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Town Clerk

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December 11, 2002

TO WHOM IT MAY CONCERN:

This is to certify that the attached Board of Appeals Decision for a Comprehensive Permit (Hearing #02-13) on the Petition by Crossroads Development Corp., at 244-248 Main Street, Acton, MA, was filed with the Town Clerk's Office and the Board of Appeals on November 19, 2002.

There have been no appeals made to this office.

  
Eva K. Bowen  
Asst. Town Clerk

12-6-02

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DATE Nov 19, 2002  
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TOWN CLERK, ACTON

MASSACHUSETTS

DECISION #02-13

BOARD OF APPEALS

**DECISION ON THE PETITION OF CROSSROADS  
DEVELOPMENT CORP., 244-248 MAIN STREET**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Thursday, August 15, 2002 on the Petition of the Crossroads Development Corp. for a **COMPREHENSIVE PERMIT** to construct 12 condominium units located at 244-248 Main St. Map F2/Parcels 129-133, 138; Map F3/Parcel 140; and Map G3/Parcels 1 and 21.

Present at the hearing were Jonathan Wagner, Chairperson; Ken Kozik, Member; Cara Voutselas, Alternate Member; Garry Rhodes, Building Commissioner and Cheryl Frazier, Board of Appeals Secretary. Also present were James Fenton and Michael Jeanson, Petitioners, Mark O'Hagan of MCO & Associates, Inc. for Crossroad Development Corp., Nancy Tavernier, Chairperson for the Acton Community Housing Corporation, Betty McManus, Acton Housing Authority and some concerned abutters.

Jonathan Wagner opened the hearing and read the contents of the file. The following items were submitted to the file and are made part of this hearing record:

1. The application for a COMPREHENSIVE PERMIT, including an abutters list; Project Eligibility Letter; Evidence of Site Control; Site Development Plans; Locus Map; Building Tabulation Sheet; Existing Conditions Narrative; Housing Characteristics & Site Considerations, Architectural Drawings; Pro Forma Financial Review and List of Requested Exemptions.
2. Staff Comments including the following: letter from the Acton Fire Chief dated August 9, 2002; letter from the Board of Health dated July 29, 2002; memo from Acton Municipal Properties Dept., dated August 8, 2002; memo from the Acton Engineering Dept., dated August 7, 2002; memo from the Town Planner, dated July 30, 2002; memo from the Water Supply District dated July 24, 2002; a memo from the Highway Department dated August 14, 2002; and a memo from the Acton Housing Authority dated July 24, 2002.
3. Letter from the Acton Community Housing Corporation dated August 5, 2002.

The Petitioner addressed the Board in support of its Petition. Mr. O'Hagan for the Petitioner stated that the Petition seeks a COMPREHENSIVE PERMIT under M.G.L. c 40B. The project is a 12-unit condominium development with three units designated as affordable. Two of the three affordable units will be three bedroom units and one will be a two-bedroom unit. The estimated sales price for the affordable units will be \$140,000, subject to long-term deed restrictions that would require the owner to sell to another qualified low and moderate income purchasers and would limit the price on resale to ensure



that it remained affordable. In accordance with applicable regulations, the sales price is determined assuming affordability to a family earning 80% of the median income for the area. The estimated sales price for the market rate units is between \$289,900 and \$309,900.

Nancy Tavernier, Chairperson of the Acton Community Housing Corporation (ACHC), addressed the Board. She stated that the ACHC supports the project because it brings additional affordable units into Acton and because the project is small in scale and appropriate to the location. The affordable housing units would count toward the ten percent (10%) affordable housing goal as required by the state.

Following the Petitioner's presentation several abutters and residents expressed concerns. Among these concerns were the aesthetics of the buildings and the impact of additional traffic on Main St.

The Board asked the Petitioner if he would consider an alternative design addressing the aesthetic concerns of the abutters and residents. The Board also requested copies of the organizational documents for Crossroads Development, condominium documents and the Monitoring Services Agreement. The Board moved to continue the hearing until Thursday, September 19, 2002.

At the continued hearing the following items were added to the file:

1. Letter from Nancy Tavernier of the ACHC dated September 5, 2002.
2. Revised engineering drawings Sheets #1 and #3 dated August 29, 2002.  
Building plans for the 8-unit building revised September 4, 2002 and for the 4-unit building revised September 10, 2002.
3. Memo from the Acton Board of Health dated September 9, 2002. Memo from the Engineering Department dated September 13, 2002. Copy of an e-mail sent from the Traffic Advisory Committee dated September 18, 2002.
4. Letter from Crossroads Development Corp., LLC dated September 12, 2002.  
This letter contained several enclosures including organizational documents for Crossroads Development LLC, Condominium documents for Crossroads Condominium, proposed Regulatory Agreement and Deed Rider and proposed Monitoring Services Agreement.
5. Letter from Stamski & McNary, Inc. dated September 5, 2002.
6. Letter from Town Counsel dated September 19, 2002.

At the continued hearing, Mr. O'Hagan stated that many of the issues relating to Town Staff comments discussed at the August hearing had now been addressed. These included: aesthetics, parking spaces, trash removal, and the status of the New England Fund. In addition, Mr. O'Hagan addressed each of the issues raised in the letter from Town Counsel to Gary Rhodes.

The Board moved to continue the hearing until October 16, 2002 at 7:00. At the continued hearing the following items were submitted to the file and made part of the hearing record:



1. Engineering drawing Sheet #2 revised October 1, 2002.
2. Letter from Nancy Tavernier of the ACHC dated October 10, 2002.
3. Memo from Peter Berry of the Conservation Commission dated October 16, 2002.

The Board makes the following findings with respect to the proposed project and the requested waivers from local by-laws and regulations:

1. The Petitioner seeks a COMPREHENSIVE PERMIT under Massachusetts G.L. c. 40B for a multifamily dwelling of twelve units. Three of the units will be designated as "affordable units." Two of the Affordable Units will have three bedrooms and will be located in the four-unit building. One of the Affordable Units will have two bedrooms and will be located in the eight-unit building. The Board notes that the location and construction timetable of the Affordable Units has been reviewed and approved by the ACHC. The Board therefore finds the location and the construction timetable of the Affordable Units acceptable.
2. The sale of Affordable Units is governed by the Regulatory Agreement, which restricts the sale of Affordable Units to low and moderate income first time homebuyers. Sales of the Affordable Units are subject to long-term deed restrictions that require owners to sell to other qualified low and moderate income purchasers and limit the price on resale to ensure that they remain affordable.
3. The ACHC submitted a letter to the Board dated August 5, 2002 in which it requests that certain parameters be met to ensure that the project meets state requirements for affordable housing projects. The Board finds the ACHC requests contained in the letter reasonable and appropriate.
4. Petitioner has received a site approval letter from Middlesex Savings Bank dated June 20, 2002. The Board understands that by this letter the project is eligible for financing under the New England Fund of the Federal Home Loan Bank of Boston, a federally subsidized affordable housing financing program.
5. In accordance with the Master Deed, the ownership interest in the units will be based on the initial sales price of the unit. As a result, condominium fees and voting rights will be proportional to ownership interest. The Board understands that the deed documents will state the percentage of ownership interest for each of the Affordable Units.
6. The Board designates the Town of Acton as the Monitoring Agent to perform the duties outlined in the Monitoring Services Agreement. The Board imposes a fee of one percent (1%) of the resale price on the seller of an Affordable Unit to help fund the monitoring process involved in selling the unit. In addition, the Petitioner agrees to pay \$2,500 to the Monitoring Agent or its designee for costs relating to the initial sales of the affordable units, the audit of the construction budget, and the ongoing monitoring activities that will become the responsibility of the Town.
7. During the hearing process, the town staff has submitted significant comments. The Board notes that the Petitioner has agreed to all changes requested by town



- staff, and that these changes are now incorporated into the plans submitted to the Board on September 19, 2002 and October 16, 2002.
8. The Board finds that the Petitioner has agreed to install curbing along the shoulder of Route 27 and remove the existing sidewalk in this area. The Petitioner will prepare the area for a new five (5) foot wide asphalt sidewalk that will be paved by the Town of Acton.
  9. The development will be serviced by town water and the Middle Fort Pond Brook Sewers. The estimated betterment for the entire twelve units is \$180,000. The Board finds that the developer has agreed to pay the betterment as reflected in the Pro Forma Financial Review. The betterments for the Affordable Units will be paid by the Petitioner prior to the issuance of a Building Permit.
  10. The Regulatory Agreement states that the Affordable Unit owner may sell the unit at fair market value to any person, regardless of his/her income, and free of future resale restrictions if the Affordable Unit owner is unable to find an eligible purchaser within a 120 day period from the date the Affordable Unit was put on the market. The Board notes that 120 days may not be a sufficient amount of time to locate an eligible buyer. If the Affordable Unit owner fails to find an eligible buyer, the unit could be lost from the Town's affordable housing stock. The Board finds, therefore, that a longer period of time is necessary.

Findings related to requested waivers from the Zoning By-Law:

11. The Petitioner requests a waiver from section 3.1 of the Zoning Bylaw to allow Multi-Family housing in a R2 Residential District. The site is 2.23 acres, located on Main Street (Route 27), just south of Massachusetts Avenue (Route 111). The site is located in a transitional position, having commercial activities adjacent to the north and residential property to the south. The Board finds that the multi-family use is appropriate as a transitional use between the varying uses and therefore GRANTS the requested waiver.
12. The Petitioner requests a waiver from section 3.3.5 which requires a Site Plan Approval for a Multi-Family Dwelling. The petition for a COMPREHENSIVE PERMIT allows for the opportunity for extensive town staff comment and review. Having received comments from all relevant town staff, the Board finds that a waiver from the Site Plan Approval requirement is appropriate, and therefore GRANTS the waiver.
13. The Petitioner requests waivers from section 5.0 Table of Dimensional Requirements. The minimum front setback in the R2 District is 30 feet. The proposed front setback is 8 feet. Two of the proposed buildings comply with the setback requirement. The setback for the third building is only 8 feet because much of the rear of the lot is wetlands. The Board finds that in an area of mixed uses combined with the nature of the topography of the lot, that a waiver of the setback is appropriate for this COMPREHENSIVE PERMIT. The Board GRANTS the requested waiver from section 5.0.
14. The Petitioner also requests a waiver from the minimum side/rear setback. The minimum side/rear setback in the R2 district is 10 feet. The one of the proposed buildings will have a 6-foot side setback. The side in question is adjacent to a



lot currently occupied by the Kmart parking lot. The Board finds that a waiver of the minimum side/rear setback is appropriate for this COMPREHENSIVE PERMIT and GRANTS this waiver.

15. The Petitioner requests a waiver from section 6.7 Parking Lot Design Requirements.
  - a. Minimum parking Space Requirements: The plans provide two parking spaces per unit. For each unit, one space is provided in a garage and one space in front of the garage. The plans therefore comply with Section 6.3 Minimum Parking Space Requirements. The Board notes that, in response to concerns about visitor parking, the Petitioner has added two visitor spaces. Site constraints prevent adding any other visitor parking. The Board finds that the Petitioner is aware of the need to keep parking off of Main Street and will comply with any future Board of Selectmen parking restrictions. Furthermore, the Board finds that because of the limited parking, a restriction on the conversion from garage space to living space is reasonable.
  - b. Section 6.7 Parking Lot Design Requirements: Section 6.7 provides an exemption for a single to four family residential uses. The Board finds that the design of the development, with two separate buildings for the twelve units, makes many of the section 6.7 design requirements irrelevant.
16. The local wetlands by-law requires a 40-foot no-build setback with waivers as allowed by section F4.6. The Petitioner proposes constructing two parking spaces within the wetland setback. There is limited on-site visitor parking and the two additional spaces are important to keep cars from parking on Main Street. The Board finds that a waiver from the local wetland by-law is appropriate because the disruption to the wetlands will be minimal and the additional parking is relatively important. The Board therefore GRANTS the waiver from the local wetland by-law.

The Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **COMPREHENSIVE PERMIT** subject, however, to the following conditions:

- A. Certificate(s) of Occupancy for each unit shall be issued upon application by the Petitioner and approved by the Building Department, except that the Certificate of Occupancy for the first Affordable Unit must be issued before the fourth Certificate of Occupancy is issued on the project, the Certificate of Occupancy for the second Affordable Unit must be issued before the seventh Certificate of Occupancy is issued on the project and the Certificate of Occupancy for the third Affordable Unit must be issued before the tenth Certificate of Occupancy is issued on the project.
- B. The project must receive financing under the New England Fund of the Federal Home Loan Bank of Boston, a federally subsidized affordable housing financing program.
- C. The deed documents will state that percentage of ownership interest for each of the Affordable Units is based on the initial sale price. The fact that

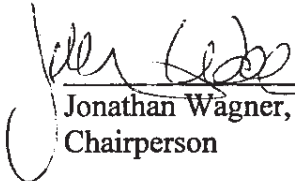


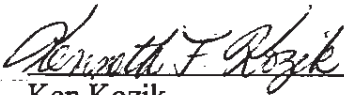
ownership interest is based on initial sales price and not market value must be made known to prospective buyers.

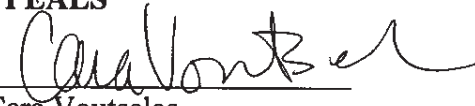
- D. The Town of Acton is appointed as Monitoring Agent, with one percent (1%) of the resale price imposed on the seller of a unit to help fund the monitoring process involved in selling that unit.
- E. The Petitioner will provide a gift of \$2,500 to the Monitoring Agent or its designee to cover the costs associated with the initial sale of the Affordable Units, the audit of the construction budget and other on-going Monitoring Agent duties.
- F. The project must be built in accordance with the plans submitted to the Board on September 19, 2002 and October 16, 2002.
- G. The Petitioner will pay the sewer betterment for the three Affordable Units prior to the issuance of a Building Permit.
- H. The Regulatory Agreement must state that the Affordable Unit owner has a period of 180 days in which to find an eligible buyer.
- I. The Petitioner will limit work at the site to the hours between 7:00 AM and 7:00 PM Monday through Friday and 9:00 AM to 4:00 PM Saturday. No work at the site will occur on Sundays. In addition, the hauling of earth is limited to the hours between 9:00 AM and 4:00 PM on weekdays. The Petitioner will not allow parking of construction vehicles on Main St.
- J. The Petitioner will submit for final review and approval by Town Counsel the Crossroads Development LLC organizational documents, condominium by-laws, master deed, deed rider, regulatory agreement and monitoring services agreement.
- K. The Petitioner has applied for approval under the state Wetlands Protection Act and this decision is conditioned upon receipt of an Order of Conditions issued by the town or the state.
- L. Condominium documents shall provide for equitable adjustment of pro rata shares of condominium units in the event an Affordable Unit becomes a market rate unit.
- M. The Building Department will not issue a Building Permit for the conversion of garage space to living space.
- N. Condominium documents shall provide that the garage interior parking space shall be used for vehicle parking only and not for living space.

This decision may be appealed by the Petitioner to the Housing Appeals Committee under G.L. c. 40B, section 22 or by any other party by court under G.L. c. 40A, section 17, within 20 days from the date of filing the decision with the Town Clerk.

**TOWN OF ACTON BOARD OF APPEALS**

  
Jonathan Wagner,  
Chairperson

  
Ken Kozik,  
Member

  
Cara Voutselas,  
Alternate Member



I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on November 19, 2002.

Cheryl Frazier  
Cheryl Frazier, Secretary  
Board of Appeals