



RECEIVED & FILED
DATE January 12, 1999
Edward J. Bell
TOWN CLERK, ACTON

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630

15.00

899

MSD 07/28/99 02:17:32

800 30472 PG 302

PLAN NUMBER: 00000810

DECISION
99-1

Harris Street Village

Major Affordable Housing Development Special Permit
January 11, 1999

RECEIVED
JAN 13 1999

By: *Certified Mail*

Decision of the Acton Planning Board (hereinafter the Board) on the application of Northwest Structures, Inc./NorthWest Development, LLC of Acton, MA (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Frederick H. Dexter, Jr., Trustee of the D & B Harris Street Realty Trust, of Bedford, MA. The property is located at 2-8 Harris Street and shown on the 1998 Acton Town Atlas map C-4 as parcel 20 (hereinafter the Site).

This Decision is in response to an application for a Major Affordable Housing Development Special Permit, received by the Acton Planning Department on August 21, 1998, pursuant to Section 4.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations for Special Permits for Major Affordable Housing Developments (hereinafter the Rules) to construct 16 dwelling units, 4 of them affordable.

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public hearing on October 19, 1998. Ronald B. Peabody, NorthWest Principal, represented the Applicant. Engineering consultants Bruce Stamski, George Dimakarakos, and Elisabeth R. Schultz of Stamski and McNary, Inc., and attorney Steven R. Graham of Graham & Harsip, P.C. assisted in the presentation. The hearing was continued to 11/9/98, 11/23/98, 12/9/98, and 1/11/99, and then closed. Board members John Pavan, Joshua Chernin, Richard Crosswell, Patrick Halm, Christopher Tolley, and Ken Sghia-Hughes were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 A plan entitled "Harris Street Village, A Major Affordable Housing Development" dated August 7, 1998, last revised on December 21, 1998, drawn by Stamski and McNary, Inc. of Acton, MA consisting of 6 sheets.
- 1.2 A basic landscape plan.
- 1.3 Architectural plans for three house styles, dated July 27, 1998, prepared by Incite Architecture of Lexington, MA, consisting of 6 sheets.

- 1.4 Supplemental items and documentation required by the Rules consisting of:
- A properly executed application form for a Major Affordable Housing Development Special Permit, dated 8/19/98.
 - A filing fee.
 - A completed Development Impact Report, form DIR.
 - A certified abutters list.
 - A list of other permits, approvals, and variances for the site.
 - A record deed and plan.
 - A letter authorizing Town entry into the Site to complete the street and other services.
 - A letter from the owner stating that there are no mortgage holders.
 - Draft condominium master deed and trust documents.
 - Drainage calculations, last revised 12/17/98.
 - Water balance calculations.
 - Earthwork calculations.
 - A traffic summary.
 - A written statement regarding the affordable units.
 - Proposed deed restrictions and regulatory agreements for the affordable units.
 - A development pro forma.
 - A development schedule.
 - A unit composition table.
 - Developer information.
 - A statement regarding the marketing prospects of the units.
- 1.5 Additional information submitted by the Applicant:
- An application cover letter from Stamski & McNary, Inc. dated 8/7/98.
 - A condominium fee breakdown estimate.
 - Letters regarding plan revisions from Stamski and McNary, Inc., dated 10/15/98, 11/17/98, 12/1/98, 12/17/98, and 1/5/99.
- 1.6 Interdepartmental communication received from:
- Acton Fire Chief, dated 10/15/98.
 - Acton Health Department, dated 9/22/98.
 - Acton Tree Warden & Municipal Properties Director, dated 9/17/98.
 - Acton Engineering Department, dated 10/1/98 (with attachments), 11/18/98 (with attachments), 12/10/98 (with attachments), and 1/6/99.
 - Acton Building Commissioner, dated 9/2/98.
 - Acton Town Counsel (to Building Commissioner), dated 11/2/98.
 - Acton Commission on Disability, dated 10/8/98.
 - Acton Community Housing Corporation, dated 10/7/98.
 - Acton Treasurer's Office, dated 8/31/98.
 - Acton Assessors' Office, dated 9/2/98.
 - Acton Historical Commission, dated 10/14/98.
 - Acton Water Supply District, dated 9/3/98.
 - Acton Planning Department, dated 10/9/98, 11/19/98, 12/3/98, 1/8/99.
- 1.7 Other:
- Hearing and decision extension agreements dated 10/19/98, 11/23/98, and 12/9/98.

Exhibits 1.1 through 1.5 are referred to herein as the Plan.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The 3.3 acre Site is located within the Residence 10/8 zoning district, the Affordable Housing Overlay District B, and the Groundwater Protection District Zone 4.
- 2.2 The proposed sixteen single family residences may be allowed on the Site by special permit subject to certain requirements set forth in section 4.4 - Affordable Housing Incentives and Overlay District - of the Bylaw, and under all other applicable overlay district requirements.
- 2.3 Four of the sixteen units, or 25%, are proposed as affordable units to be sold to eligible low or moderate income households. The rest would be market rate units. This does not meet the 40% minimum set forth in section 4.4.4.1.a) of the Bylaw. The Applicant acknowledged this discrepancy, but stated that a higher percentage of affordable units in the development is not economically feasible.
- 2.4 Furthermore, the applicant stressed that providing 25% affordable units would meet the State's requirement for a comprehensive permit under MGL Ch. 40B. The outcome of a comprehensive permit process would likely be more or less what is shown on the Plan, at least in terms of the affordable unit count and its ratio to market rate units. The Board agrees. The applicant indicated that he would seek a variance with the Board of Appeals to allow 25% affordable units, rather than a comprehensive permit.
- 2.5 The Applicant proposes to use standard State Local Initiative Program (LIP) restrictions (regulatory agreements, restrictive covenants, and deed riders) for the four affordable units to ensure their long-term affordability. These would apply if the development were approved as a comprehensive permit. The Plan appears to be in compliance with these restrictions. However, these restrictions appear to be inconsistent with certain requirements of the Bylaw, specifically the renewal by the Town of Acton of the restrictions (section 4.4.6.2), figuring the units' resale prices (section 4.4.6.3.b)), and continuation of the restrictions in the event of sales to non-eligible purchasers (section 4.4.6.6).
- 2.6 The Applicant suggests that the four proposed affordable units can be sold meeting either the State (LIP) or the local (Town of Acton) affordability guidelines. The LIP guidelines limit the affordable unit purchase price and the maximum income of eligible households to purchase such units to lower levels than the local guidelines. While adherence to local guidelines might allow for more than four affordable units in the proposed development, any affordable units that do not meet LIP guidelines will not be recognized by the State as counting toward the Town's affordable housing stock. The State goal is that every community has at least 10% affordable housing. Acton's percentage is far below that goal.
- 2.7 The Town, through its Acton Community Housing Corporation (ACHC), over the years has encouraged compliance of affordable units with State LIP guidelines. The ACHC has voted to support the proposed development.
- 2.8 The Board finds that, if there were only four affordable units on the Site, it would be more desirable that these units comply with LIP rather than local requirements, and that they are recognized by the State as affordable units.
- 2.9 It is the Board's understanding that the maximum sales price to qualify fee simple affordable units under the State's LIP program is \$94,500, which is the proposed sales price of the affordable units on the Plan. However, the development is proposed as a condominium and the Board believes that under such circumstances the maximum sales price drops to \$89,500 to allow absorption by the homeowner of the condominium fee. The applicant estimates the initial monthly condominium fee to be \$100.

- 2.10 The proposed development schedule for the affordable units does not comply with section 4.4.9.5 of the Bylaw.
- 2.11 The proposed streets, shown on the plan within an area designated as service area, do not comply with the Town of Acton design and construction standards as set forth in the Subdivision Rules and Regulations. The Applicant did not seek subdivision approval.
- 2.12 MassHighway permission will be required for the extension of the sidewalk to the abutting westerly driveway within the Great Road layout, and to allow additional storm water discharge into a catch basin and drainage pipes owned and maintained by MassHighway.
- 2.13 The existing old house on the Site is on the Acton inventory of cultural and historic resources. Although the originally submitted application indicated removal of this house, the Plan as approved hereunder does no longer indicate its removal. The Applicant has stated that he intends to restore, renovate, and modify it as necessary to locate two of the dwelling units in this building as shown on the Plan.
- 2.14 The Bylaw in section 4.4.5.5 provides that the Board may require that affordable units be constructed to be accessible for persons with disabilities. The Acton Commission on Disability recommends inclusion of one handicap accessible affordable unit.
- 2.15 The Board has received comments from various Town departments, which are listed in Exhibit 1.6 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as appropriate.
- 2.16 Since the application was made the Plan has been revised and the public hearing has been continued on numerous occasions. This decision considers and acknowledges all changes made to the Plan throughout this process, and the Plan approved hereunder reflects these changes.
- 2.17 The Plan as amended herein and the proposed residential use as approved herein are appropriate for the Site; consistent with the Master Plan; and in harmony with the purpose and intent of the Bylaw, specifically Section 4.4. They will not be detrimental or injurious to the neighborhood, and, except where variances are considered herein, comply in all respects to the applicable requirements of the Bylaw, and the Rules.

3 BOARD ACTION

Therefore, the Board voted to GRANT the requested special permit subject to and with the benefit of the following Plan modifications, conditions, and limitations.

3.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless he finds that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Commissioner. Where approvals are required from persons or agencies other than the Building Commissioner, the Applicant shall be responsible for providing evidence of such approvals to the Building Commissioner.

- 3.1.1 Show street names that have been approved by the Acton Fire Chief.
- 3.1.2 Add a detailed landscaping plan to be approved by the Board. The landscaping plan shall show all existing trees and vegetation to be preserved to the east and north of the proposed tree line that is shown on sheet 5 of the Plan, or suitable replacements. It shall specify tree wells or other suitable measures necessary to preserve existing trees near the cut and fill edges, or replacement of questionable trees. It shall specify a minimum of 6 inches loam,

and seeding of all slopes and surfaces exposed during construction. Street tree plantings shall be shown more or less consistent with the Acton subdivision rules and regulations.

- 3.1.3 Modify the Plan as may be required to meet the approval of the Water Supply District.
- 3.1.4 Modify the condominium master deed as follows:
- a) In section 6, add the 'service area' as shown on the Plan to include the streets and all related drainage and other utilities including the detention pond. Specify that all streets and related facilities shall remain privately owned by the condominium association; that the association shall not petition the Town of Acton for acceptance of the streets as public ways; that the association shall be responsible for all snow and ice removal from the streets and for the regular maintenance of the streets and related facilities, including but not limited to the annual cleaning of catch basins on the Site and of the screen at the outlet structure of the detention pond; and that the condominium association shall not petition the Town of Acton to perform snow or ice removal on the streets or to conduct any maintenance of the streets and related facilities.
 - b) In section 9.v), change the minimum size of replacement units to 1,500 gross square feet consistent with the unit composition table submitted with the application.
 - c) In section 9.w), add to the requirements for marketing and selling the affordable units any that are applicable under the State Local Initiative Program (LIP).
 - d) In section 15, add that no instrument of amendment that alters the status of the affordable units as required hereunder and under the LIP program shall be of any force and effect unless the Board approves it in writing.
 - e) In section 15, add that no instrument of amendment that alters the requirements in section 6 concerning the streets and the maintenance of them shall be of any force and effect unless the Board approves it in writing.
 - f) In section 19.a), add a paragraph stating that, with respect to the affordable units, any right of first refusal by the condominium owners shall be secondary to the right of first refusal by the Town or the State, and that no instrument amending this paragraph shall be of any force and effect unless the Board and the Massachusetts Department of Housing and Community Development approve it in writing.
 - g) Add a paragraph stating that all additions or modifications to the residential buildings shall be limited to the maximum building envelope shown for each EUA on the lot layout sheet of the Plan.
- 3.1.5 Show on the architectural plans the method by which the individual units will be structurally connected so as to be in compliance with the Bylaw, section 4.4.4.2.g).
- 3.1.6 Place the affordable unit designations on the lot layout sheet of the Plan.
- 3.1.7 On the lot layout sheet of the Plan, show a maximum building envelope for each EUA consistent with section 4.4.4.2 of the Bylaw, while ensuring adequate yard areas.
- 3.1.8 Except for the variances considered herein, the Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with the Rules, and to address all departmental comments in a manner that resolves any concerns raised therein to the satisfaction of the Board.

3.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or

occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

- 3.2.1 Prior to the issuance of a building permit on the site the Applicant shall have obtained variances from the Board of Appeals to allow 25% rather than 40% affordable units, and to allow restrictions and deed riders for the affordable units consistent with State LIP guidelines and requirements. This special permit and the Plan as approved under it shall be without force and effect without these variances.
- 3.2.2 Subject to the issuance of the variances indicated herein, the four affordable units shall be priced, marketed, and deed restricted so as to qualify as LIP units in accordance with guidelines and requirements of the Massachusetts Department of Housing and Community Development (DHCD).
- 3.2.3 The Applicant shall work closely and cooperatively with the ACHC in the marketing of the affordable units. Prior to the sale of any affordable unit to a qualified buyer, the Applicant shall submit to the ACHC for review and approval deed restrictions and any other documents necessary to ensure the initial and long-term affordability of the unit in accordance with LIP requirements.
- 3.2.4 The Applicant shall submit to the DHCD all information required for the LIP application as it pertains to the locus, zoning, proposed units and restrictions, development team, marketing plan, affirmative action, design and construction; and pay the program application fee.
- 3.2.5 The Applicant shall bear all costs associated with marketing of the affordable units, selection of qualified buyers, and the sale of the affordable units, including the preparation of the LIP applications and the necessary regulatory agreements, restrictions and deed riders.
- 3.2.6 Affordable units and market rate units shall receive Certificates of Occupancy (CO) in accordance with the following schedule:
CO for the 1st affordable unit prior to the CO for the 4th market rate unit;
CO for the 2nd affordable unit prior to the CO for the 7th market rate unit;
CO for the 3rd affordable unit prior to the CO for the 10th market rate unit;
CO for the 4th affordable unit prior to the CO for the 12th market rate unit;
- 3.2.7 One of the affordable units shall be constructed to be adaptable for residents with disabilities in accordance with Massachusetts Architectural Access Board Regulations, 521 CMR (Group 2 residence).
- 3.2.8 All streets and related drainage and other facilities on the Site shall remain in private ownership by the proposed condominium association. The Town of Acton shall not be petitioned to accept these streets as public ways, nor shall the Town be petitioned to remove snow and ice, or to maintain, repair, or reconstruct these streets or any facilities related thereto.
- 3.2.9 Prior to the issuance of any building permit on the Site the Applicant shall have received approval from MassHighway for the storm water discharge into the Great Road drainage system and for the sidewalk in the Great Road layout. Details of the Plan as approved hereunder may be modified to show compliance with any MassHighway requirements.
- 3.2.10 All houses on the Site shall be consistent in size, scale, massing, orientation, and appearance with the architectural plan sheets and the site development plan contained in the Plan.
- 3.2.11 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate

cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

- 3.2.12 Except for the variances considered herein, if granted, all work on the site and all aspects relating to the affordable units shall comply with the Bylaw, specifically section 4.4.
- 3.2.13 All requirements of the Health Director shall be met.
- 3.2.14 All taxes, and penalties and back charges resulting from the non-payment of taxes, shall be paid in full prior to issuance of a building permit.
- 3.2.15 Prior to the issuance of any building permit on the Site, the Applicant shall provide the Board with a performance guarantee for the streets and related utilities and drainage systems, erosion and sedimentation control facilities, and basic site stabilization measures. The performance guarantee shall be consistent in form and contents with the requirements of section 6 of the Acton subdivision rules and regulations. The Board reserves the right to require additional performance guarantees for any and all items and improvements shown on the Plan.
- 3.2.16 No work on the Site shall begin prior to the issuance of a building permit.
- 3.2.17 All common land areas shall remain in their natural state and remain undisturbed during and after construction except as shown on the Plan.
- 3.2.18 The common land on the Site shall remain privately owned by the condominium association.
- 3.2.19 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.2.20 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.2.21 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.2.22 This Decision, the approved Plan, and restrictive covenants, if any, shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

3.3 LIMITATIONS

The authority that is granted to the Applicant under this special permit is limited as follows:

- 3.3.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.3.2 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.3.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.3.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading of at least one street as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend

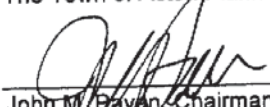
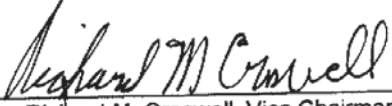
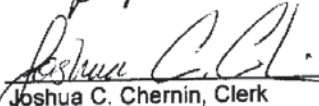

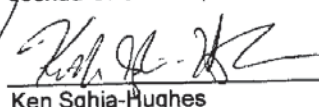

said time limits must be made in writing to the Board at least 30 days prior to said expiration dates. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

- 3.3.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Planning Board

 _____ John M. Davan, Chairman	 _____ Richard M. Croswell, Vice Chairman
 _____ Joshua C. Chernin, Clerk	 _____ Patrick E. Halm
 _____ Ken Sghia-Hughes	 _____ Christopher S. Tolley

(or)
Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Edward J. Elly (sent from Clerk) May 24, 1999
Fol Catherine Belbin, Town Clerk Date

Copies furnished:

- | | | |
|--|-------------------------------|------------------|
| Applicant - certified mail # 9601444304 | Building Commissioner | Health Director |
| Engineering Administrator | Municipal Properties Director | Town Clerk |
| Conservation Administrator | Town Manager | Fire Chief |
| Police Chief | Acton Water District | Owner |
| Historical Commission | Assistant Assessor | MAGIC (DRI only) |
| Historic District Commission | | |

c:\all planning\planning board\decisions\99-01, harris street village mahd.doc