

**Town of Lexington**  
**Town Clerk's Office**

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Donna M. Hooper, Town Clerk



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Date: December 14, 2004

Bk: 44300 Pg: 158 Doc: DECIS  
Page: 1 of 11 12/15/2004 12:19 PM

I hereby certify that twenty days have elapsed since the decision of the Board of Appeals on October 14, 2004:

Metropolitan Parkway North – Special Permit with Site Plan Review  
AvalonBay Communities, Inc.  
Book #5208 Page #329

filed on November 23, 2004, in the Office of the Town Clerk. No appeal was filed in the Office of the Town Clerk within the 20 day period.

Sincerely,

  
Donna M. Hooper

Town Clerk

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*Dorcas M. Hooper*TOWN CLERK  
LEXINGTON, MATOWN OF LEXINGTON  
DECISION OF THE BOARD OF APPEALS

Subject Property: Metropolitan Parkway North

Applicant: AvalonBay Communities, Inc.

Hearing Date: October 14, 2004

Pursuant to notice in the Lexington Minuteman, published on September 30, 2004 and October 7, 2004, and notice sent by mail, postage prepaid, to all parties in interest pursuant to the provisions of Massachusetts General Laws Chapter 40A, and notice posted as required by said Chapter 40A, a public hearing was held on October 14, 2004, in the Selectman's Meeting Room at Town Hall on the petition of AvalonBay Communities, Inc. (together with its successors and assigns as owner, operator and/or developer of the Site [as defined below], "Avalon"), filed on September 14, 2004, for a SPECIAL PERMIT WITH SITE PLAN REVIEW (SPS) for a 387-unit multifamily housing development on approximately 22.13 acres (the "Site") of the former site of the Metropolitan State Hospital, rezoned RD under Article 13 of the 2004 Annual Town Meeting (the "Development").

Acting on the petition were: Chairperson Judith Uhrig, Arthur C. Smith, John J. McWeeney, Maura Sheehan and Nyles N. Barnert.

Applicant submitted the following with the application for hearing: a Definitive Site Development and Use Plan (the "DSDUP"); certified copy of the Revised and Restated Preliminary Site Development and Use Plan dated March 22, 2004, as amended by a letter from Edmund C. Grant dated May 5, 2004 (as so amended, the "PSDUP").

The Board received the following prior to the hearing: Letter from Planning Department dated October 12, 2004; letter from Design Advisory Committee dated October 8, 2004.

Prior to the hearing the petition and supporting data were reviewed by the Building Commissioner, Conservation, Engineering, Health Department, Planning Board and Zoning Enforcement Officer.

The following were present at the hearing: Michael Roberts and Elizabeth Smith of Avalon, and Edmund Grant and Steven Schwartz, attorneys for Avalon, as well as Project Engineer David Kelly, Architect Ed Bradford and Traffic Consultant Rick Bryant. The presentation was made by Mr. Roberts. He displayed the site plan, and discussed changes to the site plan approved at Town Meeting. These changes were as follows: a change to the footprint of the South Building, a change in the entry point to Kline Hall, as well as the location of the pool adjacent to Kline Hall, and the replacement of three two-bedroom townhomes by three two-bedroom apartments within the CTG Building.

Karl P. Kastorf, the chairman of the Planning Board, stated that the Planning Board had confirmed that the DSDUP conforms substantially to the plans approved at Town Meeting.

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No one spoke in opposition. No written comments were received from abutters.

## GENERAL DEVELOPMENT

### Finding and Decision:

Avalon seeks a special permit with site plan review authorizing the development of approximately 22.13 acres of the former site of the Metropolitan State Hospital, rezoned to a RD District (Planned Residential Development) under Article 13 of the 2004 Annual Town Meeting, to construct a 387-unit multifamily housing development, all as described in the DSDUP and PSDUP.

The Board finds that the project, as described in the application and the DSDUP, conforms substantially to the project as described in the PSDUP that was approved at Town Meeting and is consistent with the considerations set forth in Sections 135-12 and 135-42E of the Zoning Bylaw. Subject to the conditions set forth below, the DSDUP and the PSDUP are hereby incorporated in this decision.

For the above reasons, the Board of Appeals, by unanimous vote, hereby GRANTS a SPECIAL PERMIT WITH SITE PLAN REVIEW to Avalon in accordance with 135-42 of the Code of the Town of Lexington to allow a Planned Residential Development (RD District) at the Site, WITH THE FOLLOWING CONDITIONS:

#### A. DSDUP and PSDUP

1. Avalon's development on the site shall be substantially in accordance with the PSDUP, as revised by the DSDUP, as well as the plans submitted with the DSDUP and subject to this decision.

#### B. Affordable Housing

1. Avalon shall reserve twenty-five percent (25%) of the total units at the Development (97 units of the 387 total units) ("the Affordable Units") for rental to households earning no more than eighty percent (80%) of the median household income for the Boston primary metropolitan statistical area (PMSA), of which Lexington is included. The mix of Affordable Units shall be proportional to the overall mix of one, two, and three bedroom units.

2. All of the 387 units at the Development (the "Units") will remain as rental units in perpetuity (i.e. for so long as any portion of the Site is used for residential purposes) and the Affordable Units will remain affordable in perpetuity (i.e. for so long as any portion of the Site is used for residential purposes).

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3. The Affordable Units shall not be segregated from the market rate units. The Affordable Units shall not be substantially different in appearance from the standard market rate units.

4. Avalon shall annually recertify the continuing eligibility of the tenant of any Affordable Unit. In the event that a tenant's income exceeds allowable income, Avalon may charge the tenant a market rate for the dwelling unit; provided, however, that Avalon shall convert, at the next change of tenant in a market rate unit within the Development, a comparable market rate unit to an affordable unit.

5. To the extent permitted by law, preference of the Affordable Units in the initial lease-up of the Development and at all subsequent times shall be to area residents as mandated by the Reuse Plan. The local preference shall be implemented by Avalon, which will have the responsibility of managing the Development.

6. The Town of Lexington, or some other entity agreed to by the Town and Avalon, shall have the right to monitor the Development's compliance with the affordable program set forth in conditions (A)(1)-(5) set forth above.

#### C. Department of Mental Health Housing

1. Avalon shall provide the equivalent of ten percent (10%) of the Units (39 units of the 387 total units) for clients of the Department of Mental Health (the "DMH Units") through a combination of on-site and off-site housing. A minimum of five percent (5%) of the total number of units (20 units of the 387 total units) will be provided on site. The on-site DMH Units will be included in, and be a part of, the Affordable Units. Avalon's provision of both the on-site and off-site DMH Units shall be made in accordance with the terms of a separate agreement with the Department of Mental Health.

#### D. Kline Hall

1. Exterior: Avalon will renovate and restore the exterior of Kline Hall.

2. Interior, First Floor (~10,000 sf): Avalon will renovate the first floor for use as its management, leasing and amenity center (~7,000 sf). The remaining area on the first floor (~3,000 sf), including the existing stage/performance area in the rear of the space will be used as "flex" space to accommodate local/community theater and performance groups and community functions including functions for residents at the Development.

3. Interior, Terrace Level (~10,000 sf): Avalon will also restore the terrace level of the Kline Hall building (~10,000 sf) as "shell" space for potential future use by the Town of Lexington, subject to Avalon's reasonable approval. Renovations will include any environmental remediation, demolition and restoration that is required by applicable law. Avalon will not provide any "fit out" or "tenant improvements." The Town of Lexington may, however, as part of its use of such space, "fit out" the terrace level in its discretion, upon reasonable approval by Avalon.

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4. Avalon shall have the right to locate a portion of its management, leasing and amenity areas on the terrace level. In no event, however, will Avalon utilize more than (~7,000 sf) in Kline Hall for the exclusive use of Avalon.

5. The restoration mentioned above shall include any environmental remediation or demolition that is required by applicable law.

6. If desired by the Town of Lexington, Avalon shall support the creation of and work with a non-profit entity or Town of Lexington Committee which would serve as a liaison between Avalon, the Town of Lexington and the various community groups who may be interested in using the Kline Hall space so that such space is effectively utilized. Alternatively, Avalon shall create a procedure that is to be reasonably managed by Avalon to provide for the use of such space. In any event, all uses of Kline Hall shall be subject to the reasonable approval of Avalon.

E. Transportation Demand Management (TDM)

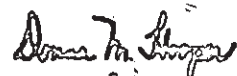
1. Lexpress

a. Upon and following the issuance of a building permit for the Development, Avalon will contribute \$35,000 per year to Lexpress (or a successor or alternative transportation system as specified by the Town of Lexington), with escalations tied to the Consumer Price Index, as outlined below, in perpetuity (i.e. for so long as any portion of the Site is used for residential purposes). Such annual contributions shall be paid on or before January 1 of each calendar year after the initial payment that is to be made upon the issuance of a building permit as provided above. Such initial payment shall be prorated to reflect the actual time between the issuance of a building permit and the end of the initial year following the issuance of a building permit.

b. If Lexpress (or the operator of a similar alternative or successor transportation system) ceases operations or chooses not to provide service to the Development, Avalon shall continue to make payments to the Town of Lexington as provided above, except that the Town of Lexington shall thereafter be entitled to use such funds to provide transportation system improvements and/or traffic demand management measures in the vicinity of the Site or in any other manner that positively impacts the Site. If Lexpress (or the operator of a similar alternative or successor transportation system) does not provide service to the Site and the Town of Lexington, in its reasonable discretion, determines that the alternative uses of such funds that are detailed above are unnecessary, the Town of Lexington shall be entitled to use all or any portion of such funds to provide rental assistance to individuals and families living in the affordable apartments that are to be located on the Site as a result of the Development.

c. Avalon agrees that the annual contribution identified above shall be adjusted yearly for inflation based upon changes in the Consumer Price Index for all Urban Consumers, U.S. City Average, All Items (1982 - 1984 = 100), published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics should cease to publish the

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Consumer Price Index in its present form and calculated on the present basis, a comparable index or an index reflecting changes in prices determined in a similar manner shall reasonably be designated by the Town of Lexington in substitution therefor. The Index for any year relevant to the application of this definition shall be that published by the Bureau of Labor Statistics for such year. If a Consumer Price Index relevant to the application of this definition is not available as of the date on which any adjustment in the contributions mentioned above is to be made, necessary adjustments to such contributions shall be made retroactively within a reasonable time after required computations can readily be completed.

d. In an effort to support resident demand for Lexpress (or a successor or alternative transportation system as specified by the Town of Lexington), Avalon will purchase \$10,000 of Lexpress tickets (or tickets to a successor or alternative transportation system as specified by the Town of Lexington) per year for the first two years beginning with the first occupancy of the Development. These passes will be distributed to residents, without charge, to encourage ridership. The purchase of tickets as outlined above is contingent upon Lexpress (or a successor or alternative transportation service as specified by the Town of Lexington) providing service to the Site.

e. The Site will be designed to accommodate the circulation of Lexpress or similar transportation vehicles through the site and an area will be set aside to serve as a bus/shuttle stop.

2. Shuttle to Alewife MBTA Station during Commuter Hours

a. Avalon will provide a shuttle from the Development to the Alewife MBTA Station during peak commuting hours (Monday – Friday) in perpetuity (i.e. for so long as any portion of the Site is used for residential purposes), beginning with the first occupancy. Avalon will provide the service either through joining the Route 128 Business Council or by providing its own private shuttle service. Avalon shall commit to provide this service based on a reasonable review with the Town of Lexington after five years, and every five years thereafter, to establish the parameters to continue and/or discontinue this service based on actual demand and usage. Such parameters may include actual demand, usage, availability of alternative transit, peak hour automobile traffic from the site and/or other criteria.

b. In the future, to the extent that the Alewife MBTA Station is obsolete, Avalon shall provide shuttle service to a similar transportation node that is specified by the Town of Lexington and reasonably agreed to by Avalon.

c. Avalon shall have the right to utilize other potential providers of shuttle service from the site to the designated appropriate transportation node (e.g. Alewife MBTA Station).

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COMMUNITY DEVELOPMENT

3. School Transportation Contribution

a. Upon the issuance of a building permit for the Development, Avalon will contribute \$200,000 to the Town of Lexington for use to assist with school transportation costs by the School Department at the School Committee's discretion.

4. Other TDM Measures

a. Avalon will identify a staff person to serve as the Transportation Coordinator for the site. This person will be the contact for the Town of Lexington and the MBTA regarding site access and transportation issues

b. Avalon will promote and facilitate ridesharing among the Development's residents and staff. Ridesharing may be most effective in bringing residents to area transit stations and workplaces in Boston where parking is limited and/or high fees are being charged. A ridesharing database and bulletin board will be maintained for the Development.

c. Avalon will provide safe and secure areas at the Development for the storage of bicycles.

d. Avalon will provide a safe and secure pedestrian and bicycle connection to Trapelo Road and the MBTA bus service along Trapelo Road.

e. Avalon will make MBTA passes available for purchase at the Development.

f. Avalon will design the Development to accommodate the circulation of school buses through the site.

g. Avalon will participate in organizations working to coordinate and solve transportation-related issues in the area, including the Lexington Transportation Advisory Committee and the South Lexington Transportation Management Association.

F. Traffic Mitigation

1. Intersection improvements

a. Upon issuance of a building permit for the Development, Avalon will make a traffic mitigation payment of \$250,000 to the Town of Lexington for the Town of Lexington to use at its discretion for traffic or Transportation Demand Management mitigation measures in the project vicinity and in a manner that positively effects the project.

2. Concord Avenue improvements

a. Avalon will complete, at no cost to the Town of Lexington, the improvements at the intersection of Metropolitan Parkway North and Concord Avenue necessary

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for the Development. Such improvements may include a yellow light and safe pedestrian crossing at the site. The specific nature of the improvements shall be subject to the ability of Avalon to obtain all necessary permits and approvals. The aforementioned intersection improvements shall be completed by the time occupancy permits are requested for at least 290 (or 75%) of the units that were approved for the Development.

b. Avalon shall construct a sidewalk along Concord Avenue connecting the intersection of Metropolitan Parkway North and Concord Avenue with the existing sidewalk on Concord Avenue to the west of the above mentioned intersection (approximately 1,500 feet). The aforementioned sidewalk construction shall be completed by the time occupancy permits are requested for at least 290 (or 75%) of the units that were approved for the Development, provided, however, that completion of this work shall be subject to the ability of Avalon to obtain all necessary permits and approvals. Avalon shall not be required to perform such work to the extent such work involves any major roadway reconstruction or to the extent the proposed sidewalk encroaches on any wetlands or wetlands buffer zones.

#### G. Historic Preservation

1. In accordance with the site plan for the Development submitted to the Board of Appeals by Avalon on September 14, 2004, Avalon will retain and rehabilitate approximately 38% of the existing buildings located on the Site.

#### H. Education Trust Fund Escrow Account

1. Upon issuance of a building permit for the Development, Avalon shall cause \$750,000 to be deposited into an Education Trust Fund Escrow Account. The funds shall be held by an Escrow Agent who is mutually acceptable to the Town of Lexington, the Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts ("DCAM") and Avalon. On or prior to the date on which any Building Permit is issued for the Development, the Town of Lexington, Avalon, the Escrow Agent and DCAM shall mutually agree upon and execute an Education Trust Fund Escrow Agreement as provided in the PSDUP and the letter agreement that was signed by DCAM, AvalonBay Communities, Inc. (successor in interest to Avalon) and the Town of Lexington on May 12, 2004.

2. The Town of Lexington shall certify to DCAM, Avalon and the Escrow Agent, on a yearly basis, the total number of school-aged children attending Lexington Public Schools from the Development for a ten-year period beginning at the end of the school year in which at least 75% of the total number of Units at the Development are occupied (the "Start Date"). Distributions from the Education Trust Fund Escrow Account shall be made in the following manner:

a. If, in any given year, according to the certification from the Town of Lexington as provided above, more than 111 school-aged children from the Development attend Lexington Public Schools, \$7,100 per student in excess of 111 shall be released from the

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*Debra M. Stoney*

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trust account and distributed to the Town of Lexington.

b. At the end of the tenth anniversary of the Start Date, all remaining funds in the trust fund shall be returned to the Commonwealth of Massachusetts.

I. Name of Development

1. Notwithstanding anything contained in Avalon's filings with the Board of Appeals to the contrary, the initial name of the Development shall not be "Avalon at Lexington Square," but Avalon shall instead select a different name for the Development that shall be reasonably deemed by the Town of Lexington Fire, Police and Public Works Departments to not cause undue confusion with other developments within the Town of Lexington.

J. Conservation Commission

1. The Development shall be subject to compliance with all laws and regulations under the jurisdiction of the Town of Lexington Conservation Commission.

K. Signage

1. The design of the entry sign(s) for the Development shall be consistent with suggestions of the Town of Lexington Design Advisory Committee.

SIGNS

**Findings and Decision:**

Following its public hearing on this proposal, the Board of Appeals has made the following determinations.

Section 135-78(D) of the Code of the Town of Lexington (Zoning Bylaw, SPECIAL PERMITS – SIGNS), allows the issuance of a special permit for more or larger signs than are provided for in the bylaw, if it is determined that the architecture of the building, the location of the building with reference to the street or the nature of the establishment is such that the sign should be permitted in the public interest.

It is the determination of the Board of Appeals that the requested signage meets the criteria set forth in §135-78(D) of the Code of the Town of Lexington, is consistent with the general purpose of the bylaw for the granting of special permits, and may be granted in the public interest.

For the above reasons and by unanimous vote, the Board of Appeals hereby GRANTS a SPECIAL PERMIT to AvalonBay Committies, Inc., in accordance with Sections 135-78(D) of

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*Donna M. Stanger*

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the Code of the Town of Lexington to AvalonBay Communities, Inc., as described in the application and at the hearing.

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LEXINGTON BOARD OF APPEALS' DECISION:

Hearing: 10/14/2004

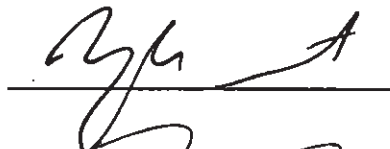
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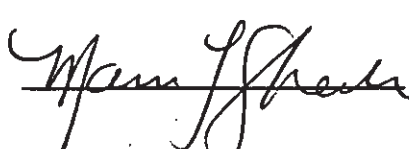
This constitutes the record of the decision of the Lexington Board of Appeals relative to:

Subject Property: Metropolitan Parkway Avenue

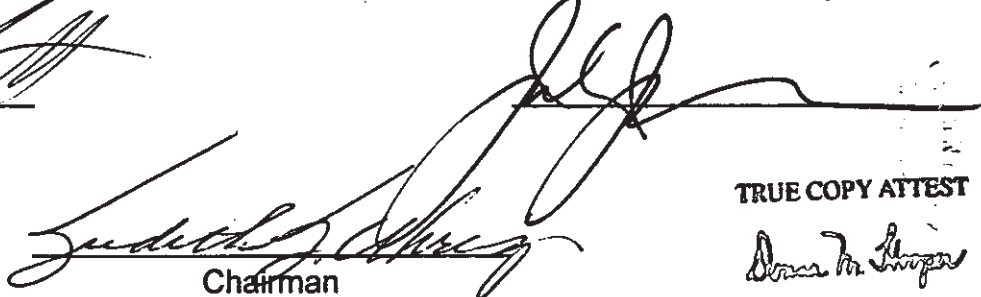
Petitioner/s: Avalon Bay Communities, Inc.

BOARD OF APPEALS OF LEXINGTON (acting under the Lexington Zoning Bylaw, Lexington General Town Bylaws, and Massachusetts General Laws, Chapter 40A)










Chairman

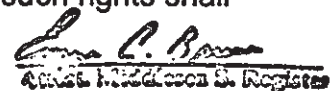
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I, Dianne Cornaro, Department Clerk of the Board of Appeals, certify that copies of the decision have been filed with the Lexington Town Clerk and the Planning Board.



In accordance with Mass. G.L., Ch. 40A, SS11, "No variance or special permit, or any extension, modification of renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located 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." Prior to the issuance of a building permit, the applicant shall present to the building commissioner evidence of such recording.

In accordance with Mass. G.L., Ch. 40A, SS10, "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, such rights shall lapse..."

  
TOWN CLERK & REGISTER