

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
NO. 86-3723

Christina Pesce, Don Deily and Perry Pollins

vs.

Thomas G. Taylor, Natalie H. Riffin, Anne R. Scigilano, Clarence D. Turner, and Robert M. Gary, as they are the Lexington Zoning Board of Appeals, and Peter Kelley and Richard Perry as they are the applicant Woodhaven Realty Corp.

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1986 AUG 11 AM 11:46
TOWN CLERK
LEXINGTON, MASS

In an action brought by a complaint filed in said Court on

June 11, 1986 entries have the following ~~entries~~ been made on the

docket:

- 1986, July 14 Stipulation of Dismissal
With Prejudice and without costs to any party
- 1986, August 8 Stipulation of Dismissal
- 1986, August 8 Judgment of Dismissal
It is ordered and adjudged that the action be and hereby is dismissed with prejudice without costs to any parties. This voluntary dismissal is submitted pursuant to M.R.C.P. Pro-Rule 41.

Witness my hand and the seal of said Court.

AUG 11 1986

LEXINGTON, MASS. Deputy

Assistant Clerk

Thomas C. Kelly

August 8, 1986

A TRUE COPY ATTEST:

Mary Louise Herr
TOWN CLERK



Town of Lexington
BOARD OF APPEALS

May 22, 1986

Miss Mary R. McDonough
Town Clerk
Lexington, Massachusetts

Dear Miss McDonough:

Subject Property: Woburn Street, Countryside Manor Development
(Map 53, Lot 3A - Zoned RD District)

Applicants: Peter Kelley and Richard Perry,
d.b.a. Woodhaven Realty

Attached you will find the "Decision of Board of Appeals."

The Board of Appeals unanimously granted to the Applicants a special permit under 8.1.14 of the 1984 Zoning By-Law for the development of the land rezoned to RD District under Article 21 of the 1985 Town Meeting, in accordance with the Preliminary Site Development and Use Plan approved under Article 21 of the 1985 Town Meeting, and in accordance with the plans filed with the application.

Very truly yours,

Evelyn F. Cole
Administrative Clerk
Board of Appeals

LEXINGTON, MASS. AUG 11 1986
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Mary Louise Herr
Asst. TOWN CLERK



TOWN OF LEXINGTON
DECISION OF BOARD OF APPEALSRECEIVED
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Subject Property: Woburn Street, Countryside Manor Development
(Map 53, Lot 3A - Zoned RD District)

Applicants: Peter Kelley and Richard Perry,
d.b.a. Woodhaven Realty

Hearing Date: May 8, 1986

TOWN CLERK
LEXINGTON, MASS.

Pursuant to notice in the Lexington Minute-Man, a newspaper of general circulation in the Town of Lexington, published on April 24 and May 1, 1986 and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws, a public hearing was held on May 8, 1986 in the Town Office Building on the petition of Peter Kelley and Richard Perry, d.b.a. Woodhaven Realty, filed on March 27, 1986, for a special permit with site plan review (SPS) for the development of land on the Southeasterly side of Woburn Street (Map 53, Lot 3A) rezoned to RD District under Article 21, all as approved by the 1985 Annual Town Meeting.

Acting on the petition were: Chairman Thomas G. Taylor, Vice Chairman Natalie H. Riffin, Robert M. Gary, Anne R. Scigliano and Clarence D. Turner. Prior to the hearing, the petition and supporting data were reviewed by the Building Commissioner, Conservation Commission, Town Engineer, Health Director, Planning Board, and Board of Selectmen. Letters, recommendations and reports were received from the Building Commissioner, Conservation Commission, Town Engineer, Health Director and the Planning Board and are on file with the Board of Appeals.

Applicants submitted copies of the following: 1985 Annual Town Meeting Article 21, which rezoned the property to RD; "Covenant" with the Town; "Conservation Restrictions" (1986); "Covenant with Conservation Commission"; Plans for Countryside Manor, dated 2/10/86, by Larson Associates, revised to 2/5/86 (A-11 through A-16 and A-18 through A-24; and Plans by the Development Group: Landscape Architect, Larson Associates, Inc., Margo Jones, A.I.A.; Boston Survey Consultants; and Survey Resources, Inc., as follows:

Sheet No.	Title	Latest Date
L-1	Existing Conditions	8/14/85
L-2	Layout and Material	2/10/86
L-3	Grading and Layout	2/10/86
L-4	Planting Plan	2/10/86
L-5	Sedimentation and Erosion Controls	1/23/86
L-6	Site Details	2/10/86
L-7	Road Profile and Section	2/10/86

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Mary Louise Herr
Asst. TOWN CLERK

Countryside Manor Development (continued)

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Mssrs. Kelley and Perry, their Landscape and Building Architects, and others on the development team were present at the hearing. The property, which had been rezoned to RD (multi-dwelling) district and approved by the 1985 Annual Town Meeting, is a 9.49-acre site, located on the southeasterly side of Woburn Street, adjacent to the Woburn city line and the Winning Farm, and would provide 51, two-bedroom rental units in eight townhouse style buildings. The proposal is privately financed, does not involve use of a government subsidy program, and will provide affordable housing in excess of the guidelines in the Planning Board's Housing Element of the Comprehensive Plan. A large portion of the site, approximately 7.41 acres, will remain undeveloped as permanent open space. A conservation easement will be granted to the Town. There is one access drive serving the developable land in the northwest corner of the site and another serving the L-shaped area on the easterly side, all as required by the 1984 Zoning By-Law in effect when the project was presented to Town Meeting. The proposal is essentially unchanged from that presented to Town Meeting and conforms substantially to it. The site has been the subject of Conservation Commission hearings under the Wetlands Protection Act. The property will be subject to Covenants with the Town of Lexington and the Conservation Commission.

Neighbors raised a number of concerns, but the principal objections seemed to be that the plans did not conform to the Zoning By-Law, Planning Board Rules and Regulations, and the Wetlands Protection Act.

A memorandum, dated May 5, 1986, from the Building Commissioner, stated that the proposed development complies with the Lexington Zoning By-Law. The Planning Board, in addition to its comprehensive and detailed report made under Section 3.4.2 of the Zoning By-Law, submitted a separate report, dated April 28, 1986, entitled, "Compliance with Subdivision Rules and Regulations" in which the questions raised by the neighbors were specifically addressed. The Planning Board concluded that the plans submitted by the Applicants conformed to all Zoning By-Law and Planning Board Rules and Regulations requirements.

In addition to Conservation Covenants and an Order of Conditions issued by the Conservation Commission, the Conservation Administrator in a separate memorandum, dated May 8, 1985, stated "In our opinion the Order adequately addressed the wetlands and drainage issues associated with the development." He said that the Commission issued its decisions under both the state Wetlands Protection Act and the local Wetlands By-Law. The decision under the state Act was appealed by several neighborhood residents to the regional office of the Dept. of Environmental Quality Engineering (DEQE). DEQE issued a superseding order which is comparable to the Commission's Order. That Superseding Order has now been appealed to the Boston DEQE Office by Christina Pesce (of the Countryside Neighborhood Association). He said that to his knowledge "our decision under the by-law has not been appealed."

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Countryside Manor Development (continued)

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A Board Member, questioning whether it would be advisable to adjourn the hearing to another date to allow the gathering of further information and perhaps answers to technicalities cited by the neighbors, made a motion to adjourn the hearing to another date. The motion lost.

After reviewing all the facts and evidence presented at the public hearing and in letters and recommendations to the Board, the Board makes the following findings:

Findings:

Applicants requested a Special Permit for development of the land rezoned under Article 21 of the 1985 Annual Town Meeting from RO to RD, approved and adopted May 8, 1985 by the Town Meeting. In accordance with 1984 Zoning By-Law Section 8.1, Multi-dwelling District - RD, the Planning Board submitted a detailed report to the Board of Appeals, recommending that the Board approve the special permit.

Based on a review of the plans, reports from Town Boards and evidence presented at the hearing, the Board of Appeals determines that the proposed development will be consistent with the development as approved by the Town Meeting and consistent with the general objectives of the RD District development. The proposed development is governed by and will comply with the requirements of the RD district of the Zoning By-Law as they existed in January, 1985. A large portion of the site, approximately 7.41 acres, will remain undeveloped as permanent open space. A conservation easement will be granted to the Town. The Board determines that the layout, type and design of housing will constitute a suitable development compatible with the surrounding area.

Decision

For these reasons, the Board of Appeals unanimously grants to the Applicants a special permit under 8.1.14 of the 1984 Zoning By-Law for the development of the land rezoned to RD District under Article 21 of the 1985 Town Meeting, in accordance with the Preliminary Site Development and Use Plan approved under Article 21 of the 1985 Town Meeting, and in accordance with the plans filed with the application and described above, all of which are hereby made a part of this decision, subject to the following conditions:

1. The installation of municipal services and construction of interior drives within the development shall comply with the requirements of the Planning Board's Rules and Regulations Governing the Subdivision of Land.

2. A set of as-built site and utility plans shall be prepared by a registered professional engineer and one copy of a reproducible mylar of said plans shall be submitted to the Town Engineering Department upon completion of the project.

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Mary Louise Herr
Asst. TOWN CLERK

LEXINGTON BOARD OF APPEALS DECISION

Hearing date: 5/8/86

This constitutes the record of the Board of Appeals Decision relative to:

Subject Property: Woburn Street (Map 53, Lot 3A)

Petitioner/s: Peter Kelley and Richard Perry, d.b.a. Woodhaven Realty
Countryside Manor Development

BOARD OF APPEALS OF LEXINGTON (Acting under the Lexington Zoning By-law,
Lexington General Town By-laws, and the General Laws of Massachusetts,
Chapter 40A)

Matalie H. Ruffin

Anne R. Scigliano

Christine D. Turner

Robert M. Gray

Thomas G. Taylor
Chairman

I, Evelyn F. Cole, Administrative Clerk of the Board of Appeals, certify that copies of the decision have been filed with the Town Clerk of Lexington and the Planning Board.

Evelyn F. Cole

In accordance with Mass. G. L., Ch. 40A, SS11, 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 or city clerk that twenty days have elapsed after the decision has been filed in 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.

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Mary Louise Hill
TOWN CLERK

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TOWN OF LEXINGTON

Board of Appeals

APPLICATION FOR HEARING

This application must be completed, signed and submitted with the filing fee by the applicant or his representative in accordance with the Rules and Regulations of the Board. (See other side of this application.) The applicant is advised to review the Lexington Zoning By-Law and the Rules and Regulations of the Board of Appeals prior to filing this application.

Location of Property Woburn Street Southeasterly side Just before Town line
(address: street and number)

Name and Address of Applicant Peter Kelley Richard Ferry Tel. No. 862-2632
d/b/a Woodhaven Realty

Applicant is Owner * Tenant Agent/Attorney Prospective Purchaser
Marrett Road Lex. Ma. 02173

Property Owner's Name and Address (if not applicant):
A. H. Realty Trust Peter Kelley Richard Ferry Tel. No. 862-2632
Trustees

Date Deed recorded: 12/28/84 Middlesex So. Registry of Deeds: Book 12363 Page 98

Characteristics of Property: Lot Area 9.58 Acres Actual Lot Frontage +600'

Lexington Assessors' Map No. 53 Lot No. 3A Zoning District RD

Present Use Vacant

Application is for

- A variance from Section _____ of the Zoning By-Law.
- * A special permit in accordance with Zoning By-Law Section Sec. 8.1 1984 Bylaw
- Permit for removal of land, sand and gravel - Town General By-Laws.
- Comprehensive Permit - Ch. 40B, G.L. (subsidized housing)

Nature and justification of request:

This request for a Special Permit is for site plan review of the Site Development and Use Plan for land rezoned under Article 21 of the 1985 Annual Town Meeting from R 0 to R D, adopted May 8, 1985.

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Mary Louise Stern
Asst. TOWN CLERK

PETITIONER OR REPRESENTATIVE MUST ATTEND THE HEARING.

Signature of Applicant/Petitioner (or his representative) *[Signature]*

Address if not applicant _____

Telephone number where applicant may be reached during the day _____

Schedule of filing fees, January 20, 1981

appeals	\$50	variance	\$ 75	cluster development (SP)	\$200
renewals	50	special permit (SP)	75	multi-dwelling (SPS)	200
sign (SP)	50	site review (SPS)	200	subsidized (SP)	200