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TOWN OF WESTON



Post Office Box 378
WESTON, MA 02193
(617) 893-7320

TOWN CLERK

CERTIFICATE OF TOWN CLERK

I, M. Elizabeth Nolan, 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 April 26, 1999 and filed with the Town Clerk with accompanying plans concerning the following described property.

MSD 07/02/99 01:06:33 837 15.00

Name of Owner
The Community Builders

Location of Property
100 Highland St., Weston 02493
Book#28043 Page 154
Book#29402 Page 133

AND I FURTHER CERTIFY that more than twenty (20) days have elapsed since filing of the said decision with me and no appeal thereto has been filed.

M. Elizabeth Nolan
Town Clerk
Town of Weston

May 17, 1999

MEN



TOWN OF WESTON
MASSACHUSETTS

BOARD OF APPEALS

There having been presented to the Board a petition for a Comprehensive Permit dated November 23, 1998 by The Community Builders, Inc., 95 Berkeley Street, Boston, MA 02116 for property at Lot 100 Highland Street, Weston, MA, the applicant and the Board agreed to hold a hearing on said petition on Thursday, January 14, 1999, at 7:30 P.M. at the Community Room of the Weston Public Library and the Board caused the following notice to be published in The Town Crier, a newspaper of general circulation in Weston on December 31, 1998 and January 7, 1999:

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 Thursday, January 14, 1999 at 7:30 P.M. at the **COMMUNITY ROOM OF THE WESTON PUBLIC LIBRARY**, on an application for a Comprehensive Permit under the Massachusetts General Laws, Chapter 40B, Sections 20-23, inclusive, filed by The Community Builders, Inc., 95 Berkeley Street, Boston, MA 02116 (Map #31, Lot #100) for the development of 18 family homes as part of a mixed-income (including affordable housing), family home-ownership community known as **DICKSON MEADOW** on the property at Lot 100 Highland Street which includes approximately 10.86 acres on the westerly side of Highland Street in the Town of Weston. The application is on file with said Board of Appeals and is available for public inspection in the office of the Board of Appeals on Monday through Friday, from 9 A.M. to 4:30 P.M.

Board of Appeals of the Town of Weston
By Robert P. Cook, Chairman

The Board also mailed the foregoing notice postage prepaid on December 31, 1998 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: The Community Builders, Inc.

(List of Abutters)

John B. Paine, Jr. & Charles J. Paine Estate, 160 Federal St., 16th Floor, Boston, MA 02110 for property at 0 & 64 Highland St.

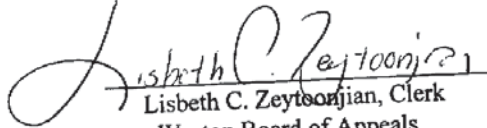
June Shillman, Trustee & RJS Home Trust, 77 Love Ln.

Lenore Z. Lobel, 31 Love Ln.

Edward M. Dickson, 125 Highland Street, P. O. Box 365

James L. & Frances M. Dowd, 9 Claridge Drive

Johanna Harrison, 15 Claridge Drive, P. O. Box 135


Lisbeth C. Zeytoonjian, Clerk
Weston Board of Appeals

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Pursuant to the foregoing notice the Board held a series of public hearings January 14, February 4 and February 24, 1999, at which time oral evidence was concluded, but written comments remained open until March 17, with an extension thereof to March 24, 1999. The following members were present:

Robert P. Cook, Chairman and Acting Secretary
Wendy Kaplan Armour
Winifred I. Li

The Board of Appeals recognizes the tremendous professional efforts of each advocate in this controversial matter we must decide. We also appreciate the sincere efforts of many participants who have expressed their differing views and concerns, all of which were carefully studied by the Board. The Dicksons and their team are to be lauded for their generosity and public spirit. We nevertheless understand the position of those residents who have devoted much time and resources toward trying to preserve the natural, pastoral beauty of the area.

Background Summary

The Community Builders, Inc. (TCB) applied to the Board of Appeals for a Comprehensive Permit pursuant to Mass. G.L., Ch. 40B, sec. 21 et seq., to develop 18 homes as part of a mixed-income community known as Dickson Meadow on 10.858 acres (roughly square) on the westerly side of Highland Street, bounded on the west and south by Dickson property and on the north by the Paine Estate which also owns the property to the east, across Highland Street. Mr. and Mrs.

Dickson have donated this land to TCB for this development. In 1998, the Housing Needs Committee approved the concept and the Selectmen endorsed the development with an application to the Massachusetts Department of Housing and Community Development (DHCD) under the Local Initiative Program. TCB is a non-profit organization with wide experience in developing affordable housing.

The planned project is to have 6 of the 18 homes sold to households with incomes and assets below levels specified by DHCD. These 6 homes accordingly (by current limits) would sell for \$94,500 and be permanently restricted in price and availability to such households. They would be distributed throughout the 18 and be similar in appearance, size and construction to all 18. The other 12 would sell for market rates. If feasible, up to 3 of these 12 might be sold and restricted as "moderate" or below market, although the status of any such homes is unclear under Ch. 40B. The project would be legally structured as a condominium, subject to a master deed and governed by a condominium trust or association of the homeowners.

All homes are to be located on a private road, "U" shaped as a ring around a 2.25 acre open meadow (to be subject to conservation covenants). Fourteen would be detached, with the remaining 4 as 2 structures, each with 2 single family homes, attached at the point of the garage and located at each entrance to the roadway, next to Highland Street. Each of the 18 homes would have 3 bedrooms, 2½ baths, a fireplace, basement and 2-car garage (about 2100 square feet excluding basement and garage). All are to be designed by Acorn Structures, of 3 basic styles shown on exhibits in file.

There is to be a common septic system near the northeasterly corner of the site. All storm drainage is to be directed into an infiltration area near the northwest corner. All utilities (water, electric, gas and cable TV) are to be underground.

Applicable Law and Regulations

Under Mass. G.L. Ch. 40B, secs. 20-23, a nonprofit organization proposing to build low or moderate income housing may submit to the Board of Appeals a single application in lieu of separate applications to the local boards, for a "comprehensive permit." The Board, by majority vote within 40 days after termination of the public hearing, may grant, condition or deny such permit. Any person aggrieved by such permit may appeal to the court; the applicant may appeal (first) to the housing appeals committee (HAC) from a denial or such conditions as make the project "uneconomic," defined as factors that make it impossible for a nonprofit organization to develop or operate "without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return... within the limitations set by the subsidizing agency...." The HAC may decide whether conditions imposed make the operation uneconomic and whether they are "consistent with local needs." A decision of the Board of Appeals generally would be deemed to be "consistent with local needs," even if the decision would render the applicant's proposal uneconomic, if the town has met its statutory minimum of affordable housing obligations, i.e., where low or moderate income housing (subsidized via programs as defined by federal or state statute) exceeds 10% of the units in town or 1½% of total available land or where

the application would be for construction on more than 0.3% of such land. Clearly none of these applies; accordingly, in such case, the Board must balance the regional need for affordable housing against local planning concerns as to (i) health and safety, (ii) site and building design and (iii) preservation of open space. However, the Massachusetts Supreme Judicial Court has ruled that failure to meet the defined minimum affordable housing obligations (above) "will provide compelling evidence that the regional need for housing does in fact outweigh the objections to the proposal." Board of Appeals of Hanover v. Housing Appeals Committee, et als, 363 Mass 339 (1973), at 367.

The statutory definition of "uneconomic," i.e. impossible for a nonprofit organization to develop or operate "without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return...within the limitations set by the subsidizing agency" is subject to interpretation, as TCB is a nonprofit organization, not a limited dividend organization. This raises the issue of a development fee. The Local Initiative Program (LIP) limits such fee to 20% of total costs. Under TCB's LIP application, TCB agreed to limit its fee to 15 % and this is reflected in DHCD's approval. Under a binding agreement which DHCD will require TCB to execute, TCB must deliver an itemized statement of total development costs and gross income from the project (certified cost and income statement) prepared and certified by an approved CPA. This agreement will require all profits in excess of the allowable profit be paid to the town and deposited in the town's Affordable Housing Fund. The Board notes that upon entering into a regulatory agreement under the LIP, the developer will be deemed a limited dividend organization for Ch. 40B, sec. 20. See 760 CMR 45.02.

Circumstances in Controversy

A number of residents, particularly those living fairly nearby, oppose the project as presented. They generally acknowledge the need for more affordable housing in Weston under state law and accept the proposal to include 6 such houses. The opposition principally focuses on density: 18 houses is too many and unnecessary to subsidize the 6. Opponents challenge the financial projections of TCB as providing an excessive cushion and argue that the Board need approve only such number of market price houses as allow the project not to be "uneconomic," i.e. the nonprofit developer is only to be protected against financial loss, not entitled to a profit. Further, the needless squeezing of 18 houses into this scenic, pastoral treasure, zoned for 60,000 square foot lots and large widths, setbacks, etc., impinges on the need to preserve open space, raises questions of health and safety and violates site and building design in relation to the surroundings. These concerns would all be mitigated by reducing the number (density) down to what assertedly is closer to a break-even level.

Specific concerns as to the septic system, roadway safety, maximum preservation of the open meadow and negative impact on surrounding properties were expressed, but the overriding focus was on the financial projections, the feasibility of reducing costs in the submitted "pro formas" in various ways and hence a reduction in number of houses that would still save the project from being uneconomic.

TCB has undertaken to respond to all these concerns, first by a memorandum of law and next by detailed explanations to refute the opponents' arguments. Certain modifications were also presented: revised sitings of several of the houses (nos. 3, 4, 5, 7, 8, 13 and 14); revision of the road configuration to soften a curve and relocate a driveway; enlargement (by 50%) and movement southward (by 5 feet) of the septic field; and addition of evergreens to screen portions of the development and enhance the existing natural wooded environment. Also, an argumentative analysis was presented as to how condominium fees would dramatically become more highly disproportionate as the number of market rate houses is reduced; the condo fees based on sales prices (defining the respective percentages of ownership interest) would have to be shifted much more significantly with each reduction of subsidizing market houses, to the point where this would naturally reduce the sales prices of such houses.

Several tabulations of cost projections were presented, discussed and disputed, in the effort to show that TCB's projections were needlessly generous and that certain items could be reduced to support a reduction in the number of market houses subsidizing the project. Rather than unduly lengthen this decision, we simply here refer to these differing comparative estimates as part of the total file (e.g., TCB's January 8, 1999 estimate, Mr. Feldman's February 24 estimate, TCB's March 17 I.B. and C. Comparison, Feldman's March 25 Exhibit B in toto).

Board of Appeals Evaluation

Several reasons suggest to the Board that a reduction in number of houses might be financially feasible and would have a less disruptive impact on the area and mitigate the safety and environmental concerns strongly expressed by the opponents. However, the Board is faced with impressive legal constraints against its right to redesign or substantially modify the proposed project in view of many countervailing considerations. We acknowledge that the cost estimates justifiably might be reduced slightly. On the other hand, we recognize that some margin for risk must be provided in the event that adverse contingencies unexpectedly develop. Further, squeezing down the cost projections might become a disincentive to developing high quality construction houses and "appointments" and landscaping, screening efforts and other superior site work. Also, the fact that any reduction in the number of market houses sharply increases the disparity of condo fees, unreasonably loading the subsidy onto the market houses to consequent reduction in their sales price and values, is certainly a consideration. Finally, to the extent the finances of the project permit, the Board would like to encourage the availability of an intermediate "moderate" house category.

The Board is less influenced by various expressed concerns. True, the site is presently beautiful in its pastoral serenity, but we know that this will otherwise be changed by the inevitable building of new houses, probably large in view of land prices. The site is quite isolated from the nearest houses: the only near house on Highland Street is owned by the Dicksons; the other houses are on Love Lane and Claridge Drive, separated by woods on Dickson property and several hundred feet from the closest proposed new houses on a direct sight line and much farther by road. All the adjacent Paine Estate land remains presently undeveloped. The 2.25 acre open

meadow will be preserved by covenant, instead of being "developed" by new subdivision houses. The private roadway, while curved and undulating has been modified to a degree that should be less hazardous than many in town. Traffic increase on Highland Street will be relatively insignificant. Septic and drainage concerns will be reasonably addressed. As to preservation of open space (2,000 acres protected in Weston) and availability of housing in this price range, we are impressed by the March 10, 1999 and March 21, 1998 letters by Kay McCahan, Chair of the Open Space and Recreation Planning Committee, in file. (We should mention that a large number of letters emphatically supporting the project as presented as well as a number of letters opposing it have been carefully considered and are in file.) In summary, the Board has done its best to resolve the conflicting arguments conscientiously and responsibly and makes its decision only after thorough, probing and reflective thought.

Decision

Based upon the many, exhaustive materials submitted by the applicant, TCB, and the numerous submissions, written and oral, by various persons opposing and supporting the project as submitted, all written submissions being incorporated as part of this file, it is the Board's decision to grant the comprehensive permit on the terms and conditions set forth in the application dated November 23, 1998, as later supplemented and modified, subject to the following conditions:

1. The location of each of the houses, roadway and common septic areas shall conform approximately to the site plan dated March 16, 1999 and submitted that date by TCB. Any permits necessary to:
 - A. cut and remove trees and plants within the limits of Highland Street in order to connect the private roadway therewith;
 - B. excavate ground during construction within the limits of Highland Street for the purpose of laying wires, pipes, and other utility conduits for use in the development; and
 - C. remove certain "significant trees" (as described in the "scenic road" provisions of the By-Law) and relocate portions of adjacent stone walls;

all as necessary to conform to the submitted site plans, are hereby granted.

2. The landscaping plan submitted March 16, 1999, showing the addition of evergreens, shall be followed. Such evergreens shall be permanently maintained in good condition and replaced if necessary.
3. The houses shall conform approximately to the architectural renderings shown in TCB's application and supplementary submissions.

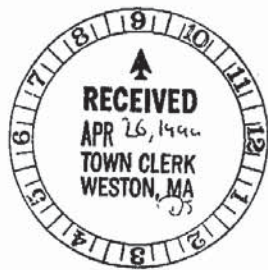
4. A condominium agreement, master deed (and rider if warranted) and declaration of trust, with regulatory agreements as required and administered under the DHCD and LIP, all as approved thereby, shall be prepared and recorded.
5. Four of the six "affordable" homes shall be reserved pursuant to LIP guidelines for local preference, the priority of applicants to be administered under the jurisdiction or with the maximum permissible participation of the Selectmen.
6. The roadway as located on the site plan dated March 16, 1999 shall have a maximum centerline (vertical) grade of 10.5%.
7. The drainage system shall meet all requirements of the Department of Environmental Protection Stormwater Management Policy. All catch basins shall have four foot deep sumps and MDC oil and gas separators. The infiltration area shall include a forebay to capture sediments prior to release into the main infiltration area of the pond. Infiltration shall occur only in the main bay of the pond. The condominium association shall maintain the drainage system and infiltration area and all roadways within the project. An operation and maintenance plan shall be prepared for all such maintenance. This plan shall include annual inspection and maintenance requirements, supervised by a professional engineer, all to be funded through the condominium fees.
8. The common septic system shall meet all state and local governmental requirements. The system shall include, satisfactory to the Board of Health: a secondary treatment unit; an emergency back up generator; and sufficient capacity to accommodate garbage grinders for all homes. A written maintenance plan shall be prepared for the septic system, including inspection, pumping and cleaning to the extent and in a manner satisfactory to the Board of Health and funded by condominium fees. As shown on the March 16, 1999 site plan, the septic system shall set back at least 15 feet from the northeasterly lot line.
9. The approximate 2.25 acre open meadow shown on the March 16 1999 site plan shall be preserved by a legally binding covenant as open space.
10. Throughout construction, there shall be compliance with Water Commission, Fire and Public Works Department requirements and periodic inspections by the Inspector of Buildings and Wires.
11. A construction trailer, for use as the offices and headquarters of the contractors, may be located on the site during construction.

12. A temporary sign not exceeding 4 feet by 6 feet may be erected on the site but only during construction and sales to advertise the development. However, in all events such sign must be removed no later than 6 months after the last building is certified for occupancy.

Application Granted, as Conditioned

A true copy

Attest: Robert P. Cook
Robert P. Cook, Chairman and Acting
Secretary, Weston Board of Appeals



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