in Condition C.1.d below.
- b. “Comprehensive Permit,” or “Decision,” shall mean the Original Decision, as amended and restated by this Decision on Application for Comprehensive Permit Modification.
- c. “Project” shall have the meaning as described in Conditions A.2, A.3 and A.5 below.
- d. “Property,” or “site,” shall mean a parcel of land, consisting of eight and ninety three one hundredths (8.93) acres, also known and numbered as 526 Hartford Turnpike, and described in a deed recorded at the Registry in Book 8104, Page 312, as more particularly depicted on the Approved Plans, and as further described in Condition A.2 below.

A.2 The holder of this Comprehensive Permit is defined as a limited dividend entity, Smart Growth Design, LLC, or the Applicant. The site is defined as the Property which is located at 526 Hartford Turnpike, Shrewsbury, Massachusetts, containing a total of approximately 8.93 acres. The Project is defined as all

features shown on the plans listed below in Condition A.3 or as otherwise required by this Comprehensive Permit.

- A.3 Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project (“Approved Plans”). Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Building Inspector who shall have the authority to approve such changes as immaterial changes. If the Building Inspector determines that the proposed changes do not conform to the requirements of this Comprehensive Permit, she shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this Decision or seek modification in accordance with 760 CMR 56.05(11). The Approved Plans consist of the following:

Site Plans-Comprehensive Permit for The Pointe at Hills Farm in Shrewsbury, Massachusetts (Worcester County),” in eighteen (18) sheets, prepared by WDA Design Group, 31 East Main Street, Westborough MA, prepared for Smart Growth Design LLC, 625 South Street, Shrewsbury MA, dated November 6, 2015, and revised on June 24, 2016, September 20, 2016, April 30, 2019, and on August 12, 2021.

- A.4 The Applicant shall be a Limited Dividend Entity as required by Chapter 40B of the General Laws and it and its successors and assigns, shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.
- A.5 The Project shall consist of not more than ninety two (92) rental apartment units in two (2) structures not exceeding fifty feet (50’) in height (as measured in accordance with the Town of Shrewsbury Zoning Bylaw), and other related residential amenities, all as shown on the Approved Plans. The Project shall consist of nine (9) three-bedroom units, forty two (42) two-bedroom units, and forty one (41) one-bedroom units for a total of one hundred and fifty eight (158) bedrooms. Upon submittal of the Final Plans, the Applicant shall include revised architectural plans accurately depicting the approved bedroom count. Affordable units shall be interspersed evenly throughout the various residential structures.
- A.6 The Project shall consist of a minimum of one hundred and fifty-two (152) outdoor parking spaces and zero indoor (garage) parking spaces (inclusive of required handicap spaces).

- A.7 All residential units approved under this Comprehensive Permit shall be rental apartment units.
- A.8 Pursuant to the Waiver List revised and submitted to the Board at the September 19, 2016 hearing, the Applicant has requested, and the Board has granted, waivers from the Shrewsbury Zoning Bylaw and other local by-laws and regulations as specified in Exhibit B attached hereto. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§20-23. The Board has voted to grant a waiver of fifty percent (50%) of applicable sewer connection and sewer infiltration & inflow ("I & I") fees, in return for the Applicant designing and constructing all sewer upgrades discussed above, subject to a further reduction in fees only by approval by the Board of Sewer Commissioners or other applicable approval authority. No other permits or inspections fee waivers are granted. Any subsequent revision to the Plans, including but not limited to revisions that are apparent in the Final Plans 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). To the extent that additional waivers are subsequently determined to be required with respect to improvements that are otherwise shown on the Approved Plans, such waivers shall be deemed an insubstantial change to the Comprehensive Permit under 760 CMR 56.05(11), and can be granted administratively by the Board.
- A.9 The Applicant shall comply with all local regulations of the Town of Shrewsbury and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
- A.10 The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.
- A.11 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Building Inspector or other Town Departments, the Building Inspector or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission. For submissions that require assistance from an outside consultant, as determined by the Building Inspector or applicable Department Head, the thirty-day time period shall not begin until the consultant's fee has been fully funded by the Applicant.

- A.12 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan construction financing terms as set forth in the financing entity’s Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph. The Board shall receive notice of any change in the principals of Smart Growth Design, LLC during construction of the Project, except if said change is as a result of the exercise by the Project lender of any rights under the applicable Loan Documents.
- A.13 The provisions of this Decision shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The limited dividend restrictions shall apply to the owner of the Project regardless of sale, transfer, or assignment of the project.
- A.14 The sidewalks, driveways, roads, utilities, drainage systems, and all other infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town of Shrewsbury shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and landscape maintenance. In this regard, the driveway within the Project shall not be dedicated to or accepted by the Town as a public way.
- A.15 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board’s behalf subsequent to this Decision.

B. Affordability

- B.1 At least twenty three (23) of the ninety two (92) units in the Project (or 25% of the units) shall be low- or moderate-income units, meaning they shall be rented to, and occupied by, households whose income is no more than eighty percent (80%) of the area median income, as determined by the United States Department of Housing and Urban Development ("HUD") and DHCD (the "Affordable Units"). Affordable Units shall be dispersed throughout the Project in accordance with guidelines of the Subsidizing Agency, and shall be evenly dispersed within the Project, except for fluctuations based on changes of income allowed which are allowed by the Regulatory Agreement with the Subsidizing Agency. The Applicant shall be responsible for maintaining records sufficient to comply with DHCD guidelines for the location of affordable units in the Project and occupancy of such units by income-eligible households.
- B.2 All of the Project's Affordable Units (25% of the units) shall be restricted for lease to households earning no more than the maximum allowable area median income of DHCD or any substitute Subsidizing Agency. To maintain compliance with the 40B program and approvals, twenty three (23) of the units (or 25% of the units in the Project) shall be maintained as Affordable Units in perpetuity, which for the purposes of this Decision shall mean for so long as the Property does not comply to applicable zoning requirements without the benefit of this Comprehensive Permit. . If a previously eligible tenant becomes ineligible to occupy an Affordable Unit, the Applicant may charge the tenant a market rate rent; however, the Applicant shall comply with the Subsidizing Agency's requirements for converting another unit to an Affordable Unit.
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an affirmative fair housing marketing plan prior to the rental of any units, and shall ensure that the Project complies with the Subsidizing Agency's fair housing requirements.
- B.4 To the extent allowed under G.L. c. 40B and other applicable law and in a form approved by the Subsidizing Agency and/or the Project's Monitoring Agent, the Project's Tenant Selection Plan shall provide a local preference for up to seventy (70%) of the Affordable units at initial occupancy. Local preference categories include present residents of Shrewsbury or employees of the Town of Shrewsbury or teachers employed by the school district serving Shrewsbury. A lottery shall be established in a form approved by the Subsidizing Agency and/or the Project's monitoring agent to effectuate this local preference, with an approved secondary lottery for all other applicants. The Applicant shall assist the Town in the submittal of any evidence required by the Subsidizing Agency to support this local preference requirement. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons

qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or DHCD, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

C. Submission Requirements

C.1 Prior to any construction or site development activities (including site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit, the Applicant shall:

- a. Deliver to the Board a check in a reasonable amount determined by the Board to be used for the Board to retain outside experts for technical and legal reviews and inspections required under these conditions. Said funds shall be deposited by the Board in an account pursuant to G.L. c. 44, s. 53G and shall only be used for technical reviews and inspections associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the Project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Said funds may be used by the Board to hire civil engineering, traffic engineering, accounting, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof.
- b. Obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for Massachusetts issued by the U.S. Environmental Protection Agency (EPA). The Board shall also be provided a copy of the SWPPP submitted along with the NPDES filing.
- c. Provide the Board with evidence of compliance with pre-blasting activities requirements, if blasting is necessary. The pre-blast survey shall be offered to all property owners with structures located within 500 feet from the lot upon which the blasting is proposed, all as required under Condition E.2 below.
- d. Submit to the Board for review and administrative approval Final Engineering Drawings and Plans (“Final Plans”) that conform to the requirements of this Decision, and incorporate the conditions herein. The Final Plans shall also

incorporate all conditions and requirements of permitting agencies having jurisdiction. Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record, the Professional (Civil) Engineer of record, and the Registered Landscape Architect of record. Final Architectural Plans shall be stamped by a Registered Architect. The Final Plans shall be submitted to the Board at least forty-five (45) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the "Final Site Plan Submission Date").

At a minimum, the Final Plans shall be in accordance with the comments from the peer review consultants detailed during the course of the hearing. If no written response or comments have been given to the Applicant by the Board concerning the Final Plans within forty-five (45) days after the Final Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.

- e. Submit to the Building Inspector a construction mitigation plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Building Inspector, no other construction of units shall commence and no building permits shall be issued under this Comprehensive Permit until the Building Inspector, in consultation with the Board's engineer, has approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Building Inspector concerning the Final Site Plans within forty-five (45) days after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.
- f. Submit to the Board for its administrative approval, a landscaping plan with the Final Plans, signed and sealed by a Registered Landscape Architect, depicting the following:
 - i. Overall planting plan that includes a demarcation of clearing and the limits of work;
 - ii. Planting plans for drives showing shade trees and lighting fixture locations;
 - iii. Plans of walkways in open space and recreation areas;
 - iv. Prototype planting plans for each building that include shade trees, ornamental trees, shrubs, and groundcovers;
 - v. Prototype screening plans for dumpsters, depicting plantings and fencing;
 - vi. Planting details for coniferous and deciduous shade trees, ornamental trees, and shrubs;

- vii. Planting schedules listing the quantity, size, height, caliper, species, variety, and form of trees, shrubs, and groundcovers;
- viii. Tree protection and preservation plans; and
- ix. Construction details.

All plantings shall consist of non-invasive, drought-tolerant species. Plantings installed along drives and walkways shall also be salt-tolerant. All plantings shall be Asian Longhorn Beetle (“ALB”) resistant. All clearing shall be done by an ALB certified contractor. The final landscaping plans shall preserve the existing tree cover to the greatest extent practicable. The Applicant shall consult with the direct abutters to the Project prior to submittal of the landscaping plan, to obtain input on types and sizes of plantings for screening. Such consultation is intended as being advisory only, and the ultimate approval on landscaping rests with the Board administratively as otherwise provided in this Condition. If no written response or comments have been given to the Applicant by the Board concerning the Final Plans within forty-five (45) days after the Final Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved. Twelve (12) months after completion of plantings, the Applicant shall remove and replace any dead or diseased plantings and trees serving as screening.

- g. Obtain from the Shrewsbury Conservation Commission an Order of Conditions for all work within jurisdictional areas pursuant to G. L. c. 131, § 40 (the “Wetlands Protection Act”) and 310 CMR 10.00 *et seq.* (the “WPA Regulations”). Such Orders shall be recorded at the Worcester District Registry of Deeds and evidence of such recording shall be submitted to the Conservation Agent prior to the commencement of work.

C.2 Prior to the issuance of any building permits, the Applicant shall:

- a. Record this Decision with the Worcester District Registry of Deeds, at the Applicant’s expense, and provide proof of such recording with the Shrewsbury Building Inspector.
- b. Submit to the Board and the Building Inspector evidence of Final Approval from the Subsidizing Agency, as required by the Project Eligibility letter and the Chapter 40B regulations.
- c. Submit to the Board and the Building Inspector a certified copy of the Regulatory Agreement and Monitoring Services Agreement for the Project. Execution and recording of such Regulatory Agreement; provided, however, since the construction lender and Subsidizing Agency will often not close and/or execute such documents until the issuance of building permits, the Building Inspector is authorized to issue the building

permits in escrow to the closing attorney who shall release them only upon the Applicant satisfying the requirements of this condition and paying any applicable building permit fees; and in addition, the Building Inspector is hereby authorized to execute and deliver to the Applicant a “Will Issue” letter confirming that building permits will issue upon satisfaction of the requirements of this condition.

- d. Submit to the Building Inspector final Architectural Plans for the Project, prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts (“Architectural Plans”). The Architectural Plans shall be submitted in such form as the Building Inspector may request.
- e. Submit to the Board’s peer review engineer for administrative approval of the Operation and Maintenance Plan for the stormwater system for the Project. Review of this plan shall be paid for by the Applicant.
- f. Obtain and file with the Building Inspector a copy of all federal, state, and local permits and approvals required for the Project.
- g. Obtain all necessary building, electrical, plumbing, and associated permits for the Project required by state law.
- h. Submit evidence of permits from the Shrewsbury Conservation Commission for any construction work that will occur in areas subject to its jurisdiction.
- i. Obtain all necessary permits for access to the Property from the Massachusetts Department of Transportation (“MassDOT”), including a State Highway Access Permit.

D. Construction Completion/Certificate of Occupancy

- D.1 Prior to issuance of a certificate of occupancy for any portion of the Project, the Applicant shall:
- a. Submit engineer’s interim certification of compliance with utilities plan and profiles (as applicable) to the Shrewsbury Engineering Department.
 - b. Provide a letter to the Board, signed by the Applicant’s civil engineer, certifying that the Project has been constructed in compliance with the Final Plans in all material respects.

- c. Obtain acceptance from the Shrewsbury Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the Project.
- d. Provide surety in the manner acceptable to the Town of Shrewsbury Engineering Department, in an amount determined by the Town of Shrewsbury Engineering Department, for the completion of utilities, infrastructure (such as roadway and drainage systems), and landscaping improvements associated with the Project if such improvements for the Project are not completed prior to the issuance of a Certificate of Occupancy.
- e. Provide all water and sewer improvements discussed herein necessary to serve the Project for which such occupancy permit is requested, and as-built plans depicting such improvements must be submitted to the Town of Shrewsbury Engineering and Water/Sewer Departments.
- f. Obtain a State Highway Access Permit from the Department of Transportation, authorizing the access to Hartford Turnpike for the Project for which the occupancy permit is requested. A copy of this permit must be filed with the Town of Shrewsbury Engineering Department and Building Inspector.

D.2 Prior to issuance of the final certificate of occupancy, the Applicant shall:

- a. Submit to the Building Department, in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in a form acceptable to the Building Department. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.
- b. Submit to the Building Inspector as-built plans for all buildings in the Project.
- c. Submit to the Board all information relating to the management company being retained to act as the property manager that the Applicant submits to the Subsidizing Agency as part of the Final Approval process.

E. Project Design and Construction

- E.1 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall attend a preconstruction conference with the Building Inspector and other Town staff as may be reasonably determined.
- E.2 The Applicant shall comply with the blasting guidelines required by applicable Massachusetts state law, rules, and regulations. The Applicant shall permit representatives of the Board to observe and inspect the Property and construction progress until such time as the Project has been completed. The blasting on site shall comply with the following requirements:
- i. Any rock blasting shall be performed by a licensed blasting professional, who shall first obtain all required permits from the Shrewsbury Fire Department in accordance with the provisions of 527 CMR 1.00 *et. Seq.*, and the Applicant shall provide evidence thereof to the Fire Chief.
 - ii. The blasting company used by the Applicant must present the Fire Chief with evidence that it holds an Explosive User's Certificate, and that the blaster has a valid Certificate of Competency.
 - iii. If required by the Fire Chief, an independent geo-technical-blasting consultant shall be selected and paid for by the Applicant, subject to the approval of the Shrewsbury Fire Department. The consultant shall review the qualifications of the blasting contractor, and review the final blasting plan prepared by the blasting contractor, check the calibration of the seismograph monitors, approve the location and installation of the seismograph monitors, and, if required by the Shrewsbury Fire Department, determine the blast limits throughout the blast period, and shall consult with the Shrewsbury Fire Department as needed throughout the blasting period.
 - iv. The Applicant shall comply with the requirements for pre-blast surveys contained in 527 CMR 1.00, Section 65.9.15, except that the Applicant has agreed to offer pre-blast surveys to property owners of structures located within five hundred feet (500') of any proposed blasting, rather than the two hundred and fifty feet (250') required by the regulations.
 - v. The Applicant shall comply with the requirements contained in 527 CMR 1.00, Section 1.13.10.1.2.4.1(2), which requires general liability insurance in the amount of not less than \$1,000,000 per occurrence, and \$1,000,000 in the aggregate.

- vi. The Commonwealth of Massachusetts blasting limits shall be observed. However, the Shrewsbury Fire Department may, based upon site-specific circumstances, require a lower limit to ensure compliance with 527 CMR 1.00.
 - vii. No perchlorate shall be used during blasting.
- E.3 The proposed construction shall be in accordance with applicable federal and state laws, rules and regulations.
- E.4 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.
- E.5 During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust, and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project.
- E.6 Appropriate signage shall be shown on the Final Plans. The Applicant has not requested any waivers from the Town of Shrewsbury Bylaws regarding signs, and the Board has granted no such waivers.
- E.7 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.
- E.8 If natural gas is proposed, gas service locations shall be included on the Final Plans.
- E.9 The Applicant shall install lighting on the site which conforms to the Town of Shrewsbury's Zoning Bylaw. Lighting shall be down-lit/shielded to prevent light spillover onto surrounding properties. Management of outdoor lighting shall be the responsibility of the Applicant.
- E.10 Utilities, including but not limited to telephone, electric, and cable, shall be located underground, subject to review and approval of local utility companies per utility company specifications except for gas meters, so-called "green boxes" or other similar aboveground features mandated by the particular utility company.

- E.11 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Structural Engineer to the Building Inspector as meeting design specifications, as applicable.
- E.12 Construction activities may be conducted between the hours of 7 a.m. and 7 p.m., Monday through Friday. Work may occur on Saturdays but shall be limited to inside work only, after the buildings have been framed, roofed, and sheathed. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and erection of new structures. All off-site utility work shall be coordinated and approved by the Engineering Department and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on site during construction.
- E.13 Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. During construction, the site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- E.14 No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- E.15 All dumpsters serving the Project shall be enclosed and covered.
- E.16 All retaining walls visible from a public way or direct abutters, as determined by the Building Inspector based upon the time of year when such walls would be most visible, properties shall be constructed in an aesthetic manner, specifically, retaining walls shall avoid the use of exposed concrete to the greatest extent practicable.
- E.17 Snow shall be stored within the areas of the site designated on the Final Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site.

- E.18 The Applicant shall comply with all applicable state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP’s Noise Policy contained in DAQC Policy 90-001. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable state and federal requirements.
- E.19 The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways and driveways providing access to residents of the Project, as well as emergency vehicles.
- E.20 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris desposited due to such use during the duration of construction.

F. Traffic Safety Conditions

- F.1 The Project shall have full access to Hartford Turnpike. Access to Stoney Hill Road shall be limited to emergency access.
- F.2 The emergency access from the Project shall be limited to providing vehicular access for emergency vehicles only. Vehicular use of this access shall be limited to emergency and public safety vehicles, and vehicles necessary for occasional maintenance of the emergency access way, including snow plowing. The Applicant shall post signs reading “Do Not Enter – Emergency Vehicle Access Only” on each side of the emergency access gates. The Applicant shall work with the Shrewsbury Police and Fire Departments to coordinate how emergency vehicles will be able to access the emergency access road.
- F.3 Access to the Property by construction vehicles shall be via Hartford Turnpike. Construction vehicles may not access the site via Stoney Hill Road during (or after completion of) construction of the Project.

G. Police, Fire, and Emergency Medical Conditions

- G.1 The Applicant shall provide professional property management and maintenance personnel on the premises during normal daytime hours and an emergency contact name and number for tenants and the Shrewsbury Police and Fire Departments.

H. Water, Sewer and Utilities

- H.1 The Applicant shall design, permit and install a new sewer main in Hartford Turnpike (Route 20) from Station 99+15 to Station 124+15 (State Layout). The final design and layout of the sewer shall be approved by Shrewsbury DPW prior to construction. This work will be done in lieu of the sewer upgrades outlined by the Town sewer consultants in the findings of fact.
- H.2 There is no indication of the size of the water services or the water main going to each building. The service size for the domestic service should be verified by the Water & Sewer Department and information on the fire service size and requirements should be submitted for review. The plans still show the site main connecting to a new water main in Route 20. Revised plans shall be submitted to the Board showing a connection to the existing water main.
- H.3 The Applicant shall perform all of the aforementioned sewer upgrades. The water and sewer fees are payable at the time of connection to the municipal system. The fifty percent (50%) waiver of the sewer fees shall be applied for the Project will be waived at the time of the requested connection for that phase. No waivers to the water connection fees shall be granted.
- H.4 The Town, by and through its peer review engineer of record, shall peer review and approve the final design of all improvements to the municipal sewer system before commencement of any work within the municipal sewer system.
- H.5 All sewer improvements necessary to serve the Project must be completed and as-built plans must be submitted to and approved by the Department of Public Works, before any occupancy permits for the Project may be issued.
- H.6 The water, sewer, and drainage utilities servicing the buildings in the Project shall be installed and tested in accordance with applicable Town of Shrewsbury requirements and protocols, except as may be waived herein.
- H.7 Utilities shall be installed underground by the Applicant using methods standard to those installations as further described in Condition E.10 above. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like.

I. Other General Conditions

- I.1 This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later. In accordance with 760 CMR 56.05(12)(c), the Board hereby provides that the Comprehensive Permit, as hereby modified, shall expire on December 20, 2023, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to this Comprehensive Permit Modification as permitted by law.
- I.2 This Decision prohibits the parking or storage of any unregistered vehicle on the Property, and likewise prohibits the service of any vehicles on the Property, except during construction.
- I.3 The Applicant or its successor and assigns shall be responsible for the operation and regular maintenance of all pedestrian walkways, parking areas, and other common facilities shown or described in the Final Plans and materials, including, but not limited to, regular snow plowing. The Applicant shall provide a Snow Management Plan as part of the Final Plans, for review and administrative approval by the Board, which shall provide for the efficient removal of snow from the access road, driveways and parking areas.
- I.4 In the event that the Applicant (or its Management Company) fails to maintain the stormwater management system for the Project in accordance with its operation and maintenance plan, the Town may conduct emergency maintenance and/or repair, as it deems necessary, and the Applicant shall, prior to the issuance of any certificates of occupancy, convey such easement or other rights in a form mutually acceptable to the Town and the Applicant as may be reasonably necessary to complete such repair and/or maintenance. In the event the Town is required to perform such maintenance, the Applicant shall reimburse the Town within forty-five (45) for all of its reasonable expenses related to such work.
- I.5 The Project entrance way, drainage systems and all other infrastructure shown on the Final Plans as serving the Project shall remain private, and the Town shall not have, now or ever, any legal responsibility for the operation and maintenance of such infrastructure, including, but not limited to, snow removal and landscaping maintenance.

- I.6 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; (b) have access to, and inspect, examine and make copies of all of the books and records of the Applicant pertaining to the particular matter related to the Project which is the subject of the alleged violation or breach; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

Decision on Comprehensive Permit Modification
Smart Growth Design, LLC
526 Hartford Turnpike "The Pointe at Hills Farm"
October 14, 2021
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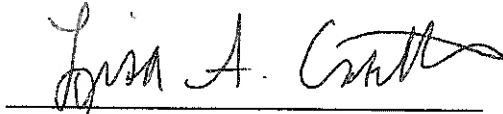
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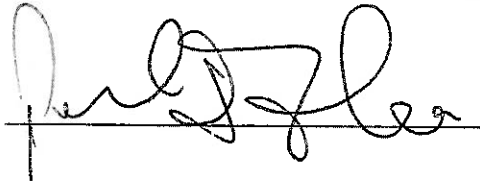
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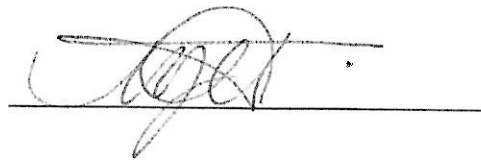
The Zoning Board of Appeals voted 5 - 0, at its public meeting on October 14, 2021, to approve this Comprehensive Permit Modification subject to the above-stated Conditions, with this Decision as attested by the signatures below.

Members in favor:











Dated: October 14, 2021

Filed with the Town Clerk on October 18, 2021.

Town Clerk

Notice: Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Shrewsbury, Massachusetts. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.

EXHIBIT A

LIST OF SUBMITTALS

The list of materials described in the Original Decision are hereby incorporated into this Decision by reference. In addition to the above, the following is a list of submittals:

1. Request for Modification from Land Design Collaborative dated April 1, 2021
2. Water Hydraulics Evaluation Update from OnSite Engineering dated March 16, 2021
3. Sewer Capacity Evaluation by OnSite Engineering dated March 26, 2021
4. Transportation Update by Tetra Tech dated May 20, 2021
5. Request for Continuance from St. Pierre & St. Pierre, PC dated July 26, 2021
6. Site Plans for the 526 Hartford Turnpike dated August 12, 2021
7. Road Improvements for Phase II dated May 16, 2017
8. Request for Continuance from Land Design Collaborative dated August 26, 2021
9. Building Summary and Unit Mix for 526 Hartford Tpke
10. Request for Extension from Rod St. Pierre dated September 30, 2021

Comment Letters:

11. Peer Review for Water Service from Tata & Howard dated May 6, 2021
12. Peer Review for Sewer Capacity from Weston & Sampson dated May 13, 2021
13. Planner Comment Letter dated April 14, 2021

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EXHIBIT B

LIST OF APPROVED WAIVERS

The list of waivers described in the Original Decision are hereby incorporated into this Decision by reference.