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**Town of Lexington**  
**Town Clerk's Office**



Bk: 70668 Pg: 92 Doc: DECIS  
Page: 1 of 10 02/26/2018 12:29 PM

Nathalie L. Rice, Town Clerk

Tel: (781) 862-0500 x84558  
Fax: (781) 861-2754

Date: 2/12/2018

I hereby certify that twenty days have elapsed since the decision of the Board of Appeals on 12/14/2017:

Lexington Housing Assistance Board (LEXHAB) (Owner)  
0 Lowell St  
Book 66882 / Page 421  
Comprehensive Permit

filed on 1/18/2018, in the Office of the Town Clerk. No appeal was filed in the Office of the Town Clerk within the 20-day period.

Attest:

Nathalie L. Rice  
Town Clerk

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*Yves & Rina*  
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TOWN OF LEXINGTON  
DECISION OF THE BOARD OF APPEALS

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Subject Property: Lowell Street Lot, Assessor's Map 20/Parcel 38, also 59  
referred to as: Parcel 2A on the plan entitled "Lowell  
Street, Lexington, Massachusetts, Assessor's Map  
20/Parcel 38, Subdivision Plan of Land Approval Not  
Required, prepared by GCG Associates, Inc., dated  
February 5, 2014 and recorded with the Middlesex  
South District Registry of Deeds as Plan 108 of 2015.  
Applicants and Owners: Lexington Housing Assistance Board, Inc  
Hearing Date: December 14, 2017

Pursuant to notice in the *Lexington Minuteman*, a newspaper of general circulation in the Town of Lexington, published on November 30, 2017 and December 7, 2017, 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 December 14, 2017, in the Town Office Building on the petition of LEXINGTON HOUSING ASSISTANCE BOARD, INC. (LEX HAB) for a COMPREHENSIVE PERMIT in accordance with the Zoning By-Law (Chapter 135 of the Code of Lexington) section 135-9.2.2.4 and MGL c. 40B, sections 20 to 23 to allow construction of 6 units of low or moderate-income housing.

The petitioner submitted the following information with the application: Nature and Justification, Topographic Plan, Plot Plan, Elevations, Floor Plans, and Photographs. The applicant also submitted a Quitclaim Deed, Certificate of Good Standing, DHCD Letter of Site Eligibility, Memo from Environmental Engineer, (7) letters of support, (3) letters of opposition, (1) video with a description in writing, submitted by Janet Kern.

Acting on the petition was Acting Chairman, Edward D. McCarthy, Jeanne K. Krieger, David G. Williams, and Associate Members Nyles N. Barnert and James A. Osten

Also present was Alternate Norm P. Cohen

Staff Present: David George, Zoning Administrator and Jennifer Gingras, Administrative Clerk

Prior to the meeting, the petitions and supporting data were reviewed by the Building Commissioner, Conservation Administrator, Town Engineer, Board of Selectmen, the Planning Director, the Historic District Commission Clerk, Historical Commission, Economic Development, and the Zoning Administrator. Comments were received from the Conservation Administrator, Police Department, Fire Department, Town Manager, and Zoning Administrator.

Presenters: Mr. Robert Phenan (Contractor), Mr. Colin Smith (Architect), Mr. John Noonan (Land Surveyor), Patricia Nelson (Attorney for LexHab)

Mr. Robert Phenan and Mr. Colin Smith, presented the petition. They are

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December 14, 2017

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applying for a Comprehensive Permit per M.G.L. Ch. 40B. LexHab recently did a project on Fairview Avenue and the units they are proposing on Lowell Street will be similar. There is a need for affordable housing in Lexington. For the units they are proposing on Lowell Street, the ground level will be handicap accessible. The land is deeded to LexHab and the Department of Housing and Development has approved their proposal. They have also reached out to neighbors about the project. Mr. Smith presented a Power Point presentation to show the Board and audience the proposed plans. The parking area will have a heavy landscape buffer. The presentation included photos of the units on Fairview to show that the structures will be similar. The presentation also showed the parking arrangement. The road at Westminster and Lowell Street was recently improved for safety reasons. They are still discussing the plans for where the trash enclosure will be located. The presentation also showed a rendering of the proposed units.

Ms. Pat Nelson stated that in response to the Town Manager's comments about the use of pesticides, LexHAB would like to propose a condition with language that states the pesticides would be limited to those allowed by the farm.

The Board asked Ms. Nelson how LexHAB would be able to minimize the number of cars on the property (If they find that they are having difficulty with the number of cars on the property, they would keep registration information for the cars registered to the owners).

The Board asked Ms. Nelson if there are any issues or concerns from the neighbors that have not been resolved (Ms. Nelson responded that she is not aware of any complaints by neighbors). The Board asked if the local initiative program extends to the property (Ms. Nelson responded that the local initiative program is what allows these units to be on the State Housing Authority list. It has been the goal of the Town to include as many houses as possible on the DHCI list. This is a project where all of the units are and will stay affordable). The Board asked if there will be a second means of egress in the handicap accessible apartment (Mr. Smith responded that both units are sprinkled so a second means of egress is not required but there will have an area of shelter in the back).

The Board asked how snow removal will be handled (Mr. Phenen said it will be handled through LexHab and will be pushed to the perimeter of the parking lot. If it became too much, it would be moved off site and will not be placed on the sidewalk).

The Board asked where the trash location will be (Mr. Smith showed the rendering again from the Powerpoint Presentation. They have not made a final decision).

Multiple audience members questioned the applicants about the fill on site and the infiltration system (the applicants responded they will bring in clean structural fill to support the parking lot area and the infiltration system is designed for a 100 year storm but the system has an overflow which is out by the farm field not near Lowell Street. There would be monitoring and inspections by someone who would also be monitoring

the driveway and catch basin. It's part of the maintenance of the property).

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Ms. Nelson discussed the history of neighborhood meetings with LexHAB that began in 2013. At that time, they presented the plans, which are the same plans presented now. There was some effort made when this was redesigned in 2017 to accommodate the comments received from the 2013 meeting. They had a 2<sup>nd</sup> neighborhood meeting once the plans were revised. LexHAB meetings are also open meetings.

Multiple audience members expressed concern about the blind curve on Lowell Street and asked what the safe stopping distance is from the curb (they do not have the distances and clearances but can look into that and measure).

Multiple audience members asked the applicants about the number of parking spaces and snow removal (Ms. Nelson responded that the zoning requires 1.5 spaces for every unit and that's how that was determined. LexHab would have no objection to a condition that it wouldn't put any snow removed onto any adjoining site. It's already prohibited to place snow on Town sites and sidewalks).

There was a discussion about how the trash is removed and Mr. Smith stated this question came up in the neighborhood meeting and it was decided that the trash will be brought out to the curb.

There was further discussion about the number of parking spaces.

An audience member stated that she has received a text message from a Board Member at LexFarm, which wanted to clarify that the letter from LexFarm included a list of requirements needed from LexFarm and LexFarm neither supports nor doesn't support this. Ms. Smiar also wanted to state that she has safety concerns for the people that will live there.

The Acting Chairman stated that the concerns about the sidewalk and bus stops need to be discussed with the Traffic Safety Committee and Sidewalk Committee, along with the Police Department and Board of Selectmen.

Two (2) audience members spoke in favor of the petition.

The Board discussed what conditions need to be added into the decision. The Board decided that the trash area should be left to the judgment of LexHAB and does not need to be a condition. The Board asked for a statement that LexHAB will not contractually use pesticides on their property that are inconsistent with certification of the organic farm.

There were no further questions or comments from the Board.

There were no additional comments from the audience.

TRUE COPY ATTEST

*Yazadeh I. Riz*

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## Findings

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, Inc. ("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 the Subject Property (the "Site") described above and located 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. 66882 and Page No. 421.
3. LexHAB is an independently chartered not for profit corporation appointed by the 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 RS (One-Family Dwelling).
6. Presently located on the Site is vacant land.
7. The neighborhood the structure is located in consists of a mix of uses, including residential dwellings located in the RS zoning district and Town owned land located in the GC (Government Civic) zoning district.
8. As shown on the plans, submitted with, or in information, otherwise referenced in the application, the applicant seeks to develop six (6) units of Low or Moderate Income Housing (the "Affordable Units") and to make related site improvements. Two of the six units would be fully handicapped accessible.
9. The Town's Subsidized Housing Inventory Eligible Housing units exceed 10% of the Town's total housing units.
10. The Applicant's petition has been brought under the Local Initiative Program (the "LIP") sections of the Statute and Regulations. The six (6) 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. The Town used Community Preservation funds to acquire the Site. Also, the Town will waive all real estate taxes on the property.

*[Signature]*

December 14, 2017

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

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- 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.

12. 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.

13. In support of its application to develop the six (6) 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 *italics*. 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, "Sketch Plan of Land," prepared by Noonan and McDowell, Inc., dated October 19, 2017. 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. See applicant's narrative submitted with the application. The plan referred to as, "Topographic Map from Engineering Department," prepared for the project, dated June 20, 2017 submitted with the application shows the existing site conditions.

*3. Preliminary, scaled, architectural drawings.*

These drawings have been provided by the applicant. See plan set entitled:

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December 14, 2017

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"LexHab Busa Farm Housing Development, Parcel 2A, Lowell Street, Lexington, MA, Zoning Board of Appeals Submission," consisting of seven sheets, prepared by Colin Smith Architecture, and dated 11-07-17, except sheet L-1, the plan entitled, "Preliminary Landscape Plan," prepared by CBA Landscape Architects, LLC, dated 11-07-2017.

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 referenced as "Zoning Table" as part of the plan entitled, "Sketch Plan of Land," prepared by Noonan and McDowell, Inc., dated October 19, 2017. Also, see the plan referenced as "Cover Sheet," of the plan set entitled: "LexHab Busa Farm Housing Development, Parcel 2A, Lowell Street, Lexington, MA, Zoning Board of Appeals Submission," consisting of seven sheets, prepared by Colin Smith Architecture or CBA Landscape Architects, LLC, and dated 11-07-17. And see applicant's narrative and other materials submitted with the application.

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, "Preliminary Grading and Drainage Plan of Land in Lexington, Mass.," and "Preliminary Utility Plan of Land in Lexington, Mass.," both plans prepared by Noonan and McDowell, Inc., dated October 19, 2017.

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

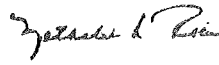
This letter has been provided by the applicant. See letter Department of Housing and Community Development, Catherine Racer, Associate Director to Ms. Suzanne E. Barry, Chair, Lexington Board of Selectmen and Ms. Melinda Walker, Chair, Lexington Assistance Housing Partnership Board, dated July 27, 2017.

7. *A list of waivers.*

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

14. 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 six (6) new Affordable Units serves



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LEXINGTON, MA

December 14, 2017

the 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.

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The Site will be improved as to storm water management, energy efficiency, and environmental protection. 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. A storm water drainage system will be installed on site to capture and dispose of storm water runoff. An environmental assessment has been performed which shows that the soil samples do not pose a risk to human health.

- 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.


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

- a. Bylaw § 135-3.4, Table 1: Schedule of Permitted Uses and Development Standards and § 135-4.1.4 to allow six housing units on a single lot in a RS zone instead of the maximum allowed one unit;
- b. Bylaw §135-4.4, Table 2: Schedule of Dimensional Controls to allow: 1.) a rear yard setback of 12 ft. instead of the required 15 ft.; 2.) height of 43.05 ft. instead of the required 40 ft.; and 3.) 3 stories instead of the maximum allowed 2.5 stories.
- c. Bylaw §135-4.4.2, Gross Floor Area (the "GFA") to allow GFA of 7,825 sq. ft. instead of the maximum allowed 7,782 sq. ft.; and
- d. Bylaw §135-5.3.4, Landscape, Transition, and Screening where a lot abuts or is across the street from a different zoning district.

### Decision

On a motion by Nyles N. Barnert and seconded by Jeanne K. Krieger, the Board voted 5-0, to grant the WAIVERS listed in Finding 15 above for the project in





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LEXINGTON, MA

December 14, 2017

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 six (6) Affordable Housing Units shall be in substantial conformance with the plans submitted with the application and referenced in Finding 13 above.
2. Location of the structures shall be in substantial conformance with the locations shown on the plan entitled, "Sketch Plan of Land," prepared by Noonan and McDowell, Inc., dated October 19, 2017.
3. LexHAB will not contractually use pesticides on their property that are inconsistent with certification of the organic farm.
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 Lowell Street Lot, Assessor's Map 20/Parcel 38, also referred to as: Parcel 2A on the plan entitled "Lowell Street, Lexington, Massachusetts, Assessor's Map 20/Parcel 38, Subdivision Plan of Land Approval Not Required, prepared by GCG Associates, Inc., dated February 5, 2014 and recorded with the Middlesex South District Registry of Deeds as Plan 108 of 2015.

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## Town of Lexington Board of Appeals' Decision

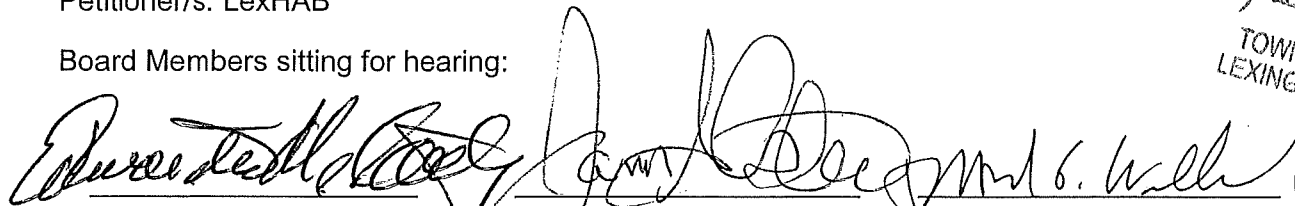
This constitutes the record of the decision of the Town of Lexington Zoning Board of Appeals acting under Massachusetts General Laws, Chapter 40A, relative to:


Address of Subject Property: Parcel 2A, Lowell Street

Hearing Date: December 14, 2017

Petitioner/s: LexHAB

Board Members sitting for hearing:

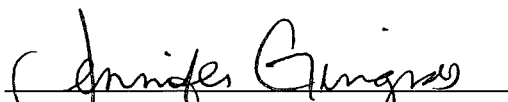
  
Edward D. McCarthy      James A. Osten      David G. Williams

  
Nyles N. Barnert      Jeanne K. Krieger

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Jennifer Krieger  
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I, Jennifer Gingras, Department Clerk of the Board of Appeals, certify that copies of the decision have been filed with the Lexington Town Clerk:

  
Jennifer Gingras, Administrative Clerk

Registry of Deeds filing requirements variance/ special permit: This variance and or special permit shall not take effect until the petitioner records, at his or her own expense, a copy thereof with the Registry of Deeds, South District Middlesex District pursuant to Massachusetts General Laws, Chapter 40A, Section 11.

Lapse of variance: Per Massachusetts General Laws, Chapter 40A, Section 10— If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, the rights of such variance shall lapse; provided, however, that the permit granting authority, in its discretion and upon written application by the grantee of such rights, may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

Lapse of special permit: Per the Town of Lexington Zoning Bylaw (Chapter 135 of the Code of the Town of Lexington) Section 135-9.4.6 Special Permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twenty-four (24) months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in Massachusetts General Law CH 40A, section 17, from the grant thereof). The permit granting authority, in its discretion and upon written application by the grantee of such rights, may extend the time for exercise of such rights.

Appeal of Board of Appeals Decision: Any person aggrieved by a decision of the Board of Appeals may appeal to the land court department or the superior court department in which the land concerned is situated by bringing an action within twenty days after the decision has been filed in the office of the town clerk, pursuant to Massachusetts General Laws, Chapter 40A, Section 17.