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Town of Lexington
Town Clerk's Office

Donna M. Hooper, Town Clerk

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2014 00178385

Bk: 64547 Pg: 22 Doc: DECIS
Page: 1 of 9 11/21/2014 01:39 PM

Date: 11/19/2014

I hereby certify that twenty days have elapsed since the decision of the Board of Appeals on 9/25/2014:

Lexington Housing Assistance Board Inc. (LEXHAB)
11 Fairview Ave
Book 57415 / Page 284
Comprehensive Permit

filed on 10/27/2014, in the Office of the Town Clerk. No appeal was filed in the Office of the Town Clerk within the 20-day period.

Attest:

Donna M. Hooper
Town Clerk

Law Office of Patricia S. Nelson
7 Hartwell Avenue
Suite 2
Lexington, MA 02421

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Diana M. Hooper
TOWN CLERK
LEXINGTON, MA

TOWN OF LEXINGTON
DECISION OF THE BOARD OF APPEALS

SEP 27 PM 2:43
2014

Subject Property: 11 Fairview Avenue, Map 59, Lot 24C
Applicant: Lexington Housing Assistance Board, Inc
Hearing Date: September 25, 2014

Pursuant to notice in the *Lexington Minuteman*, a newspaper of general circulation in the Town of Lexington, published on September 11, 2014, and September 18, 2014, and notice sent by mail, postage prepaid, to all parties in interest pursuant to the provisions of Massachusetts General Laws Chapter 40A, and notice posted as required by said Chapter 40A, a public hearing was held on September 25, 2014, in the Town Office Building on the petition of Lexington Housing Assistance Board, Inc, filed on August 29, 2014, for a COMPREHENSIVE PERMIT-CHAPTER40B, GL (SUB HOUSING) in accordance with of the Code of the Town of Lexington (Zoning Bylaw) to allow 4 rental housing units approved by the Commonwealth, Dept of Housing and Community Development at 11 Fairview Avenue.

Acting on the petition was Chairman – Jeanne K. Krieger, Edward D. McCarthy Leo P. McSweeney and Associate Members Ralph D. Clifford and Carolyn C. Wilson

Staff Present: Dianne Cornaro, Administrative Clerk, and David George, Zoning Administrator

The petitioner submitted the following information with the applications: nature and justification of request; plot plan; site and utilities plan; project cost; floor plans; elevations; photographs; list of requested waivers; neighborhood meetings and abutter list; DHCD Approval letter and Lexhab’s application to DHCD

A letter of opposition was received signed by 31 abutters and a letter support was received from Bob Pressman of 22 Locust Avenue.

Prior to the hearing, the petitions and supporting data were reviewed by the Building Commissioner, Conservation Administrator, Town Engineer, Board of Selectmen, the Zoning Administrator, the Planning Director, Economic Development; the Historic District Commission Clerk and the Zoning Administrator. Comments were received from the Conservation Administrator, The Selectmen’s Office, the Planning Board, the Historical Commission and the Zoning Administrator.

William Kennedy, Co-Chairman of the Lexington Housing Assistance Board (LexHAB) presented the petition with Builder, Carter Scott. Also present was LexHAB member Dave Eagle.

11 Fairview Avenue
The Lexington Housing Assistance Board

September 25, 2014²

Mr. Kennedy explained to the Board the proposed project which consists of: 1) Rehabilitating the existing structure and retain it as a single-family affordable dwelling unit and 2) Construct a 2.5 story, approximately 30 ft. tall, multi-family structure containing three affordable dwelling units. The three proposed dwellings will range in size from 754 sq. ft. to 924 sq. ft. with one or two bedrooms. The total living area of the three unit building is 2,602 sq. ft.

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Board members asked the applicant to clarify the setbacks for the new dwelling; were the waivers for the existing or new structure (Both); are the units all rentals (yes).

Roger Miller of 29 Hayward questioned how many additional cars would be traveling on the street; Aziz Lbahi of 17 Fairview Avenue asked how wide the house is, how large lot is and was concerned with the density and the change in the look of the neighborhood.

Mark Byington of 12 Hayward Avenue is concerned with the traffic which he said is a concern without the additional traffic. He was also concerned with the density.

Harvey Botman of 4 Hayward Avenue thought it would benefit LexHAB to build 1 new structure rather than to have 2 structures; he feels it would save them money.

Mr. Kennedy told the audience LexHAB is a non-profit that is in the business of providing housing, they spend money for housing.

Tim Kreytak of 25 Hayward Avenue questioned the zoning and asked when the last neighborhood meeting was (June 13, 2013) and have the plans changed any since then. Mr. Kreytak also asked if the application is different with a non-profit. He was concerned with the street and the traffic that would be added.

Tracy Byington of 12 Hayward spoke in opposition.

Betsy Weis of the Housing Partnership spoke in support of the project commenting that the density that everyone is talking of is an approximate 2,600 sq. ft. home; the size of a split level home.

Wu-Yan Zhang spoke in support but has a concern with 2 dwellings on the lot; would like to see only 1 structure.

Mr. Kennedy doesn't believe that there should be a density issue with the building, it is well below the average Lexington house size for a 25,000 sq. ft. size lot.

During Board discussion one of the members said she thinks affordable housing is great but for this area a 2 family home would have been more appropriate. Too many units on a lot where street is substandard.

11 Fairview Avenue
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September 25, 2014³

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Another Board member felt this lot was bigger than most in the neighborhood and thinks this will look like a typical size Lexington home.

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Findings



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The Town of Lexington Zoning Board of Appeals (the "ZBA" or the "Board"), having received the Board of Appeals Application for Hearing, viewed the site, conducted a public hearing, and reviewed all the submitted evidence, finds that:

1. The Lexington Housing Assistance Board ("LexHAB" or the "Applicant") is the applicant for a Comprehensive Permit (the "Permit") pursuant to Mass. Gen. L. ch. 40B §§ 20-23 (the "Statute"), 760 CMR 56.00 (the "Regulations"), and CH 135 of the Code of the Town of Lexington— the Zoning By-law (the "Bylaw") § 135-9.2.2.4.
2. LexHAB is also the owner of 11 Fairview Avenue (the "Site") in the Town of Lexington. The property is more particularly described in a deed recorded in the Middlesex South District Registry of Deeds Book No. 57415 and Page No. 284.
3. LexHAB is an independently chartered not for profit corporation appointed by the Town of Lexington Board of Selectmen.
4. LexHAB is an eligible entity to apply for the Permit.
5. The Site is situated in a zoning district classified under the Bylaw as RO (One-Family Dwelling).
6. Presently located on the Site is a single family residential dwelling.
7. As shown on the plans, submitted with, or in information, otherwise referenced in the application, the applicant seeks to develop four units of Low or Moderate Income Housing (the "Affordable Units").
8. The Town's Subsidized Housing Inventory Eligible Housing units exceed 10% of the Town's total housing units.
9. The Applicant's petition has been brought under the Local Initiative Program (the "LIP") sections of the Statute and Regulations. The four units will qualify for inclusion on the Commonwealth of Massachusetts Subsidized Housing Inventory. The project was endorsed by the Town of Lexington Board of Selectmen. The Town is providing LexHAB with assistance on this project, including the hiring of a consultant to assist with the permitting process, the

11 Fairview Avenue
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hiring of a consultant to craft the affirmative fair housing marketing plan for the development, and waiving of all real estate taxes on the property.

10. Prior to review of the application by the Board, the Office of Community Development, Building Division distributed copies of the application to the Local Boards and Town Departments listed below:

- a. Conservation Commission;
- b. Planning Board;
- c. Historic District's Commission;
- d. Historical Commission;
- e. Board of Health;
- f. Board of Selectmen;
- g. Lexington Fire Department;
- h. Lexington Police Department; and
- i. Town Manager's Office.

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11. The applicant applied to the Board for zoning relief under the applicable Bylaw sections, § 135-9.2.2.4, to allow the above listed work.

12. In support of its application to develop the four Affordable Units the Applicant provided the information listed below— such information as normally required by the Housing Appeals Committee (HAC) and consistent with or exceeding the Board's Rules and Regulations for the grant of a Comprehensive Permit [Note, the HAC required items are listed in italic. The information in support of the requirement is listed in plain text]:

1. A sketch plan showing the locations and outlines of the proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks, and paved areas; and proposed landscaping improvements and open areas within the site.

These plans have been provided by the applicant. See plan entitled, "Site Plan," prepared by Noonan, dated June 19, 2013. Also, see applicant's narrative and supporting documents.

2. A report of the existing conditions and a summary of conditions in the surrounding area, showing the location and nature of existing buildings, existing street elevations, traffic patterns, and character of open areas, if any in the neighborhood.

This report has been provided by the applicant in its narrative submitted with the application. Also, the applicant submitted a plot plan that shows the

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existing conditions. See applicant's narrative submitted with the application and plans submitted with the application including plan entitled, "Plot Plan in Lexington Mass.," prepared by Noonan and McDowell, Inc, dated September 7, 2011 and plan entitled, "Locus Topographic Map" displayed on the "Cover Sheet," prepared for the project, dated June 19, 2013.

3. Preliminary, scaled, architectural drawings.

These drawings have been provided by the applicant. See plans entitled: "Foundation Plan;" "First Floor Plan;" "Lower Floor Plan;" "Second Floor Plan;" "Front Elevation," "Rear Elevation," "North Elevation," and "South-Elevation"— all prepared by Nickerson Architect, dated July 25, 2014.

4. A tabulation of proposed buildings by type, size, and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking, and other paved vehicular areas, and by open spaces.

This tabulation has been provided by the applicant. See "Table" as part "Cover Sheet," prepared for the project, dated June 19, 2013.

5. A preliminary utilities plan showing the proposed location and types of sewerage, drainage, and water facilities, including hydrants.

This plan has been provided by the applicant. See plan entitled, "Utilities Plan," prepared by Noonan and Others, dated June 19, 2013. Also, see plan entitled, "Site Plan," prepared by Noonan, dated June 19, 2013.

6. The Project Eligibility Letter, showing that the Applicant fulfills the requirements of the statute.

This letter has been provided by the applicant. See letter Department of Housing and Community Development (Race) to Hayes, Kennedy, and Mauger, dated May 28, 2014.

7. A list of waivers.

This list has been provided by the applicant. See below.

13. The Board finds that it can grant the Permit for the following reasons:

- a. The project is consistent with the Town's local needs. The Town exceeds the required minimum 10% Affordable Units. The project is a LIP project and has the support of the local Board of Selectmen and the Local Housing Partnership. The creation of four new Affordable Units serves the

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*Diana M. Hopper*TOWN CLERK
LEXINGTON, MA11 Fairview Avenue
The Lexington Housing Assistance BoardSeptember 25, 2014 ⁶

Town's needs of continuing to create affordable housing in Lexington. The units will allow the Town to maintain its 10% Affordable Units. Creation of the additional Affordable Units is consistent with the Town's Comprehensive Master Plan and the Town's Housing Production Plan.

The project also serves the Town's local needs by preserving and modernizing the existing structure built in 1912. The Site will be improved as to storm water management. The project will be a model for energy efficiency with its 'net zero' construction. The project is compatible with sustainable development and green building practices. The project promotes clean energy practices including installation of solar photo voltaic panels on the roof. The panels will offset the energy needs of the new housing. The new units will be energy efficient and will exceed the Energy Star standards as well as the Town's Stretch Energy Code. The project will follow elements of green design including low or no VOC paint, resilient flooring, dual flush toilets, pervious pavement, Hardie-plank siding, and cellulose installation.

- b. No uneconomic conditions have been imposed on the project. Further, the Board has found that the waivers listed below may be granted for the project so that the project is economical.
- c. The project has received equal treatment regarding the conditions applied to the project.

14. The Board finds that it can grant the waivers listed below, because granting those waivers make the project economical.

- a. Board Rules and Regulations requiring a new certified plot plan;
- b. Bylaw §135-4.4, Table 2: Schedule of Dimensional Controls to allow 1.) Lot area of 25,200 sq. ft. instead of the required 30,000 sq. ft.; 2) Lot frontage of 140 ft. instead of the required 150 ft.; 3.) A side yard setback of 5.1 feet instead of the required 15 feet for the existing structure; and 4.) A front yard setback of 0.6 feet instead of the required 30 feet for the existing structure;
- c. The landscaping requirements of the Bylaw, § 135-5.3, in its entirety. The lot is naturally heavily wooded on two sides, there is no room for major landscaping in front of the existing home. The Site is located near heavily wooded areas and is located near the Minuteman National Historic Park on the fourth side;

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- d. Bylaw § 135-3.4, Table 1: Schedule of Permitted Uses and Development Standards and § 135-4.1.4 to allow four housing units on a single lot in a RS zone instead of the maximum allowed one unit;
 - e. Bylaw § 135-5.1.9 to allow accessory parking not on the same lot as a dwelling. The waiver is to allow the continued parking on the paper street, Hayward Ave. This waiver applies to parking for the existing structure;
 - f. The Tree Bylaw, CH 120 of the Code of the Town of Lexington;
 - g. The roadway improvement standards of the Planning Board Rules and Regulations requiring the roadway be improved to the full town standard for roadway construction.

Decision

On a motion by Carolyn C. Wilson and seconded by Leo P. McSweeney, the Board voted 4-1, to grant the WAIVERS listed in Finding 14 above for the project in accordance with Mass. Gen. Law. ch. 40B §§ 20-23 and § 135-9.2.2.4 of the Bylaw and to grant a COMPREHENSIVE PERMIT in accordance with Mass. Gen. Law. ch. 40B §§ 20- 23 and § 135-9.2.2.4 of the Bylaw, subject to the following:

1. Construction of the four Affordable Housing Units shall conform substantially to the plans submitted with the application and referenced in Finding 12 above.
2. Location of the structures shall conform substantially to the building location shown on the plan entitled, "Site Plan," prepared by Noonan and McDowell, Inc., dated June 19, 2013.
3. The boundary between the Site and adjacent Conservation land shall be marked by permanent boundary markers to prevent any potential encroachment from residential activities.
4. Approvals granted by this Decision are made only for the scope of work and uses as shown on the plans or in information materials submitted with the application, except as may otherwise be conditioned by this Decision. Any subsequent modifications to the Site, in whole or in part, may require Board action in accordance with the Bylaw.

The above listed zoning relief is for property located at 11 Fairview Avenue.

LEXINGTON BOARD OF APPEALS' DECISION:

Hearing Date: September 25, 2014

This constitutes the record of the decision of the Lexington Board of Appeals relative to:


Subject Property: 11 Fairview Avenue

Petitioner/s: Lexington Housing Assistance Board, Inc


FILED
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LEXINGTON, MA

BOARD OF APPEALS OF LEXINGTON (acting under the Lexington Zoning Bylaw, Lexington General Town Bylaws, and Massachusetts General Laws, Chapter 40A)



Ralph D. Clifford

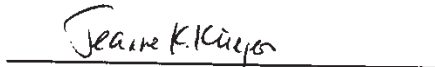

Leo P. McSweeney

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Dianne L. Cornaro
TOWN CLERK
LEXINGTON, MA


Edward D. McCarthy


Carolyn C. Wilson


Jeanne K. Krieger, Chairwoman

I, Dianne L. Cornaro, Department Clerk of the Board of Appeals, certify that copies of the decision have been filed with the Lexington Town Clerk.


Dianne L. Cornaro, Administrative Clerk

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of 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, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, 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.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, 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 person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.