

**From:** Judi Barrett [mailto:jbarrett@rkgassociates.com]  
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**To:** Maria Morelli  
**Subject:** RE: Jepson

In my opinion, the Board cannot use the comprehensive permit to allow a commercial use in a Chapter 40B development unless the use is permitted in the district. I think Jepson settles the matter: “We conclude that when commercial use is permitted on the property to be developed under the local zoning bylaw or ordinance, the board, under G.L. c. 40B, §§ 20-23, has that authority,” and “Nothing in G.L. c. 40B, §§ 20-23, expressly prohibits the inclusion of incidental commercial uses (*when such uses are permitted on the proposed property by zoning ordinance or bylaw*) to complement an affordable housing development.” [Emphasis added]

The Board may grant dimensional waivers where necessary to accommodate the commercial use and the residential units.

<http://caselaw.findlaw.com/ma-supreme-judicial-court/1480870.html>

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