



Bk: 45780 Pg: 492 Doc: DECIS
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TOWN OF WESTON



www.weston.org

Post Office Box 378
WESTON, MA 02493-0002
781-893-7320 ext. 303 FAX 781-891-3697

TOWN CLERK

CERTIFICATE OF TOWN CLERK

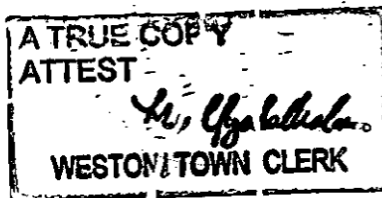
I, M. Elizabeth Nolan, Town Clerk, Town of Weston, herewith certify that attached hereto is a true copy of the Variance/Special Permit decision of the Town of Weston, Board of Appeals, rendered February 25, 2005 and filed with the Town Clerk concerning the following described property, as a Comprehensive Permit under the Commonwealth's Local Initiative Program.

<u>Name of Owner</u>	<u>Location of Property</u>	<u>Book No.</u>	<u>Page No.</u>
South Avenue, LLC	680 South Avenue, Weston, MA	42433	542

AND I FURTHER CERTIFY that more than twenty (20) days have elapsed since filing of the said decision with me and that no appeal of said decision been filed.

M. Elizabeth Nolan
Town Clerk
Town of Weston

March 18, 2005



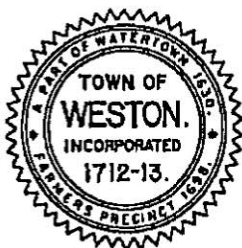
MEN



Ret to:

DLA Piper Rudnick Gray Cary US LLP
One International Place
Boston, MA 02110
Attn: *Brendan Kaiser*

15 B
680 South Ave, Weston



TOWN OF WESTON
MASSACHUSETTS

BOARD OF APPEALS

There having been presented to the Board a petition for a comprehensive permit dated August 25, 2004 by South Avenue LLC, 21 Center Street, Weston, MA 02493 for the property at 680 South Avenue, Weston, MA. The Board decided to hold a hearing on said petition on Wednesday, September 22, 2004 at 7:30 P.M. and caused the following notice to be published in The Town Crier, a newspaper of general circulation in Weston on September 2 and 9, 2004.

TOWN OF WESTON
MASSACHUSETTS

BOARD OF APPEALS
Hearing Notice

Notice is hereby given that the Board of Appeals of the Town of Weston will hold a public hearing on Wednesday, September 22, 2004 at 7:30 P.M. in one of the Conference rooms at Weston Town Hall, on an application for a Comprehensive Permit under Massachusetts General Laws, Chapter 40B, Sections 20-23, inclusive, filed by South Avenue LLC, 21 Center Street, Weston, MA 02493 for the property at 680 South Avenue, Weston, MA (Map #49, Lot #35) for the development of seven (7) one and one half story buildings, a total of sixteen (16) units of home ownership mixed income housing, four (4) of which will meet the standards for affordable housing. The petition and plans are on file with said Board of Appeals and are available for public inspection in the office of the Board of Appeals on Monday through Friday, from 9 A.M. to 4:30 P.M.

Board of Appeals of the Town of Weston
By Robert P. Cook, Chairman

The Board also mailed the foregoing notice postage prepaid on September 2, 2004 to the following named persons deemed by the Board to be all of the persons affected by said petition as they appear on the most recent tax list:

Petitioner: South Avenue LLC


(List of Abutters)

- Cataltepe, Oguz, Cataltepe, Sule, 98 Pine St, Weston
- Heslam, William D, Heslam, Sharlyn C, 118 Pine St, Weston
- Rolde, Edward J., 126 Pine St, Weston
- Berry, Pauline Tr., C/O Laura M. Paltrineri, 669 South Ave, Weston
- Church Of Jesus Christ Of, Latter-Day Saints, Po Box 1096, Easton, MA 02334-1096
- Comm Of Mass - Tpke, Turnpike Authority, 10 Park Plaza, Boston, MA 02116
- Comm Of Mass - M.D.C., 20 Somerset St, Boston, MA 02108
- Town of Weston Conservation
- Town of Weston Board of Selectmen
- Town of Weston Board of Health
- Town of Weston Fire Chief
- Town of Weston Police Chief
- Town of Weston Building Inspector
- Town of Weston Planning Board
- Town of Weston DPW
- Town of Weston Town Engineer
- Town of Weston Historic Commission
- Town of Weston Water
- Town of Weston Superintendent of Schools
- Town of Weston Traffic Committee
- Town of Weston Affordable Housing

Board of Appeals Members: Armour, Knight, Munro

In Hand To: Board of Assessors, Building Inspector, Conservation, Fire Chief, Board of Health, Planning Board Chairman, Board of Selectmen and Town Clerk.

Planning Boards: (Notice only) Lincoln, Natick, Newton, Waltham, Wayland, Wellesley



 Ann I. Swaine, Clerk
 Weston Board of Appeals

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Pursuant to the foregoing notice the Board held a public hearing on Wednesday, September 22, 2004 at approximately 7:30 P.M. at the Weston Town Hall. The following members were present:

Wendy K. Armour, Acting Chairman
Peter C. Knight
Elizabeth Munro

A. INTRODUCTION

Applicant:

South Avenue LLC
21 Center Street
Weston, MA 02493
Roy S. MacDowell Jr., Manager
Boulder Capital, LLC, Member

Property Owner:

Boulder Capital, LLC
21 Center Street
Weston, MA 02493

Public Hearing:

Opened September 22, 2004; continued with good cause and without objection to the following dates: January 24, 2005 and February 25, 2005, pursuant to notices published in The Weston Town Crier and Tab and closed on February 25, 2005. Zoning Board of Appeal members Wendy K. Armour, Peter Knight and Elizabeth H. Munro attended all sessions.

Decision Date:

February 25, 2005

The Premises:

All that certain parcel of land located at 680 South Avenue, Weston, Middlesex County, Massachusetts and described in deed recorded with Middlesex South District Registry of Deeds in Book 42433, Page 542 and containing 2.70 acres of land, more or less.

The Proposal:

The Project is entitled "South Avenue Development". The Project application requested approval for the construction of seven townhouse buildings consisting of five two unit buildings and two three unit buildings for a total of sixteen units. Four of the units would be affordable under the Local Initiative Program ("LIP") of the Massachusetts Department of Housing and Urban Development ("DHCD"). The Applicant proposes a condominium form of ownership. The Project is described in the following materials received by the Zoning Board of Appeals ("Board").

1. Application by South Avenue LLC ("Application") dated August 25, 2004.
2. Determination of Site Eligibility and Preliminary Approval under the Local Initiative Program prepared by DHCD dated August 23, 2004.
3. Deed from National Organization of the New Apostolic Church of North America to Boulder Capital, LLC dated April 7, 2004 and recorded with said Deeds in Book 42433, Page 542.
4. Project Plans and Specifications:
 - a. South Avenue LLC Development Plans dated May 3, 2004 as most recently revised October 19, 2004, made by MetroWest Engineering, Inc. consisting of Sheets SP1-SP8.
 - b. Proposed Planting Plan 680 South Avenue Weston, Massachusetts dated August 18, 2004 made by The MacDowell Company, Inc. Landscape Architects.
 - c. Existing Conditions Plan in Weston, Mass Prepared For: The Boulder Company, Inc. dated April 20, 2004 made by MetroWest Engineering, Inc.
 - d. Architectural Plans dated May 3, 2004 made by The MZO Group.
5. Trip Generation Study by Vanasse Hangen Brustlin, Inc. dated April 28, 2004.
6. Draft Environmental Site Assessment by LFR.
7. Correspondence from the Housing Needs Committee to the Board of Selectmen dated May 20, 2004.
8. Correspondence from the Board of Selectmen to the Zoning Board of Appeals dated June 24, 2004 in support of the LIP application.
9. Correspondence from South Avenue LLC to the Church of Jesus Christ of Latter Day Saints dated August 25, 2004.

10. Correspondence from South Avenue LLC to Massachusetts Turnpike Authority dated August 18, 2004.
11. Memorandum from the Town Engineer on behalf of the Department of Public Works dated September 9, 2004.
12. Correspondence from Weston Conservation Commission dated September 20, 2004.
13. Correspondence from the Chief of Department on behalf of the Fire Department dated September 22, 2004.
14. Proposed Master Deed and By-laws for the condominium prepared by the Applicant's attorney, Seth Emmer dated October 21, 2004.
15. Project Review by Judith Nitsch Engineering, Inc. dated November 8, 2004.
16. Memorandum prepared by Vanasse Hangen Brustlin, Inc. re: Proposed Residential Development Revised parking and Circulation Assessment dated December 21, 2004.
17. E-mail Correspondence from Chief of the Fire Department dated January 5, 2005
18. Comments and Recommendations on Proposed 40B Project, No. 680 South Avenue prepared by the Planning Board dated January 5, 2005.
19. Septic Approval letter from the Board of Health dated January 24, 2004 (sic).
20. Memorandum from Applicant re: List of Requested Exceptions dated January 24, 2005.

B. DETERMINATION

Following the Public Hearing and based upon the evidence submitted to the Board, the Board makes the following determinations:

1. The Applicant has standing to seek a Comprehensive Permit. The Applicant has received an approval of the 680 South Avenue Local Initiative Program project ("LIP") from DHCD. The Applicant shall execute a Regulatory Agreement which Agreement shall limit the Applicant's profit on the proposed project to no more than 20%.
2. As of the latest Subsidized Housing Inventory (February 5, 2005) prepared by DHCD only 3.3% of the Town's Housing Units are qualified affordable housing units. Under the provisions of M.G.L. c. 40B §20, the Town has not met local housing needs.

3. Impact on Land Planning Concerns:

a. Health and safety of occupants of the Project:

The site is presently occupied by an abandoned religious building. The site is bounded on west, south and east by land owned by the Commonwealth of Massachusetts and on the north side by South Avenue, a public way. The Project will be a condominium form of ownership and the condominium documents shall provide for the establishment of common area charges to cover annual maintenance and expenses as well as the establishment of a reserve sufficient to pay for repair, maintenance and possible replacement of the septic system, drainage improvements, operation and maintenance of the stormwater system, and common driveways.

The affordable units will be dispersed throughout the Project and will be provided with the same number of bedrooms and baths as the market rate units.

b. Health and safety of other residents:

The Project consists of sixteen units. Traffic studies provided by the Applicant's consultant indicated that the size of the Project would have little impact on the traffic along South Avenue. The Applicant has agreed to provide landscape screening along South Avenue to mitigate the visual impact of the Project.

Neighbors to the Project raised questions on the impact of the Project on existing traffic on South Avenue and Pine Street. The Applicant has offered to provide a financial contribution to the Town to help fund traffic improvements at the intersection of South Avenue and Wellesley Street.

c. Site and building design:

The buildings and landscaping have been designed to reduce visual impact of the Project on South Avenue. There are no residential abutters. The highest density has been directed away from South Avenue towards the rear of the site.

d. Preservation of open space:

The Project is adjacent to land owned by the Metropolitan District Commission and to land owned by the Massachusetts Turnpike Authority. The Project does not preserve open space but, given the constraints of the site, the Board finds that the landscaping on the site is appropriate. The Conservation Commission had no comments on the Project.

C. DECISION

Based upon the above determinations, the Board finds that the Project meets the requirements for a Comprehensive Permit under G.L. c. 40B. The Board therefore votes to grant the Comprehensive Permit for the construction and occupancy of 16 condominium units as described in the above referenced materials.

Said grant is made subject to the following conditions that the Board deems necessary in order to assure consistency with the purposes of G. L. c. 40B:

AFFORDABLE HOUSING

1. Four of the units within the Project shall be "affordable" as defined in M.G.L. c. 40B and the regulations promulgated thereunder. The units shall be proportionally and evenly distributed among the townhouses in the Project and not contiguous to each other and the quality of their construction shall be in compliance with the specifications set forth in the Architectural Drawings and shall be similar to the market rate units. The initial purchase price for the affordable units shall not exceed \$174,000.00 and shall be marketed and sold to eligible first-time homebuyers whose annual income may not exceed 80% of area medium income, adjusted for household size, as determined by the Department of Housing and Urban Development (HUD).
2. The affordable units shall be constructed on a schedule that provides for the construction of one affordable unit for every three market-rate dwellings.
3. All affordable units shall remain so in perpetuity. An affordable housing restriction, enforceable by the Weston Housing Needs Committee or the Town of Weston, requiring that the affordable units remain affordable in perpetuity, in the form approved by Town Counsel, shall be recorded senior to any liens on the Premises to protect the continued availability of and requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. The Applicant shall not receive a building permit until evidence of the recording of such affordable housing restriction has been provided to the Board. The Condominium Documents shall provide that the premises described in the Master Deed are subject to the terms and provisions of this restriction and that any amendment purporting to alter, amend or delete this restriction shall be void and of no force and effect unless in compliance with the termination and extinguishment provisions of this restriction.
4. All affordable units must be owner-occupied and the affordable housing restriction shall so provide.
5. Individual deeds for the affordable units shall contain references to the affordable housing restriction and all unit deeds shall reference this Comprehensive Permit.

6. Insofar as allowed under M.G.L. c. 40B and the regulations promulgated thereunder, with respect to the affordable units, the Applicant shall prior to the execution of any purchase and sale agreements provide a preference category for Weston residents, their parents and children and for those persons who had resided in Weston within two years immediately preceding their application for housing or as otherwise determined by the Board of Selectmen with the assistance of the Weston Housing Needs Committee

7. Prior to the issuance of any certificate of occupancy, the Applicant will execute a monitoring services agreement with the Weston Housing Needs Committee to monitor the Project and any monitoring fees required under said Agreement shall be paid for by the Applicant. The Weston Housing Needs Committee shall offer the affordable units through a lottery process and the Applicant shall be responsible for the costs associated with the conduct of the lottery, including but not limited to, photo copies, telephone calls, postage, etc.

8. Cost certifications shall be done in accordance with procedures established by MHFA and in accordance with the Regulatory Agreement approved by the Board of Selectmen. The Applicant shall provide to the Board of Selectmen a full certification of total development costs and total revenues on a federal income tax basis prepared and certified by a certified public accountant acceptable to the Board, to enable the Board of Selectmen to make its own determination as to whether the Applicant has complied with the Regulatory Agreement. If at any time it appears that the Applicant is in violation of the Regulatory Agreement, following a hearing of which the Applicant has been given prior notice, then the Board of Selectmen may pursue such enforcement rights as it may have under the Regulatory Agreement and/or the Affordable Housing Restriction and/or applicable law.

9. Prior to the issuance of any Certificate of Occupancy, the Applicant shall record the Master Deed, Declaration of Trust and By-Laws establishing the Project's Condominium (the "Condominium Documents"). The Condominium Documents shall be subject to review by Town Counsel prior to recording with Middlesex South District Registry of Deeds. The Applicant's attorney shall submit to Town Counsel a certification that the Condominium Documents comply with the requirements of G.L. c. 183A, as amended. The Condominium Documents shall specifically require that that the Trustees shall be responsible for the maintenance and repair of the drives serving the Site, the storm water management systems, the septic systems, and other common amenities and services.

CONSTRUCTION

10. The hours of operation for any construction activities onsite shall be between 7:30 a.m. and 5:00 p.m., Monday thru Friday. Once the buildings are buttoned up with windows and doors and no noise can be detected, indoor construction can occur on Saturdays between 8:00 a.m. and 4:30 p.m. No construction activities shall be allowed onsite on Sundays. All construction vehicles shall be parked on site. Parking on South Avenue, Brown Street and Pine Street is prohibited.

11. The Applicant shall locate all utilities within the Premise underground.
12. The interior and exterior of all buildings and structures shall be constructed substantially as represented on the Project Plans and Specifications submitted to the Board.
13. The Applicant shall submit to the Building Inspector detailed construction and engineering plans consistent with this permit and showing the location of all structures on the lots and the location of septic systems. If in the opinion of the Building Inspector, or if requested by the Applicant, the plans require peer review for compliance with the conditions stated herein, the Applicant agrees to reimburse the Town for the reasonable costs of the peer review. The Applicant shall construct the Project in accordance with the Project Plans and Specifications submitted with this Application.
14. The Units shall have no more than two bedrooms, as the term "bedroom" is defined in the State Environmental Code 310 CMR 202.0. Neither the Applicant nor any future owner shall design, construct, finish or use either attic or basement space as bedrooms as that term is defined in the State Building Code 780 CMR 202.0. No habitable space not indicated on the Architectural Plans as a bedroom shall be converted to a bedroom. These prohibitions shall be specified in all purchase and sale agreements for condominium units in the Project and each unit deed shall contain the following recitation:

Pursuant to 310 CMR 15.00 Title 5 and as a condition of the Comprehensive Permit granted pursuant to G.L. c. 40B, §§20-23 establishing the condominium, no habitable space not indicated on the Architectural Plans as a bedroom shall be converted to a bedroom and the number of bedrooms in the unit shall be limited to a maximum of two.
15. The Condominium documents shall contain a restriction prohibiting the installation of garbage grinders in the units.
16. The Applicant shall satisfy all standards of the Weston Fire Department and shall install residential sprinklers in all units in accordance with NFPA Standard 13D or 13R.
17. The existing stone wall on South Avenue will be removed as a result of the relocation of the driveway from the Turnpike Access Road to South Avenue. The Applicant shall rebuild the stone wall along the South Avenue frontage in a style consistent with other rustic stone walls in Town.
18. The Condominium documents shall contain a restriction prohibiting parking on both sides of the entrance driveway to the Project for a distance of seventy five feet.

19. The Applicant shall not sell or convey any units within the Project until the construction of all infrastructure, ways, utilities, and landscaping has been completed in accordance with the terms of this Permit unless the Applicant has secured the completion of the Base Infrastructure and the Final Completion by one, or in part by one and in part by another, of the methods similar to those described in M.G.L. Chapter 41, Section 81-U. Such security shall be in a form approved by Town Counsel and, in the Board's opinion, sufficient to secure performance of the construction and installation of roads and/or driveways, installation of water services, the installation of landscaping pursuant to the Project Plans as shown on the Project Plans. The Board may withhold final release of any security deposited by the Applicant until the Building Inspector is satisfied that the pavement has maintained its integrity after one winter, and that the planting areas are healthy and sufficiently established. The required time period for the landscaping shall be one year from the time of planting to the next July 1st for grassed areas and two years from the time of planting to the next July 1st for shrubs and trees.

20. The Applicant shall furnish water to the Project in compliance with the specifications established by the Weston Department of Public Works. If requested by the Department, the Applicant shall grant a utility easement to the Town of Weston, in form satisfactory to the Department of Public Works and Town Counsel, which shall be recorded prior to the Condominium Documents.

21. It is anticipated that the Town of Weston and the Massachusetts Highway Department will undertake certain improvements to mitigate the traffic situation at the intersection of South Avenue and Wellesley Street. The Applicant has agreed to make a \$25,000 donation to the Town for purposes of engineering studies for and construction of traffic improvements to this intersection.

ENVIRONMENTAL CONDITONS

22. The Applicant shall comply with the Septic Permit issued by the Weston Board of Health. Any violation of Septic Permit shall also be a violation of this Comprehensive Permit.

23. The Applicant shall construct the storm water system in compliance with the approved Project Plans. The Applicant shall provide the Town Engineer at least 48 hours notice for inspection of the storm water system during installation and prior to backfilling. Upon installation, the designer of the Storm Water System shall provide certification to the Building Inspector and the Town Engineer that the system has been installed in accordance with the Project Plans. The Condominium documents shall require the Condominium Trust to have the storm water system inspected twice annually by a Professional Engineer. The Engineer's written reports shall be maintained by the Condominium Trust and made available to the Town upon request. All components of the storm water system shall be cleaned at least once a year and written confirmation of the cleaning shall be maintained by the Condominium Trust.

24. Prior to the issuance of any certificate of occupancy, the Applicant shall deliver to the Board of Health a copy of the maintenance contract for the septic system and a copy of the condominium budget showing line items for the cost of the contract as well as the establishment of a condominium reserve fund.
25. All roadways and walks shall be mechanically swept twice per year. This requirement shall be included in the Declaration of Trust for the Condominium.
26. The location of the Project shall be indicated by a sign illuminated by carriage lamp type lighting on adjacent posts. The sign shall not exceed six square feet in size.

GENERAL CONDITIONS

27. This permit shall expire, if the Applicant has not, for whatever cause, commenced construction on the Project within two years of the date this decision becomes final. The decision is deemed to have become final upon the expiration of the appeal period with no appeal having been filed, or upon the final decision following the filing of any appeal, whichever is later.
28. The Board reserves the right, insofar as consistent with state law, to further review and amend this decision based upon any information that comes before the Board as a result of Applicant's future need to acquire permits from any local, state or Federal authority, specifically including filings under the Massachusetts Environmental Policy Act which information affects the Plans submitted with the Project and approved by the Board.
29. The Applicant or its successors shall pay, in perpetuity, any fees imposed for the purpose of monitoring the compliance of the Project's construction and occupancy, provided, however, that the monitoring and the fees charged therefor shall be consistent with the monitoring and fees for similarly sized communities in Middlesex County, Massachusetts.
30. This Comprehensive Permit shall issue to South Avenue LLC and shall not be transferable, except in accordance with the provisions of M.G.L. c. 40B.

D. WAIVERS

1. Zoning By-Laws

Waive Section V(2) and V(B)(1) to allow multiple unit dwelling (16 town house condominium units) in Residence A District

Waive Section V. B.2.C site plan review

Waive Section VI(B)(1) and (2) Table of Conventional Dimensional Requirements

Lot Line Setback
Street Line Setback
Signage

- c. Waive Section VI(B)(1) and (2) minimum lot size (per dwelling)
- d. Waive Section VI(F)(2) number and location of dwellings
- e. Waive Section VI(F) 3 floor area ratio
- f. Waive Section VIII.A.2 parking space size

2. Board of Health Regulations

- a. Chapter VI, Section 2.4 design requirements to accommodate garbage grinders

E. DEPARTURES

If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, Applicant desires to change any details of the Project (as set forth in the plans referred to in this Decision, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the requested change. In the event that the requested change is determined by the Board to be of insignificant impact upon the Project or the neighboring area, the requested change may be approved by the Board without a public hearing. If the Board deems the requested change to be significant, or if requested by the Applicant, the Board shall hold a public hearing. The Board may refuse to approve the change by written decision within thirty (30) days of receipt of notice from the Applicant if the Board finds the change not consistent with the standards imposed by 760 CMR 31.03.

Any material departure from the Project Proposal approved by this decision shall require an amendment to this Comprehensive Permit to be acted upon through the same procedures as if for a new Comprehensive Permit, unless the Zoning Board of Appeals determines that the nature and location of the departure is of no discernible consequence to any off-site party including the Town.

F. SUCCESSORS AND ASSIGNS

The provisions of this Comprehensive Permit shall be binding upon the successors and assigns of the Applicant, and the obligations hereunder shall run with the land. In the event that the Applicant sells, transfers, or assigns any of its interest in the Project, this Comprehensive Permit shall be binding upon the purchaser, transferee or assignee, and any such sale, transfer or assignment shall be subject to the prior approval of the Zoning Board of Appeals, which approval shall not be unreasonably withheld or delayed.

G. RECORD OF VOTE

Vote to Approve:

3 in favor none opposed

Attest: Wendy K. Armour
Wendy K. Armour, Acting Chairman
Weston Board of Appeals

Attest: [Signature]
Peter Knight
Weston Board of Appeals

Attest: Elizabeth H. Munro
Elizabeth H. Munro
Weston Board of Appeals

Application Granted, as Conditioned
A True Record



[Signature]
Asst. Middlesex S. Registrar