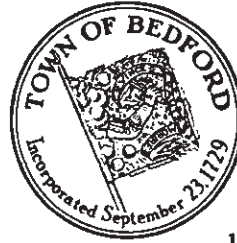


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TOWN OF BEDFORD
BEDFORD, MASSACHUSETTS 01730



Doreen Tremblay, Town Clerk

Town Hall
10 Mudge Way
Bedford, Mass. 01730
781-275-0083
doreent@town.bedford.ma.us

Date: October 28 2004



Bk: 43990 Pg: 451 Doc: DECIS
Page: 1 of 10 10/29/2004 09:06 AM

Petitioner Name: Pamela J. Brown, Esq. for Elderberry
and owner Limited Partnership II, Panake, Inc. General Partner

Location of Property: The Village at Concord Road, Caesar Jones Way
Petitioner Number: 008-05

This letter certifies that twenty days have elapsed since the decision of the Zoning Board of Appeals was filed in the Office of The Town Clerk and no appeal has been filed.

Attest:

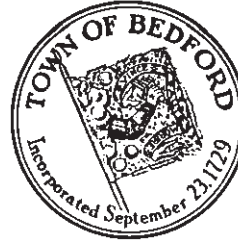
Doreen Tremblay
Town Clerk

MARGINAL REFERENCE REQUESTED
BOOK 30197 PAGE 122

Rtn to:

Brown e Braun
110 Greet Rd.
Bedford, MA 01730

RECEIVED
TOWN OF BEDFORD
TOWN CLERK



THE BOARD OF APPEALS

04 OCT -7 AM 10:02

TOWN HALL
10 MUDGE WAY
BEDFORD, MASSACHUSETTS 01730

PETITION NUMBER: 008-05

PETITIONER: Pamela J. Brown, Esq. for Elderberry Limited Partnership II, Panake, Inc.,
General Partner.

LOCATION OF PROPERTY: The Village at Concord Road, Caesar Jones Way.

DATE AND PLACE OF HEARING:

Thursday, September 23, 2004
Town Hall, Bedford, MA
Lower Level Conference Room

STATUTORY NOTICE: Notice Required by M.G.L.c. 40A sent to abutters,
Municipal boards, posted at Town Hall and Advertised in
The Bedford Minuteman September 9, 2004 and
September 16, 2004

MEMBERS PRESENT:

Robert Ellis, Chairman; Herbert Aumann, Vice-Chairman; Jeffrey Cohen, Acting Clerk;
Charles Theobald, Jr., David Ezekiel, Paul Bauer and Louise Maglione.

MEMBERS ABSENT:

Harold Ward, Clerk.

PRESENTATION: Jeffrey Cohen, Acting Clerk, read the notice of the hearing.

PETITION: #008-05. Pamela J. Brown, Esq. for Elderberry Limited Partnership II,
Panake, Inc. General Partner, for property located at Village at Concord Road – Caesar
Jones Way, requesting an amendment to the Comprehensive Permit #023-03, for the Village
at Concord Road in accordance with MGL c. 40B and 760 CMR 31.00 to eliminate the age-
restriction applicable to owners and tenants in the development

Mr. Ellis read the emergency exit notice, introduced the Board and secretary.

Mr. Ellis asked if the Petitioner is present. Atty. Brown said yes.

Mr. Ellis said the voting members would be Ellis, Aumann, Theobald, Cohen and Maglione.

A TRUE COPY ATTEST


Town Clerk

Atty. Brown said they requested a minor floor plan change to remove a half-bath on the first floor. This will allow for a more wall area in the living room, allowing more furniture placement flexibility.

Atty. Brown referred to the State Regulations regarding to changes to Comprehensive Permits. There are significant changes and there are insignificant changes. She believes the revision to the floor plan is an insignificant change, but according to the rules, the Board of Appeals has made that determination.

Atty. Brown requested two votes: one for the revision to the floor plan and one for the lifting of the 55+-age restriction. Mr. Ellis said that would be fine.

Atty. Brown said in her package there's a sheet called a Submission Package, following that is their proposed Floor Plan, which removes the half-bath and adds a half-wall along the front entrance, helping to create better occupant flow.

Mr. Ellis asked if there were any questions from the Board. There were none.

Mr. Ellis polled the Board to see if they thought this was a significant or insignificant change to the Comprehensive Permit. Insignificant: Theobald, Cohen, Ezekiel, Bauer, and Maglione. They all agree that they consider this an insignificant change. Therefore, the hearing does not have to be opened to the public.

MOTION:

Mr. Cohen moved that the Board consider the revisions to the floor plan, specifically the elimination of the half-bath and the modifications to the partitions at the front entrance, to be an insignificant change to the Comprehensive Permit.

Robert Ellis seconded the motion.

Voting in favor: Ellis, Aumann, Theobald, Cohen, and Maglione.

Voting in opposition: None.

Abstained: None

Motion carries unanimously.

Atty. Brown moved to the issue of removing the 55+ age restriction. Regarding the 55+-age restriction. She read her letter dated September 19, 2004 and handed out a copy of her letter to the Board.

Atty. Brown said everything about the project is the same; what changes is removing the 55+ age restriction. She said they couldn't sell the homes they have built so far. Although many people had looked at the homes and expressed an interest, most did not qualify. Atty. Brown said they have three potential buyers in the wings right now; however, they do not qualify under the age restriction. She said they are incapable of reducing the price.

Atty. Brown said she would like to hear the Board's responses. She said she asked the Broker what the market is now. She provided financials.

Atty. Brown was asked what the results of the meetings were with the other Boards. Atty. Brown said the Selectmen voted to recommend approval. She said the Housing Partnership was opposed to lifting the restriction.

Mr. Ellis read a memo from Rick Reed, Town Administrator, dated September 21, 2004.

Mr. Ellis said the Board would follow the same procedure as before to first determine if the Board believed that lifting the age restriction was a significant or an insignificant change to the Comprehensive Permit before opening the hearing to the public.

MOTION:

Mr. Cohen moved that the Board consider the issue of removing the 55+ age restriction as a substantial change to the Comprehensive Permit.

Mr. Bauer seconded the motion.

Voting in favor: Ellis, Aumann, Theobald, Cohen, and Maglione.

Voting in opposition: None.

Abstained: None

Motion carries unanimously.

Mr. Ellis opened the Hearing to the public.

Atty. Brown was asked if they had some success with the 55+. She said they have been at it for a year-and-a-half and have not been able to sell a single home.

Atty. Brown said the first renter is from Concord, and resides with an 18-year-old student. The second renter is a former military person, under 55 years of age. His wife is 55. The third renter is a single, 55-year-old woman.

Atty. Brown was asked if the affordable units are all rentals. Atty. Brown said no, there are two single-family homes, one is built and there will be three apartments. No affordable units have been rented or sold. The Housing Trust wanted to market all five affordable units together. They held off. Atty. Brown said incomes are too high. She said there not suitable for large families, having a maximum of two bedrooms.

Mr. Ellis questioned if the Board was being asked to eliminate the senior component for the entire project? Atty. Brown said yes.

Mr. Ellis asked if the major criteria number of rentals and for sale are the same. Atty. Brown said yes.

Mr. Ellis asked if the Board should hear comments from other Town Boards; have we heard from the Selectmen?

Mr. Gordon Feltman, Selectmen, 22 Lido Lane, said there is a perception that the developer is not playing fair with the neighbors. It's supposed to be a 55+ age restricted development, and the rules are being changed. A deal was made with the neighbors to have an age-restricted development

Mr. Ellis said Mr. Feltman's if the developer's comments are factual, the development doesn't get off the floor. Mr. Ellis feels the developers have made a good effort to sell the units.

Mr. Ellis asked where the project stands now. He asked if you walk away from this project, how many for sale units are there? Atty. Brown said there are four rental units built and empty, four rental units built and three rented. Mr. Ellis said you have foundations sitting waiting for structures. Atty. Brown said the roads are in, sidewalks are in and curbing is in. She said landscaping is not completed on the unfinished end of the site. Mr. Ellis said this could end up a blighted area if something is not done.

Mr. Ellis asked if there were any comments from the public?

Stanley Wentworth, 270 Concord Road. Mr. Wentworth submitted and read his letter to the Board, dated September 17, 2004.

Mr. Ellis asked if he copied this letter to Atty. Brown. Mr. Wentworth said no.

Atty. Brown commented by saying she understands his concerns about young people buying in and partying. Regarding water she saw only a few inches of water in the swale. The retaining wall – the Building Department had asked them to put a fence up. She said the fence is constructed and showed pictures of the fence and said the landscaping has been done. She said they would be happy to extend the fence.

Mr. Bauer asked whom they expected to buy the homes if they remove 55+-age restriction. Atty. Brown said that, because of the price, they didn't expect a lot of young people, who would fit the "partying" description.

Mr. Ellis read a letter from Melaney Richardson, 266 A Concord Road, dated September 20, 2004.

Atty. Brown commented and said they had many conversations with Ms. Richardson. She had contacted the developer about water in her yard; it was not the result of conditions at the development. Atty. Brown's said her brother, Nat, went out and looked at it. They also offered to plant trees.

Nat Brown said there was water near the walkway; Ms. Richardson had mulch beds around it that was affecting proper water runoff. Atty. Brown said there have been no further callbacks.

Richard Heinrich, 286 Concord Road. He said the original plan for the project was for Cape Cod style homes, which were changed to Colonial houses. In his opinion, lifting the 55+ restriction is a violation of trust. He said if he was going to sell his house and nobody came, he would get real estate people, professional people, to sell it. He does not think the Browns have the experience to sell the property. They have not maintained the property in an attractive way. He said the area at the entrance is overgrown with weeds. The floor plans are not good for a 55+ family. He said the plans are bad. He said a CPA firm should look at this to see what kind of management plan they have. He asked why are the developer was taking orders from people who are not 55+. He asked why would people look at the development if they were not qualified? He said there are no streetlights, debris and weeds are clearly visible, no trees have been planted, and there is a fire-damage structure. It's a mess! It's not a good situation.

He's said he's against changing the restrictions. He said it's a rental market, it needs to be reviewed.

Atty. Brown will provide the financials to the Board that were presented to the Selectmen.

Atty. Brown handled out financials. She wants to move forward, clean up and make the neighbors happy. Atty. Brown reviewed her financials with the Board.

Mr. Ellis said he is comfortable with the financials.

Alan Mironer, 269 Concord Road. He commented on what was said earlier that the developer would control behavior from young kids with a beer keg mentally. He said there was a house that was rented by the developer, which was removed to make way for the project. During the summer before it was demolished, the tenants had many parties and which resulted in the police and fire department visiting the property on numerous occasions. It was a bad summer. He believed that if the developer couldn't control this tenant, they couldn't control future tenants.

Ken Brown, 230 Concord Road, responded by saying that they were never made aware that there were problems with the tenant. No one ever called them to complain or report the situation, so he could not comment on the issue.

Atty. Brown said there would be an Association that would manage the property; there will be rules and regulations.

Gregory Cogliano, 272 Concord Road. He is a business owner (for over 32 years) and said some years he makes money and some years he loses money. No one comes around and says we're going to guarantee that you make money. He said it's too bad that the developer is losing money, but that's free enterprise. That's how it works. He said he thought that it was

unfair that 55+ owners would not be able to pass the property on to their heirs if they weren't 55.

Atty. Brown responded. She said the bottom line is that she doesn't think any of the neighbors want to see the development sit the way it is. She said after all is said and done, she believed everyone would be happy to see this project completed, regardless of to whom it's marketed. She is still confident that the owners and the tenants are not going to be end up with a neighborhood of 20 children running around, she said the units are not big enough.

Nancy Heinrich, 286 Concord Road. Comments to the resale issues. It will have to go to another senior; it's not an unique situation. It's a senior housing.

Mr. Ellis asked if there were any more comments.

Mr. Ezekiel said regarding the comments on private enterprise, this is not exactly the same thing as a private business venture; there's public money involved here. He said he also runs his own business, so he can lose money sometimes as well. From a financial perspective, the business aspects for the Brown family are not as relevant to him as what is in the best interest of the Town. We would really have to consider the downside; it's really much worse in this case. The Town has invested a lot in the process.

Mr. Ellis asked if there were any more comments.

Mr. Ellis closed the meeting to the public.

DELIBERATION:

Mr. Aumann is looking for a solution that solves everyone's concerns. He's more willing to let go of the restriction for the for-sale homes, but not for the rental units. He said it's easier to find renters.

Mr. Cohen addressed the concerns of the abutters. He agreed that it was important for the development to move forward, but was concerned that lifting the age restriction was a violation of trust with the abutters.

Mr. Ellis commented on the violation of trust. This project was presented on a premise, and the premise didn't work. He would rather see the developer step-up-to-the-plate, fess up and explain what's going on, and ask for some kind of remediation. He thinks that's what they're doing here.

Mr. Bauer said this is a LIP project and the Selectmen supported it, now they're supporting to lift the age 55+. It puts the Town in a difficult position.

The Board discussed the possibility of splitting the development into a partially restricted 55+ development, where the rental units are restricted, but the for sale-homes are not. While some members thought that this solution would address both the developer's and the neighbors' concerns, it was ultimately the consensus of a majority of members that this would be an artificial solution that could cause more problems than it solves.

Mr. Ellis commented that he believed that providing affordable housing was, and still is, the primary objective/component of this project, not a 55+ age restriction. It was the Town that requested the 55+ age restriction and the developer agreed. He believed that it is more important and in the Town's best interest to move forward with a viable affordable housing project than to allow the project to potentially go under.

MOTION:

Mr. Cohen moved to revise the Comprehensive Permit Petition #010-02 and grant to Pamela J. Brown, Esq. for Elderberry Limited Partnership II, Panake, Inc. General Partner, for property located at The Village at Concord Road – Caesar Jones Way, an amendment to the Comprehensive Permit, for the Village at Concord Road in accordance with MGL c. 40B and 760 CMR 31.00 to eliminate the age-restriction applicable to owners and tenants in the development; specifically, in Chapter III, Section A "General Conditions," on page 12 of 14, delete General Condition number 8 in its entirety. All other terms and conditions that are outlined in the Comprehensive Permit shall remain in full force and effect and be met forthwith with the abutters by the developer.

Mr. Bauer seconded the motion.

Mr. Ellis asked voting members of the Board to signify their vote with a verbal response and to raise their hand.

Voting in favor: Ellis, Aumann, Theobald and Cohen.

Voting in opposition: None

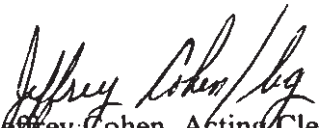
Abstained: Maglione

Motion carries: 4-0-1

The attorney representing the developer and the development owners will agree with this amendment and Mr. Ellis believes that they understand what the word forthwith means.

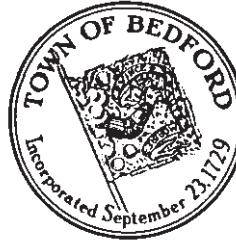
Mr. Ellis informed the petitioners that the Board has 14 days to write up the decision, and there is then an appeal period of 20 days after which the petitioner must have the Comprehensive Permit recorded and they then may move forward with the remainder of the project.

Mr. Ellis wished the Petitioners good luck on their project.


Jeffrey Cohen, Acting Clerk

IMPORTANT NOTICE:

M.G.L.c 40A, Section 11 and 17 require that no Variance or Special Permit or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Office of the Town Clerk and that no appeal has been filed within said twenty (20) days that it has been dismissed or denied, and is recorded in the Middlesex Registry of Deeds for this district. The fee for recording or registering shall be paid by the owner or petitioner.



THE BOARD OF APPEALS

TOWN HALL
10 MUDGE WAY
BEDFORD, MASSACHUSETTS 01730

DATE DECISION FILED: October 7, 2004 **PETITION NUMBER:** 008-05


Notice is hereby given that the Zoning Board of Appeals considered revisions to the floor plan, specifically the elimination of the half-bath and modifications to the partitions at front entrance to be an insignificant change to the Comprehensive Permit for The Village at Concord Road.


Notice is hereby given that the Zoning Board of Appeals **GRANTED** an amendment to the Comprehensive Permit, #010-02, for the Village at Concord Road in accordance with MGL c. 40B and 760 CMR 31.00 to eliminate the age-restriction applicable to owners and tenants in the development; specifically, in Chapter III, Section A "General Conditions," on page 12 of 14, delete General Condition number 8 in its entirety. All other terms and conditions that are outlined in the Comprehensive Permit shall remain in full force and effect and be met forthwith with the abutters by the developer.

PETITIONER: Pamela J. Brown, Esq., for Elderberry Limited Partnership II, Panake, Inc., General Partner.

PROPERTY: The Village at Concord Road, Caesar Jones Way

The hearing(s) was held on September 23, 2004.


Jeffrey Cohen, Acting, Clerk


Pamela J. Brown
Att. Middlesex S. Register

An appeal from the decision of the Zoning Board of Appeals may be made by any person aggrieved by the decision of the Board pursuant to M.G.L. c. 40A, Section 17, as amended, within twenty (20) days after the date of the filing of the decision in the Office of the Town Clerk.