

TOWN OF WESTON

www.weston.org

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TOWN CLERK



2008 01484233 235824
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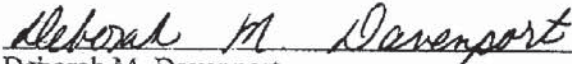
CERTIFICATE OF TOWN CLERK

I, Deborah M. Davenport, Assistant 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 October 19, 2007 and filed with the Town Clerk concerning the following described property.

<u>Name of Owner</u>	<u>Location of Property</u>
Weston Affordable Housing Foundation, Inc. 19 Fairview Road Weston, MA 02493	45 Church Street, Weston, MA 02493

<u>Book No.</u>	<u>Page No.</u>
1313	120

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.


Deborah M. Davenport
Assistant Town Clerk
Town of Weston

November 23, 2007

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TOWN CLERK
WESTON, MA



TOWN OF WESTON
MASSACHUSETTS

BOARD OF APPEALS

COMPREHENSIVE PERMIT UNDER M.G.L. c. 40B

APPLICANT: Weston Affordable Housing Foundation, Inc., 19 Fairview Road, Weston, MA

LANDOWNER: Weston Affordable Housing Foundation, Inc., 19 Fairview Road, Weston, MA

SUBJECT PROPERTY: 45 Church Street, Weston, Massachusetts Assessors Map 23, Lot 43

DISPOSITION: Comprehensive Permit Approved with Conditions

RECORD OF PROCEEDINGS:

There having been presented to the Board a petition for a Comprehensive Permit dated September 4, 2007 by Weston Affordable Housing Foundation, Inc., 19 Fairview Road, Weston, MA the Board decided to hold a hearing on said petition on Tuesday, October 9, 2007 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 20 and 27, 2007.

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 Tuesday, October 9, 2007 at 7:30 P.M. in a conference room at the Weston Town Hall, on an application by Weston Affordable Housing Foundation, Inc., 19 Fairview Road, Weston, MA as to 45 Church Street (Map 23, Lot 43), requesting a Comprehensive Permit under M.G.L. Ch. 40B, to place an affordable single family rental unit on 1.1 acre, nonconforming lot in the Single Family Residential B District.

The petitions and plans on all above applications with said Board of Appeals are available for public inspection in the office of the Board of Appeals on Monday through Friday, from 9:00A.M. to 4:30 P.M.

Board of Appeals of the Town of Weston

By: Wendy Kaplan Armour, Chair

The Board also mailed the foregoing notice postage prepaid on September 21, 2007, 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: Weston Affordable Housing Foundation, Inc., 19 Fairview Road, Weston, MA
O'Neill, Stephen J., O'Neill, Patricia B., 51 Church St
Town Of Weston, Conservation, Town House Rd
Nicholas, Clover, 335 Boston Post Rd
Parker, T. Brook, Parker, Joanne W., 327 Boston Post Rd
Parker, Brooks A., 3rd, Parker, Gale T., 321 Boston Post Rd
Marple, Wesley W., Jr., Marple, Betty Louise N., 317 Boston Post Rd
Barno, Richard M., Montgomery, Leslie L., 23 Hemlock Rd
Burke, Susan T., PO Box 322
N And E Realty Trust, Nickerson, Bruce Etal Trs, 39 Church St
313 Boston Post Rd. Rlty Trust, Bowers, Frederick W., Etal Trs., 313 Boston Post Rd
Gildea, Sean P, Gildea, Philomena M, 22 Church St
Schulman, Matthew G, Schulman, Melisa B, 2 Pigeon Hill Rd
Wood, Jeremy Scott, Wood, Robin B.R., 10 Pigeon Hill Rd
Kilgallen, Thomas M, Earp, Brandon Elizabeth, 25 Church St
Coutts, Robin Peakes, Etal Trs., Trustees Of The Hemlock Road, 12 Hemlock Rd

Board of Appeals Members: Armour, Knight, Munro

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

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

Pursuant to the foregoing notice the Board held a public hearing on Tuesday, October 9, 2007 at 7:30 P.M. at the Weston Town Hall. The following members were present:

Wendy Kaplan Armour, Chair
Peter C. Knight
Elizabeth H. Munro

BACKGROUND:

The Development Project approved under this Comprehensive Permit involves the construction of one 2,065 square foot, two-story, single-family dwelling on a 47, 906 square foot lot at 45 Church Street, Weston, Massachusetts ("the Site"). The Development Project is designated by the Massachusetts Department of Housing and Community Development ("DHCD") as a Local Initiative Program (LIP) project. DHCD has granted Site Eligibility and Preliminary Approval for the Development Project under the LIP. The construction of the dwelling and the associated Site development, are to be performed by Highland Construction LLC, on land owned by Weston Affordable Housing Foundation, Inc., 19 Fairview Road, Weston, MA ("WAHFI"), pursuant to a "Development Agreement" executed between the Town of Weston and the developer of the Highland Meadows Active Adult Residential Development, dated May 9, 2005. WAHFI will retain ownership of the Site and the dwelling. The dwelling shall be rented to an eligible household whose annual income may not exceed 80% of the area median income, as adjusted for household size, as determined by the U.S. Department of Housing and Urban Development. Rent will be based on based on 30% of the eligible household's monthly income. Weston Affordable Housing Foundation, Inc. intends to recertify the tenant's income annually.

1. The following plans and materials were submitted to the Board by the Petitioner:
 - Board of Appeals Comprehensive Permit application, dated September 4, 2007
 - Copy of Weston Assessors Map 23
 - "Existing Condition Photos" by HDS Architecture, 100 Talcott Avenue, Watertown, MA dated April 27, 2007
 - "Floor Plans" (A-100) and "Elevations"(A-200) prepared by Highland Real Estate Development LLC, 197 First Avenue, Suite 350, Needham, MA, dated March 28, 2007
 - "Plot Plan of Proposed Septic System" prepared by PureGround, Inc., William C. Murphy, P.O. Box 312, Weston, MA, dated March 20, 2007
 - "Landscape Plan" and "Overall Site Landscape Plan", prepared by Hawk Design, Inc., Boston, MA, dated June 5, 2007
 - "Site Plan" prepared by Snelling & Hamel, 10 Lewis Street, Lincoln, MA, dated April 12, 2007
 - "Existing Conditions Plan for 45 Church Street, prepared by Snelling & Hamel, 10 Lewis Street, Lincoln, MA, dated June 6, 2007
2. Town department documents submitted include:
 - Housing Needs Committee letter, dated September 25, 2007
 - Good standing approval, dated September 12, 2007
 - Agreement for Extension, dated September 10 and 11, 2007
 - E-mail from Steven F. Shaw, Police Chief, dated September 12, 2007
 - "Certificate of Action, Site Plan Approval, No. 45 Church Street", prepared by the Planning Board of Weston, dated June 27, 2007
 - "Letter of Community Support, LIP application, 45 Church Street" prepared by the Board of Selectmen, dated July 10, 2007

- "Order of Resource Delineation", prepared by the Weston Conservation Commission, dated July 11, 2007
- E-mail from Wendy Diotalevi, Board of Health, dated September 26, 2007
- E-mail from Stephen Fogg, Town Engineer, dated September 27, 2007
- E-mail from Stephen Fogg, dated October 3, 2007
- E-mail from David Conway, consulting engineer, Judith Nitsche Engineering, dated October 4, 2007
- E-mail from Steven Fogg, dated October 4, 2007

3. Additional documents in file:

- "Site Plan, Weston, Massachusetts", prepared by Snelling & Hamel Associates, Inc., 10 Lewis Street, Lincoln, Massachusetts, dated September 18, 2007
- "Deed and Declaration of Restrictive Covenants", dated December 30, 2005
- "Site Eligibility and Preliminary Approval Letter", prepared by Department of Housing and Community Development, 100 Cambridge Street, Boston, MA, dated August 21, 2007
- "Amendment of Site Eligibility and Preliminary Approval under LIP", prepared by Department of Housing and Community Development, 100 Cambridge Street, Boston, MA, dated October 5, 2007
- "45 Church St-Weston SCS" Drainage Calculations, prepared by Columbia Design Group LLC, 866 Dorchester Avenue, Dorchester, MA, dated April 13, 2007
- "Site Plan", prepared by Columbia Design Group LLC, 866 Dorchester Avenue, Dorchester, MA, revision dated October 3, 2007
- E-mail from Donna VanderClock, dated September 5, 2007
- "Notice of Meeting" by the Board of Selectmen, regarding 45 Church Street
- E-mail from Peter Varga, Cambridge Water Department, dated January 2, 2007

Appearing before the Board was Kenneth Fish, president, Peter Endicott, treasurer and director, and Keith Gross, director, all of Weston Affordable Housing Foundation, Inc., 19 Fairview Road, Weston, MA (WAHFI) (the "Petitioner"), and Mark Romanowitz of Highland Realty Trust, 197 First Avenue, Suite 350, Needham, MA. Judith Cutler of Kopelman and Paige, 101 Arch Street, Boston, MA appeared as counsel for the Town.

Mr. Fish stated that WAHFI has been in operation for ten years. Their mission is to provide affordable housing in Weston. He stated that they are a Chapter 180 corporation, and that they have tax status as a 501 C3 nonprofit organization. WAHFI currently owns and operates two properties: 15 Jones Road, and 23 Pine Street, in Weston.

Mr. Fish stated that Highland Realty Trust agreed to provide the Town, or WAHFI, with an affordable dwelling off-site following their approval for an active adult residential district (AARD) in Weston known as Highland Meadows. Highland Realty Trust has agreed to the construction of this affordable off-site dwelling at 45 Church Street.

Clover Nicholas and Roger DuPont, 335 Boston Post Road, appeared before the Board. They stated that the property was subdivided in the 1950's, and that the resultant parcel then lacked

sufficient frontage to be a conforming lot. Ms. Nicholas and Mr. DuPont donated the land to WAHFI for development of an affordable dwelling.

Peter Endicott stated that 45 Church Street (the "Site") is in close proximity to the railroad station. The land slopes gradually down toward the southeast and conservation land. The existing parcel contains an easement along the northeasterly property line. Additionally, WAHFI is granting a 10-foot wide trail easement toward the southeasterly portion of the lot, which will enhance Weston's Forest and Trails system.

Keith Gross stated that the testing for septic at the site indicated that the site would perk for the installation of the septic system. The dwelling planned for the site is to comprise 1,600 square feet of living area plus a garage. The garage is planned to be sited under the dwelling, utilizing the natural contours of the land. The dwelling will comprise 3 bedrooms and 2.5 baths in the three-story building. The basement does not qualify as a story above grade. Mechanicals will be located in the basement space.

Mark Romanowitz stated that the Cambridge water district was involved with the planned septic system, due to the proximity of the property to a tributary of the water district. Mr. Romanowitz stated that Horsley Whitten was hired to work out a plan that would be acceptable to Cambridge. It was stated that it was not possible to meet the requirement of 200 feet from the tributary. As a solution, the septic was planned as a 'bed system' instead of a 'trench system'. The bed system allows the system to be installed 1 to 1.5 feet shallower than the trench system. This shallower system provides additional vertical distance from the tributary (in addition to the horizontal distance) which Cambridge was in favor of (E-mail from Peter Varga, Watershed Protection Supervisor, Cambridge Water Department, dated January 2, 2007.) This system was approved by the Weston Board of Health. An additional benefit of the bed system is that fewer trees will be affected by the installation.

Peter Endicott stated that the rent for the Premises will be set as approved by DHCD. A renter would be granted a one year lease, and their income would be verified on an annual basis. Mr. Endicott indicated that the rent would be utilized for maintaining the residence.

The Board discussed the required review of the lottery plan, profit limitations, accounting and marketing (including local preference), deed restrictions, a regulatory agreement and covenant, and possible use restriction for the Site. A continuation for the hearing was set for Friday, October 19, 2007. Notice thereof was announced at the public hearing, and posted at the Town Clerk's office and on the Town website.

October 19, 2007

Present at the October 19, 2007 meeting were members Wendy Kaplan Armour and Elizabeth H. Munro. Member Peter C. Knight was absent. On motion of Elizabeth H. Munro, the Board voted 2-0 to grant the Comprehensive Permit as set forth in the following Decision.

DECISION:

This is to certify that at a duly posted meeting of the Board held on Friday, October 19, 2007, where members Wendy Kaplan Armour and Elizabeth H. Munro were present and representing a quorum of the Board, voted 2-0 to grant the requested Comprehensive Permit on the basis of the following findings, and subject to the following conditions:

FINDINGS:

1. The Site contains 47,906 square feet of land and is located in the Single Residence B Zoning District. The lot has 132.14 feet of frontage on Church Street; the District requires 150 feet of frontage, rendering the lot nonconforming.
2. The Site is currently undeveloped. It is bordered by a single family dwelling to the north, Conservation land to the south and east, and a multifamily dwelling to the east.
3. The Petitioner has control over the site as evidenced by a Deed and Declaration of Restrictive Covenants, recorded on December 30, 2005.
4. The dwelling is being constructed by Highland Construction LLC, pursuant to an executed Development Agreement with the Weston Board of Selectmen, dated May 9, 2005, for an off-site affordable dwelling in connection with the development of the Highland Meadows Active Adult Residential Development.
5. The Petitioner will hold title and develop the property through a nonprofit entity within the meaning of M.G.L. Chapter 40B.
6. The Petitioner agrees that the rent will be made permanently "affordable" within the meaning of M.G.L. Chapter 40B, through deed restrictions.
7. Based upon information published by the DHCD regarding the Subsidized Housing Inventory as of September 13, 2007, 3.5% of Weston's housing inventory is considered low or moderate for purposes of M.G.L. Chapter 40B.
8. The Petitioner has satisfied the jurisdictional requirements to submit an application for a Comprehensive Permit under M.G.L. Chapter 40B.
9. The Petitioner has submitted a stormwater and drainage report, prepared by Columbia Design Group, LLC, dated April 13, 2007, and the same has been approved by the Stephen R. Fogg, Town Engineer and David Conway, consulting engineer from Judith Nitsche Engineering.
10. The Planning Board has issued a Site Plan Approval for the Development project by Certificate of Action, dated June 27, 2007.
11. The Conservation Commission has issued an Order of Resource Delineation Subject to Simplified Review, DEP File number 337-0955, issued July 11, 2007.

12. The Housing Needs Committee issued a letter to the Selectmen on September 25, 2006 expressing support for the proposal.
13. The Police Department has informed the Board that it has no concerns.
14. The Selectmen unanimously voted to support the LIP petition on July 10, 2007.
15. DHCD issued a site eligibility and approval letter for the Development Project under the LIP on August 21, 2007, and an amendment to that letter on October 5, 2007, adjusting the rent.
16. The Petitioner has met with the neighbors, and incorporated several of their concerns into the current design and layout of the proposed development.
17. The project will require only one waiver from the Weston Zoning By-laws, namely, a waiver from the minimum frontage requirement from 150 feet to 132.14 feet. The Petitioner has requested reduced or waived fees, as may be permissible, due to the nonprofit status of the organization.

CONDITIONS:

1. The development shall contain only one single family dwelling to be constructed and located on the Site substantially as shown on the Plans submitted to the Board and identified as follows: "Site Plan, Weston, Massachusetts, prepared by Snelling & Hamel Associates, Inc., 10 Lewis Street, Lincoln, MA, dated September 18, 2007, "Floor Plans" and "Elevations" prepared by Highland Real Estate Development LLC, 197 First Avenue, Needham, MA, dated 3-28-07, "Plot Plan of Proposed Septic System", prepared by PureGround, Inc., P.O. Box 312, Weston, MA, dated 3-20-07, and "Landscape Plan" and "Overall Site Landscape Plan", prepared by Hawk Design, Inc., Boston, MA, dated 1-24-07.
2. The single family dwelling shall be made subject to a perpetual affordable housing restriction, enforceable by the Town of Weston, and meeting the requirements of M.G.L. c. 184, §§31 and 32, which shall restrict occupancy to households of Low or Moderate Income as that term is defined in M.G.L. c. 40B ("Affordable Housing Restriction). Prior to making application for an occupancy permit for the dwelling, WAHFI shall execute such Affordable Housing Restriction, in a form approved by DHCD and the Board, and shall provide the Board with evidence of the recording of the executed Affordable Housing Restriction.
3. The dwelling will contain three bedrooms, and have an RGFA of no more than 2,065 square feet.
4. No dumpster shall be allowed at the site, except during construction.

5. The owner of the Site shall be responsible for maintaining landscaping and shall be responsible for trash removal, snow removal, biannual inspection and maintenance of catch basins, dry wells and other infrastructure maintenance, including full compliance with the orders issued by the Conservation Commission, and the Site Plan Approval issued by the Planning Board, as referenced herein, provided however that this condition is not intended to prevent the owner from making provision in the lease for the tenant to assume responsibility for trash and/or snow removal.
6. Prior to issuance of a building permit for the dwelling, the Applicant shall enter into a Regulatory Agreement with DHCD in the form required by DHCD, which shall include provisions for the following: (a) the Town and DHCD to be holders of a Use Restriction with the right and the obligations to enforce it during the term of affordability; (b) the Town and DHCD to provide for monitoring and enforcement of the Restriction, either themselves or through a contract for monitoring services with an entity experienced in affordable housing operation; (c) selection of eligible tenants for the rental unit to be made in a fair and reasonable manner in compliance with fair housing and anti-discrimination laws; (d) tenants to be required to occupy the dwelling as their domicile and principal residence; (e) the term of affordability to be in perpetuity; and (f) the unit to be rented to low and moderate income households for no more than the permissible rent under the DHCD guidelines. Said Regulatory Agreement shall be recorded with the Middlesex County Registry of Deeds, and a copy of the recorded document shall be submitted to the Board.
7. Prior to issuance of a building permit for the dwelling, WAHFI shall enter into a Monitoring Service Agreement with a Monitoring Agent to be approved in advance by the Weston Board of Selectmen and DHCD, and a copy of the executed agreement shall be filed with the Board.
8. Prior to issuance of a building permit for the dwelling, the Petitioner shall provide evidence to the Board that it has complied with the DHCD requirements #2 through #4 as set forth in Appendix E to the Local Initiative Program Guidelines.
9. WAHFI shall be responsible for selection of qualified tenants for the dwelling, through a lottery. WAHFI shall submit an affirmative fair marketing and lottery plan for DHCD's review and approval no less than 75 days before the scheduled date for the lottery. Prior to submitting said plan to DHCD, WAHFI shall submit it to the Weston Board of Selectmen (or its designee) for review and approval.
10. The Monitoring Agent shall be responsible for (a) annual monitoring and certification to DHCD and the Town of Weston that the tenants in the affordable dwelling meet the applicable income limits and that the Development Project has been maintained in a safe and sanitary condition, consistent with the LIP Guidelines and the recorded Regulatory Agreement; (b) review of the Project's Certified Cost and Income Statement prepared once the Project has received its certificate of occupancy; and (c) annual review of the Development Project's Certified income and Expense Statement, to determine if any excess profits have been earned and are owed to the Town. WAHFI shall cooperate with

the Monitoring Agent in regard to its execution of these responsibilities.

11. During the development of the Site and the construction of the dwelling, construction shall be limited to the hours between 7:30 a.m. and 5:00 p.m., Monday through Friday. Construction is permitted on Saturday, only as specified by the Planning Board. There shall be no construction on Sundays or holidays, or outside of these designated hours absent an emergency.
12. No construction vehicles may be left standing on adjacent streets before or after the designated construction hours set forth in Condition 11 above.
13. Vinyl fencing and covered dumpster shall be used during construction to keep debris within the confines of the Site, and the Petitioner shall be responsible for the prompt removal of any debris which escapes enclosure.
14. No building permit shall be issued until the Building Inspector receives written confirmation from the Chairman of the Zoning Board that all of the applicable pre-building permit conditions specified under this Comprehensive Permit have been satisfied.
15. No occupancy certificates shall be issued until the Building Inspector has received written confirmation from the Chairman of the Board that all of the applicable pre-occupancy permit conditions under this Comprehensive permit have been satisfied.
16. No changes to the approved plans, renderings, or drainage plans, are allowed without prior approval by the Board, after such notice and hearing as the Board in its sole discretion shall deem appropriate.
17. All exterior lighting at the Site shall be designed and installed so as not to allow spill-over of light onto adjoining properties, as specified by the Planning Board in its Site Plan Approval Certificate of Action.
18. This Comprehensive Permit shall lapse if the Applicant does not commence construction within three years of the date the Permit becomes final, which is the date of this decision if no appeal is filed. An extension of the three-year period may be authorized by the Board for good cause shown.
19. All cost certifications and reporting requirements shall be prepared in conformance with DHCD's regulations and guidelines, and copies of same are to be filed with this Board and the Board of Selectmen in a timely manner. All final certification documents must be filed with the Board no later than six months after occupancy of the dwelling.
20. The provisions of this Comprehensive Permit shall be binding upon the Petitioner and its successors and assigns, and the authorizations and obligations hereunder shall run with the land. Any instrument for sale or transfer of rights or interest in all or any part of the Site, shall include a condition that successors are bound to the terms and conditions of this Comprehensive permit. This Comprehensive Permit may not be transferred by the

Petitioner to any other person or entity, however, without the prior written approval of the Board, following notice and hearing, as the Board deems appropriate. Proof of the execution of any instruments or documents that may be required, pursuant to Town Counsel's direction, shall be filed with the Board, to ensure the continuing enforceability of the Comprehensive permit.

21. The Petitioner shall not take any action, or fail to take action, such that the development Project would be brought out of compliance with M.G.L. c 40B, this Comprehensive Permit, or the applicable DHCD LIP Regulations and Guidelines. Failure to comply with the terms and conditions of this Comprehensive Permit shall be grounds for the Board to order cessation of construction on the Site until the Development Project is brought into compliance.
22. No changes to the approved plans, renderings, or drainage plans are allowed by the Petitioner, or any subsequent owners, without the expressed written approval of the Board, following notice and hearing, as the Board, in its sole discretion, shall deem appropriate.

WAIVER

This Comprehensive Permit includes a waiver from the minimum frontage requirement specified in Section VI.B.2 of the Weston Zoning By-laws, in order to allow a street frontage of 132.14 feet and lot width at street setback line of 126.6 feet. No other waivers of Town of Weston By-laws or regulations were requested by the Petitioner, or are granted by this Comprehensive Permit.

I hereby certify that the foregoing is a True Record of the Board's vote taken on October 19, 2007 to grant the within Comprehensive Permit.

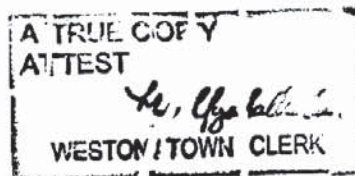
Attest:



Wendy Kaplan Armour, Chair



Elizabeth H. Munro, Member



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WITH
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12-23-05

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DOCUMENT 01464233

Southern Middlesex LAND COURT

REGISTRY DISTRICT

RECEIVED FOR REGISTRATION

On: Feb 04, 2008 at 10:33A

Document Fee: 75.00
Receipt Total: \$99.00

NOTED ON: CERT ~~2008~~ BK ~~1313~~ PG 180
ALSO NOTED ON: 235844 1313 180

~~John Henry LLP~~ Adelson Loria + Weisman PC
NAME TEL. 617 330-1635
STREET ADDRESS
CITY OR TOWN ZIP