

CONDITIONAL USE PERMIT AND SITE PLAN APPROVAL
FOR DEVELOPMENT AT 16 MAPLE DRIVE BY 87 MIDDLE NECK ROAD LLC

After numerous public hearings, and based on and subject to the findings and conditions set forth in the attached “Conditions for Approval of Application by 87 Middle Neck Road LLC” (“Conditions”), the Board of Trustees of the Village of Great Neck Plaza (“Board”) hereby grants to 87 Middle Neck Road LLC (“Applicant”) the following approvals, permits and waivers in connection with the construction of a mixed-use building (“ Building”) to be located at 16 Maple Drive in the Village (Section 2, Block 195, Lot 114 on the Nassau County Land and Tax Map): site plan approval and a permit of compliance pursuant to Village Code Section 225-130(A); approval of a façade permit pursuant to Village Code Section 225-130(B); a conditional use permit pursuant to Village Code Sections 225-63 (A)(16) and 225-134; permission for modification/enlargement of a driveway pursuant to Village Code Section 225-130(C); waiver of front-yard setback requirement under Village Code Section 225-68(A); authorization for the proposed building to exceed two stories and twenty-five feet, pursuant to Village Code Section 225-66(A); and a waiver of the off-street parking requirement for retail use of the building pursuant to Village Code Section 225-88(A). This relief is contingent on and subject to (a) the Applicant complying with and satisfying all the Conditions, including but not limited to obtaining all necessary approvals and variances from the Village Board of Zoning Appeals and other government agencies; (b) the Applicant timely paying all fees, deposits and reimbursements due to the Village under the Village Code within sixty (60) days after being notified of the amounts due; and (c) construction of the Building being completed within two (2) years after the issuance of the initial building permit. In granting this relief, the Board affirmatively determines that, if the Applicant complies with the Conditions, the factors set forth in Village Code Sections 225-63(A)(16)(h) and (i), 225-88(A), 225-130 and 225-134 will have been satisfied.

Dated: May 6, 2020

Mayor Jean Celender

Trustee. Ted M. Rosen

Trustee Gerald Schneiderman

Trustee Pamela Markscheid

Trustee Lawrence Katz

CONDITIONS FOR APPROVAL OF APPLICATION BY 87 MIDDLE NECK ROAD LLC

Description of the Action

Applicant proposes to construct a mixed-use building on property designated on the Nassau County Land and Tax Map as Section 2, Block 195, Lot 114 (“Property”). The Property is situated at the southeast corner of the intersection of Middle Neck Road and Maple Drive. It has the street address of 16 Maple Drive. The Property consists of approximately 0.167 acres. It is currently improved with a commercial building having one level at grade formerly containing several small retail uses. Currently, the Property is entirely covered by impervious surfaces, has minimal landscaping and no on-site parking. It adjoins a four-story municipal garage on Maple Drive (“Municipal Garage”) from which it is separated by a sloped driveway and ramp leading to the lower level of the Municipal Garage (“Existing Driveway/Ramp”).

The Applicant proposes a construction and development project (“Project”) whereby it would demolish the existing structure on the Property and construct a five-story mixed-use building having 2,936 feet of retail space on the ground floor, and four residential floors above the ground floor (with the fourth and fifth floors being set back) containing thirteen (13) residential units. Two of these units will be affordable housing units (i.e., one one-bedroom unit and one studio). The Building will be 58 feet in height to the rooftop and will have 29,845 square feet of gross floor area. Parking will be contained in a below-grade garage containing nine (9) spaces for residential owners and occupants. After obtaining a necessary easement from the Village, Applicant proposes to widen and improve the Existing Driveway/Ramp to service both the Building and the vehicles using the lower level of the Municipal Garage (“Improved Driveway/Ramp”).

History of the Application

In late 2018, Applicant submitted an application to the Village’s Building Department for a building permit to allow construction of a mixed-use building on the Property and an application to the Board for a permit of compliance, site plan approval, a conditional use permit and other approvals and waivers in connection with the construction of the mixed-use building (“Application”). By letter dated November 26, 2018, the Village Commissioner of Public Services denied the application for a building permit, stating that the submitted plans required numerous variances from Village Code. Applicant then applied to the Village Board of Zoning and Appeals (“BZA”) for the necessary variances from the Village Code.

In December 2018, the Board began public hearings on the Application. At meetings on February 7 and March 20, 2019, the Board stated that it would serve as the lead agency for review of the Project under the State Environmental Quality Review Act (“SEQRA”) and that it would conduct a coordinated SEQRA review. This SEQRA review was extensive and comprehensive and took place over the course of approximately twelve months. The SEQRA review came to a conclusion on February 5, 2020 when the Board adopted a resolution approving a Negative Declaration (“SEQRA Determination”) (copy attached as Exhibit A) stating that “the proposed action will not have a significant adverse impact on the environment.” As demonstrated by the SEQRA Determination, this Board reviewed and evaluated a wide-range of issues during the SEQRA review process, including but not limited to traffic, parking, drainage, community character, quality of life, shadows, site and community enhancements and aesthetics. After adoption of the SEQRA Determination, the matter was sent to the Nassau County Planning Commission which, on March 12, 2020, adopted Resolution 10365-20 to leave the Application for local determination.

This Board held numerous hearings in 2018, 2019 and 2020 on the Application. Hearings were held on December 19, 2018, February 6, 2019, March 20, 2019, November 20, 2019, January 15, 2020, February 5, 2020, March 4, 2020, March 19, 2020 and May 6, 2020 (the “Board Hearings”). In the course of and as a result of the Board Hearings, Applicant revised the plans for the Project from a four-story building containing eleven (11) residential units to a five-story building (with recessed fourth and fifth floors) containing thirteen (13) residential units (“Building”).

The final plans for the Project (the “Final Project Plans”) consist of: the plans and drawings of MoJo Stumer Associates P.C., containing pages T-1, T-2, T-3, and A-1 through A-8, all dated most recently as of March 3, 2020; and the plans and drawings of VHB Engineering, Planning, Landscape Architecture and Geology P.C. containing pages C-1.00 through C-8.00 and Sheet 1 (Line of Sight Exhibit) and Sheet 2 (Vehicle Circulation), all dated most recently as of March 3, 2020; a survey S-1 dated December 3, 2018; and two pages showing the results of soil borings by Soil Mechanics dated July 16, 2018. A more detailed list of the Final Project Plans is attached hereto as Exhibit B.

The Final Project Plans provide for 9 underground parking spaces to be used by the residential occupants of the Building. Due to the small size of the Property---0.167 acres or 7,926 square feet---this is the maximum number of on-site spaces that can be attained. The number of required spaces per the Village Code for the 13 residential units in the Building is 22 spaces. Thus, a variance will be required for the shortfall of 13 residential parking spaces.

Applicant has also requested a waiver of the number of parking spaces required for the renovated 2, 936 square feet of ground floor retail. The four retail premises previously located on the Property have been granted such a waiver for many years. The Board has determined that the continuation of such a waiver is warranted by reason of the close proximity to the Property of the shopper parking in the Maple Drive Municipal Parking Lot and in the adjoining Municipal Garage.

In order to mitigate its inability to provide 13 additional residential parking spaces, Applicant has proposed significant mitigation measures and community benefits. Applicant has agreed to rehabilitate the Existing Driveway/Ramp and to construct the Improved Driveway/Ramp, the use of which will be shared by the residents of the Building and by the vehicles using the lower level of the Municipal Garage, which is currently subject to a long-term lease to the co-op apartment building located at 12 Bond Parc ("Bond Parc"). Applicant proposes to spend approximately \$250,000 to widen the Existing Driveway/Ramp by removing the curb on the eastern side adjacent to the Municipal Garage, to smooth out the radii of the aprons on either side of the curb cuts at the top of the driveway to twelve feet, and to widen the driveway from its current width of approximately 7-10 feet to 24 feet for the entire length of the driveway. Applicant has also agreed to dismantle and remove the elevator shaft on the northwest side of the Municipal Garage ("Elevator Shaft"), which has not been operational for more than ten years. Its electrical components have been constantly damaged by water leaks and it has required a significant expense by the Village to maintain, which was not justified by its infrequent usage. (Removal of the Elevator Shaft will not affect handicapped accommodation since the handicapped are permitted to park on the grade level.) If the Village were required to remove the Elevator Shaft, it would have to expend substantial sums. Applicant will remove some trees, shrubs and ivy from the area of the Existing Driveway/Ramp and install all new landscaping once the Improved Driveway/Ramp has been completed. All of these improvements to be constructed by Applicant will result in better sight lines and safer access and egress for vehicles using the lower level of the Municipal Garage and the underground parking in the Building.*

In addition to the removal of the Elevator Shaft and the driveway improvements, as described above, Applicant has agreed to provide a \$50,000 mitigation fund to be used for community benefits---including but not limited to items such as new pavers and sidewalks, benches, landscaping, street furniture and lighting ---as shall be determined by the Village.

Upon review of the Final Project Plans, the Village Superintendent of Building ("Building Superintendent") issued a revised notice of disapproval of the plans dated March 4, 2020 listing the several variances which would be necessary from the BZA in order to construct the Project. The Applicant is currently in the process of seeking these variances from the Zoning Board.

*It is anticipated that use of the Existing Driveway/Ramp into the lower level of the Municipal Garage will be out of service for about 7-10 days at the beginning of the Project and about 7-10 days towards the completion of the Project. During these times, vehicles from Bond Parc that would otherwise use the lower level of the Municipal Garage will be given free temporary permits to use open available spaces in either the Municipal Garage or the Maple Drive Parking Lot.

During the Board Hearings, Applicant was represented by Christopher Prior, Esq. of McLaughlin & Stern, LLP, 1010 Northern Boulevard, Great Neck, NY 11021. During the Board Hearings, witnesses in favor and in opposition to the Application were offered the opportunity to be heard. The Applicant and the public were provided the opportunity to introduce whatever relevant evidence they wanted to submit. Substantial oral testimony and written documentation was submitted during the Board Hearings. This decision is based on the documents and testimony introduced at said hearings as well as public records in the Village files, including all material submitted during the SEQRA review process.

Based upon said evidence, and subject to the following Conditions, including but not limited to the granting of necessary variances by the BZA, the Board has determined that the Conditions are feasible to establish and impose, and are suitable and necessary for the health, safety and welfare of the Village, regarding such issues as garbage, security services, fire egress, emergency access, light, maintenance services, superintendent availability and other similar matters and for the quality of life for the occupants of the residential units and the surrounding community. The Board has further determined that, given that there is currently no on-site parking for the retail use of the Property, that there was a prior waiver of the requirement for on-site parking related to the retail use, and that the retail use of the building is adequately served by neighboring public parking facilities, the waiver of on-site parking relating to the retail use of the Building should continue. The Board therefore grants the following relief, subject to and contingent on the Conditions:

- (a) site plan approval of the Final Project Plans pursuant to Village Code Section 225-130(A);
- (b) a permit of compliance with respect to the Final Project Plans pursuant to Village Code Section 225-130(A);
- (c) façade approval pursuant to Village Code Section 225-130(B);
- (d) a conditional use permit pursuant to Village Code Section 225-63(A) and 225-134;
- (e) permission to modify and/or enlarge the Existing Driveway/Ramp pursuant to Village Code Section 225-130(C);
- (f) waiver of the front yard set-back requirement pursuant to Village Code Section 225-68(A);

- (g) authorization for the Building to exceed two stories and 25 feet in height, pursuant to Village Code Section 225-66(A); and
- (h) waiver of the off-street parking requirement for the retail use of the Building pursuant to Village Code Section 225-88(A).

CONDITIONS

1. Unless specifically provided otherwise herein, the Applicant, and any successor owner and/or developer of the Property (all such parties and entities hereinafter being referred to collectively as “Applicant”) shall comply with all representations made by the Applicant to the Board and/or the BZA (a) as part of the SEQRA review process, including representations concerning mitigating measures to be taken; (b) as part of the permit of compliance and site plan process before this Board; (c) during the Board Hearings; and (d) during and as part of the variance proceedings before the BZA, and shall comply with all conditions that are set by the BZA as well as the Conditions set forth herein.
2. Unless expressly indicated otherwise herein, the Project shall be built in strict conformity with the Final Project Plans presented to the Village in connection with the Application.
3. The Building shall contain no more than 29,845 square feet of gross floor area, including 2,936 square feet of ground floor retail. The Building shall be limited to five stories and shall not exceed 58 feet in height to the rooftop, if the BZA approves variances allowing this.* Residential units shall not be permitted on the ground floor. The fourth and fifth floors shall be set back as shown on the Final Project Plans. There shall be no structure on the roof of the Building extending higher than 58 feet, except for the structures which are permitted as of right under the Village. No recreational or social activities shall be permitted on the roof of the Building. There shall be no chairs or tables placed on the roof.

The proposed footprint of the Building on the ground floor is 5,250 square feet, which is 72% lot coverage. This exceeds the maximum 60% lot coverage set forth in Village Code Section 225-67(B), thereby requiring a variance, and results in a floor area ratio of approximately 2.92.

*Under Village Code Sections 225-66 (A)(3)(a) and (b), the Board has the authority to authorize a mixed-use building to have up to four stories (with a limited floor area) and 40 feet in height. In calculating the magnitude of the variances requested, the Board advises the BZA that it has granted such authorizations. However, in addition to such authorizations, Applicant will still need further variances from the floor and height requirements in order to construct the Building pursuant to the Final Project Plans.

4. The Building shall contain no more than thirteen (13) residential units, i.e., three (3) studios, three (3) one-bedroom units and seven (7) two-bedroom units. At least two of the units---i.e., one (1) one-bedroom unit and one (1) studio to be located on the second and third floors--- shall be affordable housing units, leased in accordance with conditions set forth elsewhere herein and in accordance with a regulatory agreement to be subsequently entered into between Applicant and the Village.

5. The Building (including its windows, balconies, facade, doors, sidewalks and driveway) shall be constructed with the materials, samples and/or data specifications which have been provided to and approved by the Village Board (as listed on Exhibit C) and shall conform to those samples provided to the Village Board.

In order to ensure that the façade of the Building presents a uniform coordinated appearance, Applicant shall install a uniform window covering/treatment on all windows of each unit in the Building, and shall prohibit residents in the Building from inserting a divergent window covering between the window and the Applicant-installed covering.

Any changes to the approved building materials must be “substitutions deemed equal” and must be expressly approved by the Building Superintendent or, if deemed necessary, by the Board. Any exterior materials not approved herein must be expressly approved by the Board, e.g., decorative railings, exterior lighting fixtures, landscaping, transformers, fencing.

6. Landscaping on the Property shall comply with a landscaping plan to be subsequently approved by the Village.

7. The parking for the Building shall contain at least nine (9) underground spaces (including one ADA-compliant handicapped space) for the Building’s residents and shall conform to the plans and designs shown in the Final Project Plans. As noted, the Board grants a waiver, pursuant to Village Code Section 225-88 (A), of the requirement for any on-site parking spaces relating to the retail space in the Building. All proposed curb cuts will require the approval of the Building Superintendent. Signage and traffic devices shall be installed indicating height clearances and other directions necessary for safe use of the Improved Driveway/Ramp and for safe traffic circulation into and out of the garage of the Building and the Municipal Garage.

8. It is not anticipated that the Project will result in the net loss of on-street parking spaces, and this approval does not authorize the loss of any such spaces. The Village will conduct pre-construction and post-construction surveys of on-street parking spaces in the vicinity of the Building. If the Village determines that there has been a loss of on-street parking spaces by reason of the Project, and is willing at that time to approve the loss of such spaces, then, prior to the issuance of a certificate of occupancy, Applicant shall compensate the Village in the amount of \$10,000 for the loss of each space, in addition to any other measures the Village shall deem appropriate. As used herein, a “net loss of on-street parking spaces” does not mean a temporary loss during construction activities.
9. Each piece of HVAC equipment shall have a maximum sound decibel level rating of 60 dB(A). The Applicant shall implement measures necessary to reduce sound levels (e.g., acoustic sound blankets or an acoustic wall) and incorporate such measures into the final engineering design of the proposed Building to preclude adverse noise impacts upon other buildings and properties in the vicinity of the Building.
10. Applicant will be required to monitor vibrations during all demolition and construction phases of the Project, including during excavation, sheeting and shoring, in order to measure the level of vibrations on neighboring properties, including but not limited to, the Municipal Garage, and the properties located 83-85 and 95 Middle Neck Road. A maximum vibration limit of 0.75 ips shall be observed. The Building Superintendent will be immediately notified of any exceedance, and the Applicant’s construction manager will be responsible for implementing measures directed by the Building Superintendent to address any exceedance. Vibration monitor data shall be stored and made available to the Village in the form of weekly reports. Applicant shall pay for all costs associated with or relating to such monitoring. Prior to the commencement of any demolition or construction, Applicant shall also provide to the Village surveys (pictures and video) showing (a) the pre-demolition condition of the Existing Driveway/Ramp, and (b) the substructure of the Existing Driveway/Ramp, if any, which Applicant has represented will not be impacted by construction of the Improved Driveway/Ramp.
11. Applicant shall not use pile-driving during construction of the Building, although, subject to any mitigation measures required by the Building Superintendent, it may use augured piles which are drilled/screwed into the ground. Should the design of the Building subsequently change such that pile-driving and/or additional sheet piling or other shoring methods of construction need to be employed (with the Board’s approval) that may result in a potential for more than minimal vibration, the Village reserves the right to conduct additional reviews and require mitigation measures, as may be determined by the Building Superintendent, to ensure that there will be no adverse vibration effects from construction activities on surrounding buildings and properties.

12. All earth-moving equipment on the construction site will be operated as far away as possible from adjacent structures. Applicant will use its best efforts to phase earth-moving operations and ground-impacting operations so as to not occur in the same time period but, insofar as such operations are required to occur contemporaneously, Applicant will take all reasonable measures to insure that they are done in a manner that minimizes disruption and disturbance to surrounding areas to the extent possible, and Applicant shall comply with the directions (if any) of the Building Superintendent regarding how that can be best accomplished. Applicant will also take all necessary measures to ensure that construction activities and staging will not impact the Village's adjacent trompe'l'oeil on Maple Drive
13. Construction will occur only during the allowable Village hours of operation.
14. The Applicant will comply with all minimum acceptable distances when using large/small bulldozers and loaded trucks.
15. Prior to commencing any demolition or construction activities on the Property, the Applicant will prepare construction drawings that denote the uses and locations of restriction of certain construction methods, e.g., vibratory sheet piling, to areas far enough away from adjacent buildings to prevent and/or minimize construction vibration impacts.
16. No trees shall be removed from the Property without the Village's express consent. This permit of compliance and site plan approval are conditioned upon the replacement and maintenance by the Applicant of all removed sidewalk/street trees, which shall be replaced at a location to be determined by the Village, at a ratio of three (3) street trees of 2 ½ - 3 inch caliper for each tree removal.
17. Prior to the issuance of a permit authorizing construction of the Building's superstructure or any work beyond excavation, foundation and storm water drainage work, the Applicant shall provide an exterior lighting plan that is acceptable to the Board and approved by the Building Superintendent. A photometric plan and catalog cut of the proposed site lighting fixtures shall be approved by the Building Superintendent prior to issuance of a building permit. The lighting plan shall locate all lighting fixtures, providing detailed specifications for each lighting type and lumens noted. All exterior lighting shall be shielded and downward facing in order to preclude light spill onto other properties in the vicinity of the Building, other than onto the Improved Driveway/Ramp. Applicant shall be responsible for, and shall bear all costs and expenses relating to the relocation of any Village street lighting or fixture necessitated by this Project.

18. Any excavation of a public roadway will require the Applicant, and/or any utilities or subcontractors performing work on behalf of the Applicant, to repave full depth from the curb area disturbed to the median island curb, per Village Code and per the methods and standards of the Nassau County Department of Public Works (“County DPW”).
19. If the BZA grants a variance permitting the underground parking garage to extend beyond the building footprint, adequate waterproofing will be provided on top of those portions of the underground parking garage that extend beyond the Building footprint and on top of all underground areas of the Building that extend beyond the Building footprint in order to ensure that said underground areas will not face structural drainage or other leaking problems. Applicant will utilize a waterproofing system approved by the Village and shall provide proof to the Village that said waterproofing system has a warranty either of 20 years or, if a 20-year warranty is not available on commercially-reasonable terms, of a shorter length found sufficient by the BZA.
20. Applicant will cooperate with the Village, the County, the Town and utility companies to the fullest extent possible if it is necessary to relocate existing electrical infrastructure and other utility connections in order to eliminate and/or minimize the need to break up public roadways.
21. Applicant has represented that there will be no on-site superintendent. Accordingly, all approvals, waivers and permits are conditioned upon submission by the Applicant and approval by the Board of a Life Safety Plan and Emergency Response Plan equivalent to that required by Village Code Section 124-49(F).
22. Applicant must obtain written confirmation from the Great Neck Water Pollution Control District that it is able to accept and dispose of sanitary waste from the Building. Evidence of a Permit to Connect must be obtained from the Great Neck Water Pollution Control District and provided to the Village prior to issuance of a certificate of occupancy.
23. Prior to issuance of a certificate of occupancy, Applicant shall obtain the approval of the Water Authority of Great Neck North and obtain all required permits and approvals for necessary connection to obtain potable water and water for irrigation.
24. Prior to the issuance of a permit for construction of the Building’s superstructure, Applicant must submit detailed construction plans of the Building for review by the Building Superintendent.
25. Prior to the issuance of a certificate of occupancy, Applicant must demonstrate to the Building Superintendent that adequate methods have been put in place to dispose of stormwater from the site in compliance with standards established by the County, State and Village.

26. Applicant shall coordinate the location of construction staging areas with the Building Superintendent at least thirty (30) days prior to the start of any foundation work.
27. All permits, waivers and approval granted herein are conditioned upon submission and approval of an Erosion and Sedimentation Control Plan for the Project site which shall include delineation of stabilized construction entrance, drainage inlet protection, silt fencing, hay bale protection and jute mesh/mat areas. The Erosion and Sedimentation Control Plan shall include provisions relative to maintenance and inspection (i.e., daily inspections by contractor with reports submitted to the Building Superintendent of weekly inspection by the Village, timing and sequencing of erosion control installation, etc.) as required by the Village prior to the issuance of a permit allowing any excavation work.
28. The Project will incorporate dust and erosion control measures to minimize impacts during constructions per federal Phase II requirements and Village Code.
29. Excavated material will be re-used on-site as fill to the greatest extent practical (i.e., non-structural fill suitable for landscaping will be used) in an effort to minimize the soil to be removed from the site.
30. If the importation and exportation of topsoil and fill material are proposed to be trucked, then, prior to the issuance of a building permit, Applicant shall provide to the Building Superintendent for review and approval a plan for the trucking of such topsoil and fill.
31. The location of a building transformer shall be filed with PSEG promptly after receipt of an excavation permit from the Village.
32. The Village shall be provided a copy of all plans and applications filed with utilities and other government agencies relating to the Project.
33. All demolition, construction and excavation activity shall occur only within the hours permitted by Village Code, which hours shall be weekday daytime hours (8:00 am to 6:00 pm) and, if needed, on Saturday (9:00 am to 5:00 pm). There shall be no demolition, construction or excavation work permitted on Sundays or on Village-designated holidays. At least fifteen (15) days prior to the start of construction, Applicant shall provide the Building Superintendent with a detailed construction schedule (including work hours) for review and approval. Pursuant to instructions from the Building Superintendent, Applicant shall post on the Property notices/signage listing the hours of operation and the relevant Village Code provisions. Notwithstanding anything else stated herein, Applicant shall not engage in any work activity related to the Project that would conflict with the restrictions imposed by the State due to the coronavirus, as determined by the Building Superintendent.

34. Applicant shall coordinate the location of parking areas for construction workers with the Building Superintendent at least thirty (30) days prior to the start of any foundation work. To the maximum extent feasible, parking for construction workers' vehicles shall be provided on-site. The vehicles of construction workers shall not be parked on the street. If determined to be necessary by the Building Superintendent, permit parking spaces shall be purchased for construction workers' vehicles at designated Village parking facilities at a cost per day per space to be determined by the Building Superintendent.
35. Applicant shall submit plans of detour and re-routing to the Building Superintendent for review and approval prior to commencement of any proposed closure of a public parking area or travel lane.
36. Applicant shall submit plans for any required sidewalk bulkhead and barricade system during demolition and construction of the Project for the proper maintenance and protection of pedestrian accessibility along Middle Neck Road and Maple Drive. In the event scaffolding is used in connection with demolition or construction of the Project, Applicant shall submit plans to the Village and shall comply with all conditions imposed by the Building Superintendent.
37. Applicant shall provide flag persons in the number and at all times determined to be necessary by the Building Superintendent during all phases of demolition and construction.
38. Approval is conditioned upon detailed building plans being submitted that provide an adequate ventilation system for the refuse/storage room in the event that the refuse/compactor storage room is not to be air-conditioned.
39. The Building shall contain at least two affordable housing units ("AHUs") – one (1) one-bedroom unit and one (1) studio. Applicant shall identify which units in the Building shall be AHUS. Such units shall be located on the second and third floor of the Building. Such units, including their marketing and leasing, shall be subject to a regulatory agreement to be subsequently entered into between the Applicant and the Village prior to the issuance of a certificate of occupancy for the Building. Such regulatory agreement shall include provisions specifying among other things that: such units shall remain as affordable housing units for a period of at least thirty (30) years after the issuance of a certificate of occupancy for the Building; such units shall be rented only to households having an income no less than 50% and no more than 100% of the median household income set by the United States Department of Housing and Urban Development ("HUD") for the Nassau/Suffolk area, with adjustments for household size; that the rent for such units shall not exceed the fair

market rents set by HUD for studios, one-bedroom and two-bedroom units in the Nassau/Suffolk area; that Applicant shall utilize the services of the Long Island Housing Partnership (or similar company with expertise regarding affordable housing) to market and lease the units; that such units shall comply with the requirements of the Long Island Workforce Housing Act (GML Article 16-A); and that, while the AHUs may have different interior amenities than the market rate units (e.g. white ceramic appliances instead of stainless steel appliances, or carpeted floors instead of hardwood), all other common elements shall be of consistent design with the other residential units in the building, as set forth in GML Section 699a(1).

40. Prior to the issuance of a certificate of occupancy, Applicant shall also file and record at its sole expense with the Office of the Nassau County Clerk a declaration of covenants and restrictions embodying the terms of the regulatory agreement relating to the affordable units, in a form satisfactory to the Village and approved by the Village Attorney, and proof of such recordation shall be provided to the Village. Said declaration shall be deemed to constitute, and shall have the same force and effect as a covenant running with the land; shall not be modified, changed, altered or amended except with the consent of the Board; and shall provide that this permit of compliance and the site plan approval issued by the Board to the Applicant may be suspended or revoked if these conditions are not complied with.
41. In addition, the regulatory agreement referenced above in paragraph 39 shall contain provisions, among others, imposing the following obligations on the Applicant:
 - (a) Applicant (or a third-party entity as authorized by subparagraph (e)) shall be obligated to develop and provide the Village with a copy of a plan to market available affordable housing units in a manner reasonably calculated to reach persons served by (i) civic organizations and public agencies that serve non-white and low-income communities and clients, families with children, and people with disabilities, and (ii) the Nassau County Section 8 housing voucher program;
 - (b) Applicant shall adopt (or demonstrate that is already has in place) an equal housing opportunity policy substantially similar to the one attached hereto as Exhibit D including a reasonable accommodation policy substantially similar to the one attached hereto as Exhibit E;

- (c) Applicant shall display fair housing posters substantially similar to those attached hereto as Exhibit F, issued by HUD and by New York State, in its rental office in a location where they can be readily seen by the public;
 - (d) Applicant shall use the HUD fair housing logo, pictured in Exhibit G hereto, on its website and in all marketing materials related to affordable housing in the Village;
 - (e) Applicant may contract with a third-party entity to develop and implement its obligation under the regulatory agreement described above, provided that any such third-party entity must have experience developing and implementing affirmative marketing plans for affordable housing;
 - (f) Applicant shall comply with all provisions of the Village Code that may hereinafter be enacted relating to the marketing and leasing of affordable housing units within the B Zoning District;
 - (g) Applicant shall annually file with the Village a sworn certification providing the following information regarding the affordable housing units: (i) the unit number; (ii) the name and contact information for the occupant of each said unit, (iii) the length of lease for each said unit, (iv) the combined household income for the occupants of each said unit, (v) confirmation that the household income of persons in each such unit is between fifty percent and one hundred percent of the median income for the Nassau/Suffolk primary metropolitan statistical area as defined by HUD, (vi) the amount of rent being charged for each such unit, (vii) confirmation that the annual rent being charged for each such unit does not exceed authorized levels, and (viii) confirmation that the marketing and rental of these units complies with the requirements of the Long Island Workforce Housing Act and of the Federal Housing Act.
 - (h) Upon request, Applicant shall provide the Village with any and all documents relating to the operation, marketing, tenant selection and leasing of the affordable housing units in the Building.
42. Letters requesting availability have been submitted to the Water Authority of Great Neck North and the Great Neck Water Pollution Control District. All permits, waiver and approvals granted herein are conditioned upon receipt of letters of water and sewer availability by these two agencies. Copies of their letters shall be filed with the Village. The letter of sewer availability shall include sanitary connection details as approved by the Great Neck Water Pollution Control District (either gravity connection or sanitary lift station) and any other appropriate mitigation associated with a lift station that may be needed and integrated in the building plans, if required.
43. Approval is conditioned upon the Nassau County Fire Marshal's review.

44. Approval is conditioned upon coordination with the Great Neck Union Free School District Transportation Department regarding any potential effects on school bus stops during construction, and the School District's concurrence on any proposed changes.
45. Approval is conditioned upon Applicant's compliance with the Notice of Intent, SWPPP's and SPDES requirements and procedures of the NYS Department of Environmental Conservation.
46. Approval is conditioned upon compliance with all requirements of the Nassau County Department of Health.
47. Prior to the issuance of an excavation permit, Applicant shall submit to the Building Superintendent for review and approval a plan for insuring safe passageway for pedestrians in the vicinity of the Project during excavation and construction activities.
48. The storage and removal of garbage shall conform to the requirements of the Village Code. The location of garbage receptacles and compactors shall be as shown on the Final Project Plans, or, if no such location is shown, the Building Superintendent shall specify such a location and shall impose any further conditions required for the clean and safe storage and removal of garbage from the Building.
49. Deliveries into and out of the Building may be made from the Maple Drive entrance for residents and from Middle Neck Road for the retail use. Prior to the issuance of a certificate of occupancy, Applicant will provide for the Village's review and approval a plan for vehicles used in connection with persons moving into or out of the Building.
50. If Applicant seeks IDA financing or tax abatements/exemptions for this Project, such IDA involvement may result in the loss of tax revenues for the Village. Payments-in-lieu-of-taxes may only partially offset the loss of these tax revenues. Therefore, Applicant must enter into an agreement to hold the Village harmless with respect to the loss of any tax revenues that it would otherwise have received absent IDA financing or tax abatement/exemptions, and all permits, waivers and approvals granted herein are conditioned on Applicant entering into a written agreement providing for this.
51. All permits, waivers and approvals granted herein are for a rental residential building as described above. In the event the Applicant should hereafter determine to convert the Building into a condominium or cooperative, then the Board Hearings related to these approvals shall be re-opened, and Applicant shall return to the Village Board so that these conditions may be supplemented or modified as necessary and appropriate.
52. As required by Village Code Section 89-8(A), construction of the Building must be completed within two years after issuance of the initial building permit. If the

Building is not completed within such period, and the Applicant seeks to extend such period based on purported good cause, then: (a) Applicant must appear in person before the Board to explain in detail the grounds constituting the purported good cause, and must submit a sworn written statement and back-up documentation to corroborate the purported good cause; (b) in connection with any such extension request by Applicant, the Board shall review these Conditions and, if it decides to grant an extension, may modify or supplement these Conditions, including but not limited to (i) requiring a further SEQRA review, (ii) requiring the payment of a bond to insure completion of the Project by a specified date, (iii) requiring the Applicant to pay a sum of money in order to compensate the Village and its residents for the additional disruption and administrative/supervisory work caused by the lengthened period of construction, and (iv) if the purported good cause is based on alleged financing difficulties, the Applicant must demonstrate (a) how the circumstances relating to financing have changed since the issuance of the initial permit; (b) that such circumstances were not caused by the Applicant and could not have been prevented by the Applicant taking reasonable available measures; and (c) that an extension of the two-year period would allow elimination of the purported financing problems and completion of the Project by a date certain.

53. Applicant must comply with rules regarding the full mark-out of underground utility lines as set forth in 16 NYCRR Part 753.

54. (a) In order to construct the Improved Driveway/Ramp as shown on the Final Project Plans, Applicant requires an easement from the Village allowing a portion of the Improved Driveway/Ramp to be maintained, operated and constructed on property owned by the Village. All permits, waivers and approvals granted herein are contingent on and subject to the Village and Applicant subsequently entering into two agreements relating to this easement, i.e., an easement agreement and an indemnification agreement.
 - (b) The easement agreement shall, among other things, include provisions specifying the following:
 - (i) The precise location of the easement area by survey diagram and by metes-and-bounds description, to be obtained and paid for by the Applicant;
 - (ii) The Improved Driveway/Ramp shall be constructed as shown on the Final Project Plans;
 - (iii) Applicant shall bear all costs related to the design and construction of the Improved Driveway/Ramp;
 - (iv) Applicant shall be responsible for and shall pay all costs relating to the upkeep, repair and maintenance of the Improved Driveway/Ramp in the future, including but not limited to sweeping; snow removal; surface repairs; repairs to those

portions of the Improved Driveway/Ramp which have been designed and constructed by the Applicant; and repairs to the substructure of the Existing Driveway/Ramp (if any) which have been damaged by reason of the design/construction of the Improved Driveway/Ramp by the Applicant (“Ramp Maintenance”). However, Ramp Maintenance shall not include any repairs to the substructure of the Existing Driveway/Ramp (if any) which have not been designed or constructed by the Applicant, unless such substructure has been damaged by the portions of the Improved Driveway/Ramp designed and constructed by the Applicant. Applicant shall be responsible for and shall pay all costs and expenses arising from and relating to Ramp Maintenance issues during the period between the execution of the easement agreement and the expiration of the current parking lease between the Village and Bond Parc (“Bond Parc Lease”) on December 31, 2041. Thereafter, all Ramp Maintenance costs and expenses shall be allocated pro-rata between the Village and the Applicant based on the ratio of (a) the number of parking spaces in the lower level of the Municipal Garage as of January 1, 2042, to (b) the total number of parking spaces in the lower level of the Municipal Garage plus those in the Building, as of January 1, 2042. (Ex: If there are 100 spaces in the lower level of the Municipal Garage and 9 in the Building, the Village would be responsible for 100/109 of the Ramp Maintenance costs and expenses, or 91.7%).

- (v) Applicant shall design, install and maintain at its sole expense landscaping along the Improved Driveway/Ramp pursuant to a plan mutually satisfactory to Applicant and the Village;
- (vi) Applicant shall install, maintain and pay for all signage and other traffic safety devices necessary for safe use of the Improved Driveway/Ramp by vehicles exiting/entering/parking in the Building and the Municipal Garage;
- (vii) The easement shall be non-exclusive. However, in the event the Village shall hereinafter permit any use of the Improved Driveway/Ramp other than for access to and egress from the Building and the lower level of the Municipal Garage, then the Village shall require the party or parties granted permission for such other use to share in the Ramp Maintenance costs and expenses according to the same pro-rata allocation method set forth above in subparagraph (iv). If such other use is permitted by the Village prior to the expiration of the current Bond Parc Lease, then the costs and expenses shall be allocated between Applicant and such other users; if such other use is permitted after the expiration of the current Bond Parc Lease, then the costs and expenses shall be allocated among Applicant, the Village and such other users;

- (viii) Applicant shall obtain liability insurance of specified amounts and kinds holding the Village harmless from claims for personal injury and property damages arising from any and all occurrences in connection with the use, construction, operation and design of the Improved Driveway/Ramp, if any, that involve the negligence or other wrongful conduct in the design, construction or maintenance of the Improved Driveway/Ramp, or the negligence or wrongful conduct of the Applicant or its successors or assigns as owners of the Property, except to the extent that such claims or damages are caused by the negligence or wrongful conduct of the Village or its agents. To the extent available on commercially-reasonable terms in the insurance marketplace, Applicant shall also obtain insurance of specified amounts holding the Village harmless from claims by Bond Parc or its residents that the Village had no legal right to grant the easement to Applicant or that the Improved Driveway/Ramp has interfered with, or diminished the rights of Bond Parc or its residents under the current Bond Parc Lease.

- (ix) Applicant shall grant the Village a non-exclusive easement allowing vehicles entering and exiting from the Municipal Garage, and other parties permitted by the Village to use the easement area, to travel on and utilize those portions, if any, of the Improved Driveway/Ramp which are located on Applicant's Property;

- (x) In addition to the cost of the design and construction of the Improved Driveway/Ramp, the planting and maintenance of the landscaping in the vicinity of the Improved Driveway/Ramp, the continued maintenance of the Improved Driveway/Ramp, and the \$50,000 community benefit/mitigation fund, as further consideration for granting the easement, Applicant shall arrange for the removal of the Elevator Shaft and shall pay all costs and expenses associated with such removal, provided that the Village shall grant to Applicant all necessary rights of access in order to accomplish this removal; and

- (xi) Whether, in addition to the above-enumerated forms of consideration for the easement, Applicant may also be required to pay the Village an annual fee for the easement, which shall be determined after an appraisal of the fair market value of the easement, with the understanding that said appraisal shall be paid for as follows: Applicant and the Village shall split the first \$3,000 of the appraisal cost, Applicant shall pay the next \$1,000 of the appraisal cost, and the remainder of the appraisal cost (if any) shall be paid in accordance with subsequent agreement of the parties.

- (xii) The Village shall provide to all persons entitled to use the lower level of the Municipal Garage pursuant to the current Bond Parc Lease temporary parking spaces elsewhere in the Municipal Garage or in the on-grade municipal parking lot on the north side of Maple Drive (“Maple Drive Parking Lot”) during those periods of demolition of the Existing Driveway/Ramp, construction of the Improved Driveway/Ramp and removal of the Elevator Shaft when the lower level of the Municipal Garage shall not be accessible for parking;
- (c) The indemnification agreement shall, among other things, include provisions specifying the following:
 - (i) Applicant, as well as its successors and assigns, shall indemnify and hold harmless the Village, its officials, employees, agents and representatives, including its attorney, from and against any claims, demands, damages, lawsuits and/or causes of action, of any kind, wherever and whenever brought (“Claims”), relating to, among other things, the removal of the Existing Driveway/Ramp; the design, construction and operation of the Improved Driveway/Ramp; and/or interference with the use and operation of the underground parking in the lower level of the Municipal Garage, regardless of whether such interference occurs during the removal of the Elevator Shaft; during the construction of the Improved Driveway/Ramp; during the construction of the Building; or any other time through the expiration of the current Bond Parc Lease; and from Claims that the Village breached the current Bond Parc Lease and/or violated the rights of Bond Parc under the Bond Parc Lease by granting the easement; provided, however, that Applicant’s indemnification obligation shall not extend to Claims arising from incidents in the lower level of the Municipal Garage unless such incidents were caused in whole or in part by the design, construction or operation of the Improved Driveway/Ramp; and
 - (ii) Applicant shall defend the Village in any lawsuit, arbitration or other proceeding arising from or relating to Claims as described above in paragraph (c)(i), shall retain counsel to defend the Village in any such proceeding, subject to the Village’s approval, and shall pay all litigation costs and attorneys’ fees related thereto;
 - (iii) Prior to commencing any demolition or construction, Applicant shall post cash or a cash bond with the Village in the amount of \$50,000 to be used towards the performance of these indemnification obligations; and

- (iv) Whether, in addition to the above, Applicant shall be required to post any other collateral or security (e.g. a bond or mortgage), as the parties may subsequently agree to, in order to insure that the indemnification and hold harmless obligation of the Applicant is enforceable in the event Applicant has financial difficulties in the future.
 - (d) Neither the grant of site-plan approval, a conditional use permit or the other relief approved herein, nor the grant of any variances by the BZA, shall create a presumption of any kind that the Village will subsequently enter into either an indemnification agreement or easement agreement with the Applicant, nor that it has any obligation to do so. The determination of whether or not to enter into such agreements remains in the sole and absolute discretion of the Village.
55. Applicant shall comply with all other applicable governmental rules, laws and regulations.