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**TOWN OF BURLINGTON
BOARD OF APPEALS**

2004 JUL 30 AM 11:59

FINDINGS AND DECISIONTOWN CLERK
BURLINGTON, MA

TO: Jane L. Chew, Town Clerk

FROM: Burlington Board of Appeals

DATE: July 30, 2004

RE: Application of Kimball Woods, LL (hereinafter the "Applicant") for an Amendment to a Previously Approved Comprehensive Permit granted to the Applicant in Burlington, Massachusetts (hereinafter the "Amendment Application")



Bk: 43614 Pg: 100 Doc: DECIS
Page: 1 of 28 08/30/2004 10:42 AM

PROCEDURAL HISTORY

On August 20, 2002, the Board of Appeals for the Town of Burlington (hereinafter referred to as the "Board" and the "Burlington Board of Appeals") granted a Comprehensive Permit (hereinafter, the "Permit") pursuant to M.G.L. Chapter 40B §§ 20-23, for property located off Pearl Street (said street being in Woburn) and shown on Assessor's Map 31 as Parcel 130 (hereinafter, the "Property"), for the construction of a rental apartment building consisting of at least 201 units and up to 250 units (the "Project") subject to certain provisions concerning adequacy of parking, traffic conditions and safety, as detailed in the original decision, which Permit is attached and incorporated as Attachment "A". The Permit was recorded with the Middlesex South Registry of Deeds on October 3, 2002 as Document Number 507.

On January 21, 2003, the Burlington Board of Appeals, Pursuant to 760 CMR 31.03(3)(a), granted the Applicant an amendment to the previously issued Permit in order to construct the Project at 250 units and fully described said proposed amendments in the Amendment Application. Such Permit is attached and incorporated as Attachment "B".

On December 16, 2003, the Burlington Board of Appeals, Pursuant to 760 CMR 31.03(3)(a), granted to the Applicant an amendment to the previously issued Permit to allow alterations to the site layout which allowed the creation of two (2), separate, eight (8) story residential structures adjoined by an exterior pool deck; two (2) levels of structured parking beneath the residential buildings; the elimination of an exterior parking deck; and the creation of a circular entrance driveway. These site improvements are fully described in the Amendment Application and such Decision issued by the Board is attached and incorporated as Attachment "C".

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Jane L. Chew
TOWN CLERK
BURLINGTON, MASSACHUSETTS

SUPPLEMENTAL DOCUMENTATION

The following documents and exhibits were received as part of the Amendment Application and/or during the public hearing process and are hereby incorporated by reference into this Decision amending the Permit:

- The completed Town of Burlington Board of Appeals Application for Hearing and associated Memorandum from Riemer & Braunstein LLP to the Board dated June 28, 2004.
- A Plan of Land entitled "Kimball Woods Site Development Plans, Burlington, Massachusetts", dated January 12, 2004 and revised through June 1, 2004, prepared by H. W. Moore Associates, Inc., and as further shown on an architectural plan entitled "Kimball Woods Apartments", dated May 28, 2004, prepared by Shesky Architects (hereinafter, individually and collectively known as the "Amended Site Plans").

PROPOSED AMENDMENTS

The Applicant has proposed site alterations/modifications to the previously approved Permit which are intended to enhance vehicular circulation and promote improved pedestrian access throughout the premises. The structured parking deck would be relocated between the two residential structures which will allow for a more efficient vehicular circulation pattern in the garage and in front of the buildings. This redesign will allow pedestrians to access the residential buildings from all five levels of parking, thereby eliminating conflicting pedestrian and vehicular movements. The structures have also been sited further from the wetlands line creating an enhanced buffer area.

As a result of the building and parking garage redesign, the Applicant has also created more spacious floor plans, residential storage areas and a minor increase in overall number of units from 250 to 256. The required affordability component of 25% of units will continue to govern this Project including the increased number of units.

FINDINGS

The Burlington Board of Appeals hereby makes the following findings regarding the Project, as described in the Amended Application and above:

1. In order to provide sufficient parking opportunities for all residents within the Project, the Applicant has proposed to construct a parking structure between the two (2) residential structures which will accommodate up to 347 vehicles. The balance of the parking for the units will be created through surface parking surrounding the buildings. The overall parking ratio for Kimball Woods is proposed at 1.52 spaces per unit and Kimball Court will have an overall parking ratio of 1.57 spaces per unit.

2. The Applicant has designed the internal vehicular circulation pattern to adequately accommodate the increase in residential traffic anticipated to be generated by the Project. The roadway layout will allow two-way traffic throughout the entire site as well as the surrounding area.

Janet L. Chen
TOWN CLERK

BURLINGTON, MASSACHUSETTS

routes in the event of an emergency. The Applicant shall continue to maintain the main and emergency access/egress points connecting the Project to the abutting public way (Pearl Street).

3. The site design will also adequately accommodate the increase in pedestrian traffic generated by the Project through a series of sidewalks connecting the parking areas to the residential buildings in Kimball Court and the community building.

4. The Applicant has proposed to reconstruct and increase the size of the community/recreational facilities currently existing within Kimball Court which will be designed to serve all residents within Kimball Woods and Kimball Court.

DECISION

Pursuant to 760 CMR 31.03 (c), the Burlington Board of Appeals opened and closed a duly advertised public hearing on **July 20, 2004**.

Pursuant to M. G. L. Chapter 40B §21, the Burlington Board of Appeals, after a public hearing and the above-noted findings, hereby grants to Kimball Woods LLC an amendment to the Permit for the construction of 256 apartment units with associated infrastructure improvements, subject to the following terms and conditions:

1. All previously issued conditions of approval granted to Kimball Woods, LLC by the Burlington Board of Appeals pursuant to the Permit issued on August 20, 2002, shall continue to remain in effect and are hereby incorporated into and made part of this Decision by reference.

2. The Project as constructed shall not exceed a total of 256 dwelling units and ten (10) stories in height. In the event that the Applicant chooses not to proceed with the construction of the 256 units, the Applicant shall notify the Burlington Board of Appeals.

3. The applicable plans governing the Project shall be the Amended Site Plans.

This Amendment of the Comprehensive Permit shall not be in effect until a copy of this Decision, bearing the certification of the Town Clerk that twenty days (20) have elapsed and no appeal has been filed, or, that if such appeal has been filed that it has been dismissed or denied, and is recorded at the Middlesex South Registry of Deeds and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Applicant.

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Jane L. Chew
TOWN CLERK
BURLINGTON, MASSACHUSETTS

On the 20th of July 2004, the following Burlington Board of Appeals members voted to grant this Amendment to the previously approved Comprehensive Permit granted to Kimball Woods, LLC, as stated above:

Robert Magney ^(P)
John Jackson
William Yaff
George Murray ^(P)

MMC/bc
 31433/1
 841017.1

Elean McGelinas Aug = 24 20 04
 Town Clerk, of the
 Town of Burlington hereby certify that no appeal has
 been taken within 20 days after the approval of this
 variance by the Bd. of Appeals of said town.

Elean McGelinas
 Asst Town Clerk

A TRUE COPY ATTEST:

Jane L. Chas
 TOWN CLERK
 BURLINGTON, MASSACHUSETTS

COPY

RECEIVED

Time

Date 10-3-02

EXHIBIT "A"

FINDINGS AND DECISION

AUG 30 2002

TOWN CLERK
BURLINGTON, MA

Re: Application of Joseph R. Mullins Company for a Comprehensive Permit in Burlington, Massachusetts

DATE: August 20, 2002

Middlesex South Registry of Deeds

	<u>DATE</u>	<u>TIME</u>	<u>DOC#</u>
<u>Procedural History</u>	10-03-02	10:50	507

On or about February 28, 2002, Kimball Woods LLC (hereinafter, the Applicant), applied for a Comprehensive Permit pursuant to M.G.L. Chapter 40B, to construct rental apartment units to be located off Pearl Street (said street being in Woburn) and shown on Assessor's Map 31 as Parcel 130 (hereinafter the Property).

A duly advertised public hearing was opened on March 19, 2002, and continued through the following dates: April 2, 2002, April 16, 2002, and June 18, 2002, with a site walk conducted on April 27, 2002.

The public hearing was closed on June 18, 2002. The Applicant agreed to an extension of time for the filing of the Decision in letters dated July 24, 2002, August 13, 2002 and August 21, 2002, extending the deadline for filing the Decision to August 30, 2002.

The following documents and exhibits were received as part of the Application or during the public hearing process and are hereby incorporated by reference into this Decision:

- The Application together with exhibits 1 through 15, inclusive.
- Plan of Land entitled "Kimball Woods Preliminary Site Development Plans", dated February 24, 2002, prepared by H.W. Moore Associates, Inc.
- Architectural plans entitled "Kimball Woods, Burlington, Massachusetts", dated January 14, 2002, prepared by Russell Scott Steedle & Capone Architects Inc.
- "Traffic Impact and Access Study, Kimball Woods, Burlington, MA." dated March 22, 2002, prepared by H.W. Moore Associates, Inc.
- "Storm Runoff Analysis and Erosion Control Requirements, Kimball Woods, Burlington, Massachusetts" dated February 12, 2002, prepared by H.W. Moore Associates, Inc.

Kimball Woods Decision - Page 1
August 20, 2002

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Jane R. Chen

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BURLINGTON, MASSACHUSETTS

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Town Departmental recommendations and e-mails:

- Memorandum of the Planning Director to the Board of Appeals dated March 19, 2002.
- Memorandum of the Planning Director to the Board of Appeals dated June 18, 2002.
- Memorandum of the Board of Health to the Town Administrator dated May 14, 2002.
- Memorandum from the Town's consultant, MHJ Associates, dated July 16, 2002.
- Memorandum from the Fire Department to the Town Administrator dated July 17, 2002.
- Memorandum from the DPW Director and Town Engineer to the Town Administrator dated July 18, 2002.
- Memorandum from the Inspector of Buildings to the Town Administrator dated June 18, 2002.
- Memorandum from the Police Department to the Town Administrator dated July 26, 2002.
- E-mail memorandum from the Fire Department to the Town Administrator dated March 5, 2002.
- E-mail memorandum from the Fire Department to the Town Engineer and Planning Director dated March 14, 2002.

Correspondence from the Applicant:

- Memorandum from Riemer & Braunstein LLP to the Board of Appeals dated May 7, 2002, in response to the comments of the Planning Staff and Fire Department.
- Memorandum from Riemer & Braunstein LLP to the Board of Appeals dated June 7, 2002, with supplemental traffic analysis by H.W. Moore Associates.
- Memorandum from Riemer & Braunstein LLP to the Board of Appeals dated June 18, 2002, for clarification of limitations imposed on a "Limited Dividend Organization".
- Memorandum from Riemer & Braunstein LLP to the Board of Appeals dated August 19, 2002, in response to the draft Comprehensive Permit Decision and comments from Town Counsel.

The Board of Appeals deliberated on August 20, 2002.

Kimball Woods Decision – Page 2
August 20, 2002

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FINDINGS

The Board of Appeals makes the following findings with regard to the Project's compliance with M.G.L Chapter 40B, Sections 20 through 23 ("Chapter 40B").

1. The Comprehensive Permit Application of Kimball Woods, LLC has been found to meet the following procedural requirements:
 - (a) Kimball Woods, LLC is a limited dividend organization within the meaning of Massachusetts General Laws, Chapter 40B and 760 C.M.R. 31.01(1)(a) and distributions shall be limited according to Chapter 40B and the applicable regulatory agreement governing the pertinent housing programs providing the subsidy for the Project. The restriction on dividends shall be governed by the terms of the applicable Regulatory Agreement governing the Project and applicable regulations governing affordable units created pursuant to M.G.L. Chapter 40B or any successor statute, provided, however, that the release of the restriction on dividends does not affect any of the other obligations set forth in this permit regarding the affordable units required hereunder.
 - (b) The Project is fundable by a subsidizing agency using the New England Fund ("NEF") from the Federal Home Loan Bank of Boston ("FHLBB"), and thus complies with 760 C.M.R. 31.01(1)(b).
 - (c) The Applicant has sufficient control of the Site pursuant to 760 C.M.R. 31.01(1)(c).
 - (d) The number of low or moderate income housing units in the Town of Burlington (the "Town") constitutes less than ten percent (10%) of the Town's total housing units as reported in the latest decennial census of the Town and reported by the Department of Housing & Community Development ("DHCD") as of July 1, 1997 (Chapter 40B units certified by DHCD at the time of application) and April 24, 2002.
 - (e) The Project as herein proposed is consistent with local needs of the Town of Burlington within the meaning of M.G.L. Chapter 40B, Section 20.
2. The Town of Burlington has not met the statutory minimum set forth in M.G.L. Chapter 40B, Section 20 or 760 C.M.R. 31.04 nor is affordable housing located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial, or industrial use. The development of affordable units consistent with this Application will result in the commencement of such housing on sites comprising more than three tenths of one percent of such land area.

Kimball Woods Decision – Page 3
August 20, 2002

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3. The subject property is located on Assessor's Map 31, Parcel 130, in Burlington, Massachusetts. The property contains approximately 30.92 acres and is zoned One Family Dwelling (RO) District as set forth on the official Zoning Map and in the Zoning Bylaw of the Town of Burlington.
4. The original Application proposed to develop 201 apartment units in one seven story building. During the public hearing, the Town initiated discussions with the Applicant regarding increasing the number of units to in the proposed development to 250 units. The Applicant was amenable to this requested increase in the number of units. Therefore, the Board of Appeals renders this Decision for 250 units subject to the review procedures set forth in Section 3 of the DECISION Section, below.
5. As proposed, and pursuant to M.G.L. Chapter 40B and the regulations promulgated thereunder, twenty-five (25%) percent of the units will be restricted for lease/rental by households at or below eighty (80%) percent of the Boston area median household income. This is consistent with the requirement of the Housing Appeals Committee (HAC) for New England Fund projects.
6. The Applicant's financial information is in compliance with the requirements of M.G.L. Chapter 40B and the regulations promulgated thereunder.

DECISION

Pursuant to M.G.L. Chapter 40B, the Board of Appeals of Burlington, after a public hearing and the above-noted findings, hereby grants a Comprehensive Permit ("Permit") to the Kimball Woods LLC, for the construction of up to 250 apartment units, with associated infrastructure improvements, subject to the following terms and conditions:

1. Subject to the provisions of Section 3, below, the Project as constructed shall not initially exceed 201 dwelling units, as detailed in the Preliminary Plan entitled "Kimball Woods Preliminary Site Development Plans", dated February 24, 2002, prepared by H.W. Moore Associates, Inc. The Preliminary Plan, or any subsequent plan consistent with this Permit and having been approved by the Zoning Board of Appeals as an "insubstantial change" in accordance with 760 C.M.R. 31.03 (1), is hereby incorporated into this Decision by reference.
2. Prior to the issuance of a Building Permit, the Applicant shall prepare a Final Plan detailing the approved design, as modified below, of the Project including the following detail sheets: Existing Conditions Plan; Site Layout and Materials Plan; Proposed Grading and Drainage; Utilities; Proposed Traffic Improvements and Traffic Safety Signage Summary; Detail Sheet specifying design of Drainage Structures, Sewer Manholes, Infiltration Systems, and Retaining Walls; Profile in Grade Plan of Drainage, Water and Sewer Lines; Parking Table; Landscape Plan.

Kimball Woods Decision – Page 4
August 20, 2002

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3. The Project as constructed shall not exceed a total of 250 dwelling units (provided that the Applicant shall not construct more than 201 units until the Applicant submits a revised plan to the Board of Appeals demonstrating that there is sufficient parking for the added units and provided further that the Applicant provides the Board of Appeals with evidence that the construction of such units does not have an adverse effect on safety or traffic conditions as verified by the various Town boards and departments which shall have an opportunity to comment to the Board of Appeals on the additional units). The 201 units initially authorized by this Permit are detailed on the Preliminary Plan entitled "Kimball Woods Preliminary Site Development Plans", dated February 24, 2002, prepared by H.W. Moore Associates, Inc. The Preliminary Plan, or any subsequent plan consistent with the Comprehensive Permit and having been approved by the Board of Appeals as an insubstantial change in accordance with 760 C.M.R. 31.03(1), is hereby incorporated into this Decision by reference. The Applicant shall notify the Board if it elects not to proceed with constructing units in excess of 201.
4. Twenty-Five (25.0%) of all units constructed pursuant to this Permit shall be reserved for rental or lease by households at or below eighty (80%) percent of the Boston Primary Metropolitan Statistical Area median household income for a period of 99 years, or for as long as the development is not in full conformity with the Town's Zoning Bylaw, whichever is longer. The affordable units shall not be situated so as to segregate the affordable units from the market rate units.
5. Preference for the leasing of 70% of the affordable units shall be given to Burlington residents, children and parents of Burlington residents, and/or employees of the Town of Burlington, pursuant to a lottery or selection process (reviewed and approved by Town Counsel) administered by the Applicant, with an annual report of leasing activity submitted to the Burlington Housing Partnership.
6. As part of its Application for the Comprehensive Permit, the Applicant has submitted a Regulatory Agreement and a Monitoring Agreement. Prior to the issuance of any Building Permit, the Applicant shall submit the final draft of a Regulatory Agreement to the Board of Appeals for approval as to form by its Town Counsel. The Regulatory Agreement shall contain, at a minimum, the following terms: The affordable units shall be restricted as affordable for 99 years, or for as long as the development is not in full compliance with the Town's Zoning Bylaw, whichever is longer, to households with less than 80% of the Boston area median income; The Monitoring Agent for this Project shall be an entity designated by the Board of Selectmen.

Jane L. Chew

TOWN CLERK

7. Prior to the issuance of the Certificate of Occupancy, the Applicant shall submit the final draft of the Monitoring Agreement to the Board of Appeals for approval, as to form, by its Town Counsel.
8. The affordable units of the Project shall consist of a 45% two bedroom and 55% one bedroom mix, consistent with the overall Project.
9. All units shall be connected to public water and sewer facilities at the Applicant's sole cost and expense.
10. In the event that the water supply for the Project is to be provided from Burlington, the Applicant shall be required to either (a) connect the existing dead end water main at Beacon Street to the existing dead end water main in Peach Orchard Road, providing a looped water main to serve the proposed building; or (b) the Applicant shall propose alternative arrangements acceptable to the Town's DPW Superintendent and/or Fire Department, which approval shall not be unreasonably withheld. The location and design of such water line shall be subject to review and approval of the DPW Superintendent. Where the system may need to be constructed outside Town boundaries, the Applicant shall pursue construction approval from the City of Woburn as may be required. Where the system may be proposed to be constructed outside of existing easements, the Applicant shall pursue such easements from the affected property owner(s).
11. The Applicant shall comply with all State Building and Fire Code requirements.
12. The Applicant shall submit to the Building Department structural drawings for all proposed retaining walls within the Project. All structural drawings shall be designed and certified by a professional structural engineer. Prior to the issuance of a Final Occupancy Permit, the Applicant shall submit to the Building Department a certification from a professional engineer that the retaining walls were designed in accordance with the approved structural drawings.
13. Prior to the issuance of a Final Certificate of Occupancy, the Applicant shall submit an as-built plan of all underground utilities (including telephone, electric, gas, water, sewer, storm drainage) serving the building to the Inspector of Buildings, Town Engineer, Board of Appeals and Planning Board for future reference purposes. The as-built shall include horizontal and vertical ties from any handholes, manholes, valves, gates, cleanouts, tees, elbows, bends, etc. to fixed points of reference.
14. Prior to the issuance of a Final Certificate of Occupancy, all landscaping as reflected on the Landscaping Plan prepared by H.W. Moore Associates, Inc., dated February 24, 2002, shall be installed. The Applicant may provide a bond to cover the full amount of the landscaping materials and installation if weather conditions do not

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permit the completion of the landscaping prior to anticipated occupancy of the building. All landscaping shall be properly maintained in a healthy condition in perpetuity.

15. The Final Site Plan shall reflect the location of the Fire Department connections, fire hydrant(s), and "Fire Lane" striping as required by the Burlington and/or Woburn Fire Departments.
16. Confined spaces shall comply with 29 C.M.R. 1910.146 and shall be listed with the Fire Department.
17. A fully addressable alarm system shall be installed and monitored by a Master Box.
18. The Applicant shall be required to file for a dumpster permit with the Fire Department.
19. The building and garage shall be fully sprinkled with standpipes in the stairwells and garage.
20. The Applicant shall work with the Fire Department to customize the 911 emergency system to provide specific locations of emergency calls.
21. Any proposed construction activity within 100' of any wetland or resource area shall be submitted to the Conservation Commission for review and approval in accordance with the Massachusetts State Wetlands Act. The Applicant shall comply with all conditions of any Order of Conditions issued thereunder.
22. Prior to the submission of the Final Site Plan to the Building Department and simultaneous with the submission of a Notice of Intent to the Conservation Commission, the Applicant shall prepare and submit a Stormwater Pollution Prevention Plan ("Prevention Plan") that addresses the control of runoff and sediment during construction. This Prevention Plan shall be submitted to the Conservation Commission for review and approval with input from the Board of Health staff. The Prevention Plan shall detail sediment controls to be used throughout each phase of the construction sequence. The Prevention Plan shall include the location of stockpiling areas, temporary stabilization of stockpiled materials, dewatering methods and specifications, procedures to monitor for and manage contaminated soil if detected, measures to temporarily stabilize exposed surfaces, and a contingency plan in the event that any contamination is encountered on the Site.
23. Prior to the submission of the Final Site Plan to the Building Department, the Applicant shall submit documentation to the Board of Health verifying that it has complied with the stormwater permitting requirements as specified by the Federal

Jane R. Chen

Clean Water Act National Pollution Discharge Elimination Systems (NPDES), as applicable.

24. Prior to the submission of the Final Site Plan to the Building Department and simultaneous with the submission of a Notice of Intent to the Conservation Commission, the Applicant shall submit a Snow Management Plan to the Conservation Commission. The Snow Management Plan shall include plowing of all fire access ways and pedestrian exit walkways. Snow shall not be stockpiled within any emergency access ways or adjacent to any on-site fire hydrants or within wetland resource areas.
25. The Final Site Plan shall reflect the installation of granite curbing within all improved areas under the jurisdiction of the Conservation Commission with the exception of those locations detailed on the Final Site Plan where a retaining wall is proposed to be constructed at the edge of pavement. The retaining wall shall be raised 6" above the grade of the pavement.
26. On-site catch basins shall be equipped with four (4') foot sumps, oil absorbent pillows and oil/water separating hoods.
27. Prior to the submission of the Final Site Plan to the Building Department and simultaneous with the submission of a Notice of Intent to the Conservation Commission, the Applicant shall submit a Drainage Maintenance Agreement to the Conservation Commission, the Board of Health and the Town Engineer. The Agreement shall indicate that all on-site drainage structures and all paved areas on the Site will be cleaned and maintained at least two (2) times annually, once in the Fall and once in the Spring, and immediately after any chemical release equal to or greater than five (5) gallons. The Agreement shall include a maintenance schedule and the Applicant shall submit maintenance records to the Board of Health as they are generated.
28. All handicapped parking shall be properly posted in accordance with the requirements of the Americans with Disabilities Act. All handicapped accessibility improvements shall comply with Massachusetts Architectural Access Board Rules and Regulations.
29. The Applicant shall be responsible for maintaining the proposed access and driveway as a private way, and shall be responsible for maintaining all improvements within the Project, including but not limited to drainage systems and structures, sewer system, water lines, the roadway surface, curbing, and other required utility improvements, in a satisfactory manner.

Jane L. Chen

30. Prior to the submission of the Final Site Plan to the Building Department the Applicant shall submit a chemical inventory to the Board of Health and the Fire Department which specifies the name and amount of each chemical proposed to be stored on-site. A copy of the material safety data sheet for each item listed on the chemical inventory shall also be submitted to the Board of Health and the Fire Department.
31. There shall be no use of salts or other de-icing chemicals or compounds on the property, except for calcium chloride, pursuant to Article XIV Section 4.4 of the General Bylaw.
32. There shall be no on-site storage of fuels, oils, automotive fluids, fertilizers, pesticides, insecticides, herbicides, cleaning chemicals, and other hazardous materials of significant concern, other than household quantities for domestic use.
33. The Final Site Plan shall reflect the installation and maintenance of a stone apron consisting of 6" or 20 pound stones with an apron at least 30' wide and 50' in length, to be used throughout all construction phases between all work areas and paved areas. Sediment tracked onto paved areas including the internal access drive and Pearl Street, shall be swept at the conclusion of each construction day, until all work areas have been properly stabilized.
34. Prior to the submission of the Final Site Plan to the Building Department and simultaneous with the submission of a Notice of Intent to the Conservation Commission, the Applicant shall submit a Sedimentation and Erosion Control Plan to the Conservation Commission and the Board of Health which shall reflect appropriate measures to protect materials and any adjacent drainage structures from erosion and sedimentation during excavation.
35. A dumpster shall be used during the building construction process to contain waste construction materials and debris.
36. All pavement/asphalt materials removed from the premises shall be properly disposed of by a licensed contractor and documentation of such disposal shall be submitted to the Board of Health and the Conservation Commission.
37. The Applicant shall provide twenty-four (24) hour notice to pertinent Town departments, including the Inspector of Buildings, the Conservation Administrator and the General Development Inspector, prior to commencing any work on the Site.
38. No construction activity shall take place prior to 7:00 a.m. or after 7:00 p.m., Monday through Saturday, and no construction shall be permitted on Sundays, except as may be permitted or otherwise authorized by the Board of Selectmen and the Police Chief.

Jane L. Chew

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BURLINGTON, MASSACHUSETTS

39. The southerly property line abutting the Westgate Apartments adjoining the area of proposed construction shall be clearly identified in the field to ensure that any construction activity does not encroach onto the abutting property.
40. The Applicant has requested and the Board of Appeals has granted the following waivers from the local Bylaws and Regulations set forth in Appendix "A" attached hereto and incorporated herein. Minor deviations from applicable local Bylaws and Regulations may be authorized by the Board of Appeals in the subsequent review and approval of the Final Site Plans.
41. This Comprehensive Permit shall control the development of the Project and to the extent of any inconsistency between this Comprehensive Permit and any other instrument, document or agreement delivered as part of the Application for this Comprehensive Permit the terms, conditions and limitations of this Comprehensive Permit and the Regulatory Agreement incorporated by reference herein shall govern and control.
42. Pursuant to 760 C.M.R. 31.08(5), this Comprehensive Permit may be transferred to a person or entity other than the Applicant only with the written approval of the Board of Appeals, which approval shall not be unreasonably withheld or delayed.

This Comprehensive Permit Decision shall not be in effect until a copy of this Decision, bearing the certification of the Town Clerk that twenty days have elapsed and no appeal has been filed, or, that if such appeal has been filed, that it has been dismissed or denied, and is recorded at the Middlesex South Registry of Deeds and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Applicant.

On the 20th day of August, 2002, the following Burlington Board of Appeals members voted to grant this Comprehensive Permit Application as stated above:

Eileen M. Galvin
Asst. Town Clerk

John M. Warden
John H. Berger
Wayne R. Harding

Kimball Woods Decision - Page 10
August 20, 2002

A TRUE COPY ATTEST:

Jane L. Chew

TOWN CLERK
BURLINGTON, MASSACHUSETTS

Eileen M. Galvin
Sept. 23, 19-2002
Town of Burlington
I, Eileen M. Galvin, Asst. Town Clerk, of the
Town of Burlington hereby certify that no appeal has
been taken within 20 days after the approval of this
variance by the Bd. of Appeals of said town.

**REQUESTED EXCEPTIONS FROM LOCAL BYLAWS, POLICIES AND REGULATIONS
APPENDIX "A"**

I. ZONING BYLAWS	REQUIRED	PROPOSED
Zoning Bylaw § 2.29	Frontage	"Frontage" shall mean the line adjacent to (a) any internal site drive of any length which connects to a way described in subclause (b), (c) or (d), below, or (b) a public way which the Town Clerk certifies is maintained and used as a public way, or (c) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (d) a way in existence when the subdivision control law became effective in the Town of Burlington, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Frontage shall be measured in a single, continuous, uninterrupted line along a street or streets.
Zoning Bylaw § 4.1.3	Temporary Accessory Uses	Temporary Building or structure for a period of 1 year
Zoning Bylaw § 4.2.1.2	Garden Apartment dwelling units	Up to 250 Units or as approved by the Zoning Board of Appeals
Zoning Bylaw § 4.3.1.4	Garage space for parking not more than three automobiles	109 garages spaces or as approved by the Zoning Board of Appeals
Zoning Bylaw § 4.4.1	Principal Uses in a Wetlands District	Under MGL Chpt 131, Section 40 Applicant will submit a Notice of Intent to the Conservation Commission in accordance with 310 CMR 10.05 (e)
Zoning Bylaw § 5.1.3	Garden Apartments limited to 6-12 dwelling units; no more than 2 bedrooms and not less than 50% of units one-bedroom; no living space below finished grade or above second story; no space in an apartment building shall be used for storage of gasoline powered vehicles and equipment or combustible materials not part of the building	High Rise Apartment complex 55% one bedroom & 45% two bedroom units with 109 parking spaces below grade or as approved by the Zoning Board of Appeals
Zoning Bylaw § 5.1.4.3	Accessory use prohibited in front and side yards in RO Zone	See Signage Exceptions & Dimension Exceptions Tables
Zoning Bylaw § 5.1.8	Each dwelling requires separate lot complying with dimensional requirements	See Dimensional Exceptions Table
Zoning By-Law § 5.2.0	Dimensional Requirements	See Dimensional Table Exceptions
Zoning By-Law § 6.4.0	Required Screening	Screening provided per plans
Zoning By-Law § 6.5.0	Landscaping	See Landscaping Plan

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Jane R. Chen
TOWN CLERK
BURLINGTON, MASSACHUSETTS

**REQUESTED EXCEPTIONS FROM LOCAL BYLAWS, POLICIES AND REGULATIONS
APPENDIX "A"**

I. ZONING BYLAWS (CONTINUED)	REQUIRED	PROPOSED
Zoning By-Law § 6.6.1	Determination of Area and Frontage	See Frontage Exception Definition
Zoning By-Law § 6.7.1	Signage	See Signage Exceptions
Zoning By-Law § 7.1.0	Parking and Loading Regulations	See Parking Exceptions
Zoning By-Law § 7.5.0	Parking Structures and Garages for Uses other than one Family Dwellings	109 below grade parking spaces or as approved by the Zoning Board of Appeals
Zoning By-Law § 8.1.0	100 Yard Flood Plain District	Under MGL Chpt 131, Section 40 Applicant will submit a Notice of Intent to the Conservation Commission in accordance with 310 CMR 10.05 (e)
Zoning By-Law § 8.2.0	Wetlands District	Under MGL Chpt 131, Section 40 Applicant will submit a Notice of Intent to the Conservation Commission in accordance with 310 CMR 10.05 (e)
Zoning By-Law § 9.1.1	Enforcement - Issuance of Building Permit for plans in compliance with Zoning Bylaw	Process in Compliance with MGL Chpt. 40B
Zoning By-Law § 9.1.2	Occupancy Permit - Issuance of Occupancy Permit for structures constructed in compliance with Zoning Bylaw	Process in Compliance with MGL Chpt. 40B
Zoning By-Law § 9.2.0	Special Permit Requirements, Procedures and Fees	Process in Compliance with MGL Chpt. 40B
Zoning By-Law § 9.3.0	Site Plan	Process in Compliance with MGL Chpt. 40B
Zoning By-Law § 9.5.0	Appeals	Process in Compliance with MGL Chpt. 40B
Zoning By-Law § 9.6.0	Notice of Public Hearings	Process in Compliance with MGL Chpt. 40B

II. GENERAL BY-LAW	REQUIRED	PROPOSED
General By-Law, Article IV §3	Various approval and/or permit from the Board of Selectmen in its capacity as Board of Public Works having all the powers and duties of Road Commissioners, Water Commissioners, Sewer Commissioners, and the like	The Applicant will comply with all applicable State Laws and Regulations and standard engineering practices with respect to roads, water and sewer systems
General By-Law, Article IV §9.1 & Burlington Building Department Schedule of Permits and Fees	Fees for Building Permits and Plan Review	Cap fees for Building Permits and Plan Review at rates in effect at time of application submitted on February 28, 2002
General By-Law, Article XIII §1.2	Permit from Selectmen to break or dig up any part of a street or remove any earth or gravel	Applicant will comply with state laws and regulations and standard engineering practices

A TRUE COPY ATTEST:

Jane R. Chen

**TOWN CLERK
BURLINGTON, MASSACHUSETTS**

**REQUESTED EXCEPTIONS FROM LOCAL BYLAWS, POLICIES AND REGULATIONS
APPENDIX "A"**

II. GENERAL BY-LAW (CONTINUED)	REQUIRED	PROPOSED
General By-Law, Article XIII § 1.3	Permit from Selectmen for access to and from public way of the Town	Site driveway will comply with standard engineering practices
General By-Law, Article XIII § 4.0	Fire Alarm Systems	Applicant will comply with the State Building Code for multi-family residential use and fees shall be capped at the rate in effect at the time of application submitted on February 28, 2002
General By-Law, Article XIV § 1.0	Local Wetlands By-Law	Under MGL Chpt 131, Section 40 applicant will submit a Notice of Intent to the Conservation Commission in accordance with 310 CMR 10.05 (e)
General By-Law, Article XIV § 2.8	Local Wetlands By-Law Provisions for Solid Waste Disposal	Under MGL Chpt 131, Section 40 applicant will submit a Notice of Intent to the Conservation Commission in accordance with 310 CMR 10.05 (e)
General By-Law, Article XIV § 3.0	Sign Bylaw including permit requirement and limitation on permitted signage	Signage proposal in compliance with non-zoning requirements of State Building Code and standard engineering practices - See Signage Exceptions
General By-Law, Article XIV § 4.2	Removal and addition of earth with permit and performance guarantees	Applicant will comply with standard engineering practices

III. SEWER POLICIES		
Sewer Policies	Guidelines for Allocation of Sewer Tie-In Permits including permits approvals and signatures from the Board of Selectmen, Superintendent of Burlington Department of Public Works and/or Building Inspector	Sewer Connection Permit from Department of Environmental Protection (DEP)

IV. BOARD OF HEALTH RULES & REGULATIONS		
Burlington Board of Health Rules and Regulations	General procedures and regulations pertaining to construction and drainage	All construction shall be in compliance with the Massachusetts DEP and Under MGL Chpt 131, Section 40, Applicant will submit Notice of Intent to the Conservation Commission in accordance with 310 CMR 10.05 (e)

V. SIGNAGE	REQUIRED UNDER SINGLE FAMILY (RO) DISTRICT	PROPOSED
Residential Sign Area	1 square foot or less	3 wall signs for designation of entrances. Each sign will not exceed 5 square feet

Jane L. Chew
TOWN CLERK
BURLINGTON, MASSACHUSETTS

TRUE COPY ATTEST

**REQUESTED EXCEPTIONS FROM LOCAL BYLAWS, POLICIES AND REGULATIONS
APPENDIX "A"**

VI. PARKING	REQUIRED UNDER GARDEN APARTMENT (RG) DISTRICT	PROPOSED
Number of parking spaces for multi-family dwelling	1.5 plus seasonal storage - 1.5 per unit = 303	As approved by the Zoning Board of Appeals
Standard Car space	9 x 18 feet	9 x 18 feet
Compact Car space	8 x 15 feet	8 x 15 feet
Handicapped Car space	In accordance with Massachusetts Architectural Access Board requirements	Dimensions and quantity of spaces in accordance with Massachusetts Architectural Access Board
Structured Parking space	not permitted	As approved by the Zoning Board of Appeals

VII. CONSERVATION COMMISSION	REQUIRED	PROPOSED
Local Bylaws and Policies	Local Policies and Fees	Under MGL Chpt 131, Section 40 applicant will submit a Notice of Intent to the Conservation Commission in accordance with 310 CMR 10.05 (e)

VIII. SITE PLAN RULES AND REGULATIONS	REQUIREMENT	PROPOSED
Section 1.6 Surveying and Drafting Requirements	Surveying and Drafting Requirements	Preliminary Site Plan shall be submitted in Compliance with 760 CMR 31.02 (2)
Section 1.7 Submission Requirements and Plan Form and Content	Submission Requirements and Plan Form and Content	Preliminary Site Plan shall be submitted in Compliance with 760 CMR 31.02 (2)
Section 1.8 Filing Fees	Filing Fees	Applicant shall submit required \$5,000.00 filing fee in accordance with Board of Appeals Fee Schedule
Section 1.9 Project Review Fees	Project Review Fees	Any Peer Review requested by Board of Appeals shall cap fees at \$15,000

A TRUE COPY ATTEST

June 2, 2011
TOWN CLERK
BURLINGTON, MASSACHUSETTS

**REQUESTED EXCEPTIONS FROM LOCAL BYLAWS, POLICIES AND REGULATIONS
APPENDIX "A"**

IX. DIMENSIONAL REQUIREMENTS	REQUIRED UNDER SINGLE FAMILY (RO) DISTRICT	GARDEN APARTMENT (RG) DISTRICT	PROPOSED
Minimum Lot Area	20,000	120,000	30+/- acres
Minimum Lot Frontage	100	100	30' (easement)
Minimum Front Yard	25	50	3'
Minimum Side Yard	15	50	120'
Minimum Rear Yard	15	50	400'
Minimum Yard Adjoining RO & RG	n/a	50	140'
Maximum Aggregate Building to Ground Area Percentage	n/a	n/a	As approved by the Zoning Board of Appeals
Maximum Building & Structure Height	30'	30'	As approved by the Zoning Board of Appeals
Minimum Feet Between Buildings	n/a	50	N/A
Maximum Floor Area Ratio	n/a	n/a	As approved by the Zoning Board of Appeals
Impervious Surface Area	n/a	n/a	7%
Wetland Area	n/a	n/a	90%

A TRUE COPY ATTEST:

Jane R. Chen

**TOWN CLERK
BURLINGTON, MASSACHUSETTS**

COPY

Time 9:35
D.L. 4/2/03

RECEIVED

EXHIBIT "B"FINDINGS AND DECISION

FEB FEB -5 PM 12:13 -C

TOWN CLERK
BURLINGTON, MA

Re: Application of Joseph R. Mullins Company, acting as Kimball Woods, LLC (hereinafter the "Applicant") for an Amendment to a Previously Approved Comprehensive Permit granted to the Applicant in Burlington, Massachusetts (hereinafter the "Amendment Application")

DATE: January 21, 2003

Procedural History

On August 20, 2002, the Board of Appeals for the Town of Burlington (hereinafter referred to as the "Board" and the "Burlington Board of Appeals") granted a Comprehensive Permit (hereinafter, the "Permit") pursuant to M.G.L. Chapter 40B §§ 20-23, for property located off Pearl Street (said street being in Woburn) and shown on Assessor's Map 31 as Parcel 130 (hereinafter, the "Property"), for the construction of a rental apartment building consisting of at least 201 units and up to 250 units (the "Project") subject to certain provisions concerning adequacy of parking, traffic conditions and safety, as detailed in the original decision, which Permit is attached and incorporated as Attachment "A". The Permit was recorded with the Middlesex South Registry of Deeds on October 3, 2002 as Document Number 507.

Pursuant to 760 CMR 31.03(3)(a) the Applicant informed the Board that it was seeking to amend the Permit in order to construct the Project at 250 units and fully described said proposed amendments in the Amendment Application filed on December 16, 2002.

Pursuant to the terms of the Permit and 760 CMR 31.03 (c), the Board opened and closed a duly advertised public hearing on January 21, 2003.

The following documents and exhibits were received as part of the Amendment Application and/or during the public hearing process and are hereby incorporated by reference into this Decision amending the Permit:

- § The completed Town of Burlington Board of Appeals Application for Hearing and associated Memorandum from Riemer & Braunstein LLP to the Board dated December 16, 2002.
- § A Plan of Land entitled "Kimball Court/Kimball Woods, Woburn & Burlington, MA, Conceptual Plan for Covered Parking", dated October 16, 2002, prepared by H. W.

Kimball Woods Decision - Page 1
January 28, 2003

A TRUE COPY ATTEST

Jane L. Chen
TOWN CLERK
BURLINGTON, MASSACHUSETTS

Moore Associates, Inc., and as further shown on a Plan of Land entitled "Kimball Woods Preliminary Site Development Plans", dated December 30, 2002, prepared by H. W. Moore Associates, Inc., and as further shown on an architectural plan entitled "Kimball Woods", dated December 4, 2002, prepared by Russell Scott Steedle & Capone Architects Inc. (hereinafter, individually and collectively known as the "Amended Site Plans")

Town Departmental recommendations and correspondence:

- \$ Memorandum of the Fire Chief to the Board of Appeals dated January 13, 2003.
- \$ Memorandum of the Board of Health to the Board of Appeals dated January 9, 2003.
- \$ Memorandum of the Planning Board to the Board of Appeals dated January 17, 2003.

FINDINGS

The Burlington Board of Appeals hereby makes the following findings regarding the compliance of the Project, as described in the Amended Application, with the requirements of the Permit regarding the creation of sufficient parking to service the proposed 250 units and the adequacy of traffic conditions and safety provisions:

1. In order to provide sufficient parking opportunities for all residents within the Project, the Applicant has proposed to construct a raised parking deck which will accommodate up to 118 vehicles. A portion of this parking deck will be located on the southeasterly corner of the Kimball Woods site, with the remainder of the parking deck located on the adjacent Kimball Court property. This proposed parking deck will not only serve the needs of the residents located within the Project, but will also provide residents of the abutting Kimball Court with alternative parking options. These additional parking spaces will create a parking ratio of 1.67 spaces per unit for the Kimball Woods residents with an overall parking ratio of 1.64 spaces per unit for the entire Kimball Woods and abutting Kimball Court apartment development.
2. The Applicant has designed the internal vehicular circulation pattern to adequately accommodate the increase in residential traffic anticipated to be generated by the Project. The roadway layout will allow two-way traffic throughout the entire site as well as multiple internal routes in the event of an emergency. The Applicant shall continue to maintain the main and emergency access/egress points connecting the Project to the abutting public way (Pearl Street).
3. The site design will also adequately accommodate the increase in pedestrian traffic generated by the Project through a series of sidewalks connecting the

Kimball Woods Decision - Page 2
January 28, 2003

A TRUE COPY ATTEST:

Jane R. Clune

TOWN CLERK
BURLINGTON, MASSACHUSETTS

parking areas to the Project's residential building and the residential buildings in Kimball Court.

4. The Applicant has worked with the City of Woburn to design a utility system which will provide the Project with adequate water supply for domestic needs and fire suppression as well as sanitary sewer capacity. A copy of the final agreement shall be submitted to the Burlington Board of Appeals.

DECISION

Pursuant to M. G. L. Chapter 40B §21, the Burlington Board of Appeals, after a public hearing and the above-noted findings, hereby grants to Kimball Woods LLC an amendment to the Permit for the construction of 250 apartment units with associated infrastructure improvements, subject to the following terms and conditions:

1. All previously issued conditions of approval granted to Kimball Woods, LLC by the Burlington Board of Appeals pursuant to the Permit issued on August 20, 2002, shall continue to remain in effect and are hereby incorporated into and made part of this Decision by reference.
2. The Project as constructed shall not exceed a total of 250 dwelling units and nine (9) stories in height. In the event that the Applicant chooses not to proceed with the construction of the 250 units, the Applicant shall notify the Burlington Board of Appeals.
3. The applicable plans governing the Project shall be the Amended Site Plans.

This Amendment of the Comprehensive Permit shall not be in effect until a copy of this Decision, bearing the certification of the Town Clerk that twenty days (20) have elapsed and no appeal has been filed, or, that if such appeal has been filed that it has been dismissed or denied, and is recorded at the Middlesex South Registry of Deeds and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Applicant.

Kimball Woods Decision - Page 3
January 28, 2003

A TRUE COPY ATTEST
June L. C. [Signature]
TOWN CLERK
BURLINGTON, MASSACHUSETTS

On the 21st of January 2003, the following Burlington Board of Appeals members voted to grant this Amendment to the previously approved Comprehensive Permit granted to Joseph R. Mullins Company, acting as Kimball Woods, LLC, dated August 20, 2002, as stated above:

Joseph R. Mullins
Wayne Z. Harding
George Munn
Willie [unclear]
John M. Berghini

31433/1
 751771.2

M. Cushing
 3/7/03

March 7 19 2003

Elean M. Gelina Asst. Town Clerk, of the
 Town of Burlington hereby certify that no appeal has
 been taken within 20 days after the approval of the
 variance by the Bd. of Appeals of said town.

Elean M. Gelina
 Asst. Town Clerk

Kimball Woods Decision - Page 4
 January 28, 2003

A TRUE COPY ATTEST:

Jane R. C. [unclear]
 TOWN CLERK
 BURLINGTON, MASSACHUSETTS

COPY

MDSX SO. DIST. DEEDS

DOCUMENT: 169024DATE: 6-30-04TIME: 8:36Book 43178Page 27

TO: Town Clerk

EXHIBIT "C"

**BOARD OF APPEALS
FINDINGS AND DECISION**

RECEIVED

2004 JAN -7 PM 12:10

TOWN CLERK *X*
BURLINGTON, MA

RE: Application of **Joseph R. Mullins Company**, acting as **Kimball Woods, LLC** (hereinafter the "Applicant") for a modification/amendment to a Previously Approved Comprehensive Permit granted to the Applicant in Burlington, Massachusetts (hereinafter the "Amendment Application")

DATE OF
DECISION: **December 16, 2003**

DATE OF **January 7, 2003**
FILING: *RM*

PROCEDURAL HISTORY

On August 20, 2002, the Board of Appeals for the Town of Burlington (hereinafter referred to as the "Board" and the "Burlington Board of Appeals") granted a Comprehensive Permit (hereinafter, the "Comprehensive Permit") pursuant to M.G.L. Chapter 40B §§ 20-23, for property located off Pearl Street (said street being in Woburn) and shown on Assessor's Map 31 as Parcel 130 (hereinafter, the "Property"), for the construction of a rental apartment building consisting of at least 201 units and up to 250 units (the "Project") subject to certain provisions concerning adequacy of parking, traffic conditions and safety, as detailed in the original decision, which Permit is attached and incorporated as Attachment "A". The Comprehensive Permit was recorded with the Middlesex South Registry of Deeds on October 3, 2002 as Document Number 507.

On January 21, 2003, the Board granted approval to an Amendment Application (hereinafter, the "Amendment"), to the Comprehensive Permit in order to construct the Project at 250 units, which Amendment is attached and incorporated as Attachment "B". The Amendment was recorded with the Middlesex South Registry of Deeds on April 2, 2003. (Hereinafter, the Comprehensive Permit as amended should be referred to as the "Permit").

Pursuant to 760 CMR 31.03(3)(a) the Applicant informed the Board that it was seeking to further amend the Permit in order to reconfigure the site layout and building design and fully described said proposed revisions in the modification/amendment Application (hereinafter, the "Second Amendment"), filed with the Board on November 21, 2003.

Kimball Woods Decision/Second Amendment - Page 1 of 5 **TRUE COPY ATTEST:**

Jane R. Ch...
TOWN CLERK

BURLINGTON, MASSACHUSETTS

Pursuant to the terms of the Permit and 760 C.M.R. 31.03 (c), the Board opened and closed a duly noticed and advertised public hearing on December 16, 2003.

The following documents and exhibits were received as part of the Second Amendment Application and/or during the public hearing process and are hereby incorporated by reference into this Decision amending the Permit:

- The request for amendment to a previously approved Comprehensive Permit Application as detailed in the Memorandum from Riemer & Braunstein LLP to the Board dated November 21, 2003.
- A Plan of Land entitled "Kimball Woods Preliminary Site Development Plans, Burlington, Massachusetts", dated November 11, 2003, prepared by H. W. Moore Associates, Inc., sheets 1 to 9, and as further shown on an architectural plan entitled "Kimball Court Apartments, Woburn/Burlington MA", dated November 7, 2003, prepared by Sheskey Architects (hereinafter, individually and collectively known as the "November 2003 Site Plans")

Town Departmental recommendations and correspondence:

- Memorandum of the Fire Chief to the Board of Appeals dated December 10, 2003.
- Memorandum of the Building Department to the Board of Appeals dated December 9, 2003.
- Memorandum of the Planning Director to the Board of Appeals dated December 15, 2003.

FINDINGS

The Burlington Board of Appeals hereby makes the following findings regarding the compliance of the Project, as described in the November 2003 Site Plans, with the requirements of the Permit and the Amendment Application regarding the creation of sufficient parking to service the proposed 250 units and the adequacy of traffic conditions and safety provisions:

1. In order to accommodate the development of 250 units of housing and to provide sufficient parking opportunities for all residents within the Project, the Applicant has proposed the following site design amendments, which are further detailed in the November 2003 Site Plans, to facilitate the requirements of the Board of Appeals: (a) The creation of two (2) separate, eight (8) story residential structures adjoined by an exterior pool deck which will provide recreational opportunities for residents of the Project; (b) two (2) levels of parking underneath the residential buildings which will accommodate up to 403 vehicles; (c) the elimination of the exterior parking deck partially located on the Kimball Woods and Kimball Court property; and, (d) the creation of a formal building entrance with a circular driveway and enhanced landscaping design.

2. The entire parking structure and residential buildings will be located entirely on the Kimball Woods property.
3. As detailed in the November 2003 Site Plans, the revised parking layout will create a ratio of 1.68 spaces per unit for the Kimball Woods residents with an overall parking ratio of 1.62 spaces per unit for the entire Kimball Woods and abutting Kimball Court apartment development.
4. The Applicant has designed the internal vehicular circulation pattern to adequately accommodate the increase in residential traffic anticipated to be generated by the Project. The roadway layout will allow two-way traffic throughout the entire site as well as multiple internal routes in the event of an emergency. The Applicant shall continue to maintain the main and emergency access/egress points connecting the Project to the abutting public way (Pearl Street).
5. The site design will also adequately accommodate the increase in pedestrian traffic generated by the Project through a series of sidewalks connecting the parking areas to the Project's residential building and the residential buildings in Kimball Court.
6. The Applicant has worked with the City of Woburn to design a utility system which will provide the Project with adequate water supply for domestic needs and fire suppression as well as sufficient sanitary sewer capacity. A copy of the final agreement shall be submitted to the Burlington Board of Appeals.

DECISION

Pursuant to M. G. L. Chapter 40B §21, the Burlington Board of Appeals, after a public hearing and the above-noted findings, hereby grants to Kimball Woods LLC an amendment/modification to the Permit for the construction of 250 apartment units with associated infrastructure improvements, subject to the following terms and conditions:

1. All previously issued conditions of approval granted to Kimball Woods, LLC by the Burlington Board of Appeals pursuant to the Permit issued on August 20, 2002 and the Amendment Application on January 21, 2003, subject to the plan amendments detailed on the November 2003 Site Plans, shall continue to remain in effect and are hereby incorporated into and made part of this Decision by reference.
2. The Project as constructed shall not exceed a total of 250 dwelling units, with eight (8) floors of residential units, adjoined by a recreational area/pool deck, and 2 levels of parking underneath the buildings. In the event that the Applicant chooses not to proceed with the construction of the 250 units, the Applicant shall notify the Burlington Board of Appeals.

Jane L. Clark
TOWN CLERK
BURLINGTON, MASS.

3. The applicable plans governing the Project shall be the November 2003 Site Plans.
4. The mixture of apartment styles within the Project shall be as follows: 45 studio; 79-1 bedroom; 94-2 bedroom; and, 32-2 bedroom units with a den.
5. Twenty-Five (25.0%) of all units constructed pursuant to this Permit shall be reserved for rental or lease by households at or below eighty (80%) percent of the Boston Primary Metropolitan Statistical Area median household income (or such higher amount as authorized by applicable law or regulation in the future) for a period of 99 years, or for as long as the development is not in full conformity with the Town's Zoning Bylaw, whichever is longer; (hereinafter referred to as, the "Affordable Units"). The Affordable Units shall not be situated so as to segregate the Affordable Units from the market rate units. The Affordable Units within the Project shall consist of 55% studio and 1 bedroom units and 45% two bedroom and two bedroom units with a den.
6. Kimball Woods, LLC shall work with the Board of Health Agent to review the design and construction of the pool to ensure compliance with Board of Health regulations.
7. Prior to the issuance of a Building Permit, Kimball Woods, LLC shall provide adequate emergency access to the pressurized stairwell located within the northerly building, subject to the review and approval of the Fire Department.
8. Prior to the issuance of a Building Permit, Kimball Woods, LLC shall submit to the Conservation Commission a Notice of Intent and obtain an Order of Conditions pursuant to M.G.L. Chapter 131, Section 40, for the construction of the site improvements detailed in the November 2003 Site Plans.

This Amendment of the Permit shall not be in effect until a copy of this Decision, bearing the certification of the Town Clerk that twenty days (20) have elapsed and no appeal has been filed, or, that if such appeal has been filed that it has been dismissed or denied, and is recorded at the Middlesex South Registry of Deeds and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Applicant.

Jane R. Collins
TOWN CLERK
BURLINGTON, MASSACHUSETTS

On the 16th of December 2003, the following Burlington Board of Appeals members voted to grant this amendment/modification to the previously approved Comprehensive Permit granted to Joseph R. Mullins Company, acting as Kimball Woods, LLC, on August 20, 2002 and amended on January 21, 2003, as stated above:

Joseph R. Mullins
John J. Sullivan
William H. H. H.
John M. Berghini
George Murray @

Eleana M. Galvin June 24 2004
 Asst Town Clerk, of the
 Town of Burlington hereby certify that no appeal has
 been taken within 20 days after the approval of this
 variance by the Bd. of Appeals of said town.

Eleana M. Galvin
 Asst Town Clerk

31433/1
 807175.1

John P. Brown
 Town Clerk

Kimball Woods Decision/Second Amendment - Page 5 of 5 TRUE COPY ATTEST

John P. Brown
 TOWN CLERK
 BURLINGTON, MASSACHUSETTS