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Site Plan Special Permit & Special USE Permit # 11/18/98-366
Route 27 Realty Corp.
886 Main Street Acton, MA (Ashton)

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Route 27 Realty Corp. (hereinafter the Petitioner) for the property located at 886 Main Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map C-5 Parcel 40-1 and Parcel 20.

This Decision is in response to an application submitted to the Board on November 18, 1998 by the Petitioner for a Site Plan Special Permit under Section 10.4 and Special USE Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw) to construct a Full Service Retirement Community.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on January 19, 1999 at 7:35 P.M. in the Selectmen's Hearing Room at the Acton Town Hall. The hearing was continued to February 16, 1999 at 8:30 P.M. Board members Wayne L. Friedrichs, Herman Kabakoff, F. Dore' Hunter, Nancy E. Tavernier and Peter Ashton were present throughout the proceedings.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Exhibit I

A properly executed application for Site Plan and Special USE Permit approval received November 18, 1998; A booklet containing a Project Data summary, Development Team, A certified abutters list, USE description, Recorded plans, Drainage calculations, Water balance calculations, Earth removal calculations and traffic Study; A Phase I Environmental Site Assessment; Revised Drainage and Earth Removal Calculations dated January 26, 1999; A seven sheet set of development Plans, dated November 10, 1998 revised February 12, 1999; Landscape Plan dated September 23, 1998 revised January 18, 1999 and a nine sheet set of building plans dated November 10, 1998.

Exhibit II

Interdepartmental Communication (IDC) from the Town Manager to the Town Staff requesting comments. The following IDC responses were received:

1. Building Commissioner dated January 13, 1999, February 5 and February 12, 1999
2. Town Planner dated December 21, 1998 and January 28, 1999
3. Fire Chief dated December 23, 1998
4. Municipal Properties Director dated December 10, 1998
5. Engineering Administrator dated December 10, 1998 and February 3, 1999
6. Health Director dated December 23, 1998
7. Transportation Advisory Committee dated January 15, 1999
8. Natural Resources Director dated December 28, 1998
9. Water District November 24, 1998

Exhibit III

The following response to staff comments were received:

1. Emerson Hospital dated November 18, 1998
2. MassDevelopment
3. Paul Feldman dated January 25, 1999
4. Stamski and McNary, Inc. dated January 27, 1999 and February 12, 1999

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5. Weinmayr Associates dated January 20, 1999
6. Route 27 Realty Corp. dated January 25, 1999
7. Fiscal Impact Analysis-update

Exhibits I & III are hereinafter referred to collectively as the Plan

1.0 Findings and Conclusions

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

- 1.1 The site is located in Small Manufacturing Zoning District and Zone 3 of the Groundwater Protection District and the Full Service Retirement Community USE is allowed by Special Permit in the Small Manufacturing Zoning District and by right in Zone 3.
- 1.2 The Plan has been revised to reflect the concerns raised by the Engineering Department in both of its IDC responses.
- 1.3 The Fire Department has raised the possibility of additional alarm notification. The Fire Chief may at his discretion with the consent of the Petitioner revise the proposed fire protection.
- 1.4 The project is proposed to be developed and built out as a phased condominium. The project does not involve a subdivision. Thus the roadways within the project are not bonded. It is important that all the roads and other infrastructure needed for the proper occupancy of each phase are completed before occupancy of any unit within that phase.
- 1.5 The funding for the project has not been finalized. If the funding were provided from MassDevelopment using tax-exempt bonds, 20% of those units would be "affordable". If tax exempt bonds are not used the Town still has a need for affordable housing for the seniors.
- 1.6 At the request of the town the applicant has agreed to a condition that the owner would have to pay Real Estate Taxes as provided by Massachusetts General Laws, and in the event a future owner of the development is eligible for an exemption from property taxes, such owner shall enter into an agreement in lieu of taxes that would result in payments to the Town equal to the amount that otherwise would be paid as property taxes.
- 1.7 At the request of the Board the Petitioner has agreed to give a consumer disclosure to all prospective purchasers or renters of units. Such disclosure is intended to explain, in plain language issues relevant to the development. The Board shall review the disclosure as to content prior to either sale or rental of any unit.
- 1.8 Section 3.4.8 of the Acton Zoning Bylaw defines a Full Service Retirement Community. In the present case the Petitioners USE will consist of assisted living and independent living. The Bylaw requires both in order to be in compliance. The Board must structure this decision to require both use components to commence at approximately the same time.
- 1.9 Access to and from the assisted living facility amenities, services and other parts of the town will be serviced by the project's own van service. The van shall be operating prior to occupancy of any unit within that facility. If the van had not been proposed the project would possibly place a serious stress on the town's own van service.

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- 1.10 Town staff requested that the Petitioner provide public access to the future rail trail as well as a public parking lot. In response to the request, the Petitioner proposes to provide a gift to the town for the town to construct a sidewalk to the North Acton Recreation where better parking is provided; and thereby offer the town \$50,000 in lieu of providing formal access to the future rail-trail from their site. The gift is to be used to provide a sidewalk from the site to Ledgerock Way. Ledgerock Way is the access point to the North Acton Recreation area, where parking is provided and can be used to access the rail-trail.
- 1.11 The petitioner proposes to provide both rental and owner occupied units. It is of vital concern to the Board that if the rental units fail the owner-occupied units must be able to survive as well as be able to maintain and support the properties roadway system, subsurface sewer facilities and other required infrastructure.
- 1.12 The Plan provides for a street sidewalk on the site that is not located within the street right-of-way. The applicant shall either provide proper easements to allow public use of the sidewalk or relocate the sidewalk within the street right-of-way.
- 1.13 The Board wants to reinsure the project remain age-restricted. The Board will condition this decision on an age restriction.
- 1.14 The Plan as modified below in this Decision:
 - Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
 - Will provide for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation including emergency vehicles, on or adjoining the site.
 - Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
 - Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
 - Is consistent with the Master Plan.
 - Is in harmony with the purpose and intent of this Bylaw.
 - Will not be detrimental or injurious to the neighborhood in which it is to take place.
 - Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted to GRANT the requested Special Use Permit and Site Plan Special Permit subject to and with the benefit of the following Plan modifications, conditions and limitations.

2.0 Plan Modifications

Prior to the issuance of a Building Permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected or modified information. The Building Commissioner shall not permit any construction activity to 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 other than the Building Commissioner, the Petitioner shall be responsible for providing a written evidence of such approvals to the Building Commissioner before the Commissioner shall issue any Building Permit or permit any construction on the site. The Petitioner shall submit five copies of the final Plan, as modified in accordance with and as

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approved for construction by the Building Commissioner to the Building Commissioner prior to the issuance of a Building Permit.

- 2.1 The landscape plan shall be revised so as to be consistent with the Site Plan. The landscape plan shall also be stamped by a landscape architect.

3.0 Conditions

- 3.1 As agreed, the Petitioner shall provide a gift in the sum of \$50,000 for a sidewalk in lieu of providing formal access to the future Rail Trail. Half of such gift shall be provided prior to the issuance of any building permit and the remainder prior to the building permit for the independent living facility or assisted living facility whichever comes later.
- 3.2 Each Dwelling unit shall be occupied by at least one person fifty-five (55) years of age or older and no dwelling unit shall be occupied by more than four persons. No person under the age of twenty-one (21) shall reside within a dwelling unit in the Full Service Retirement Community for more than three (3) consecutive months in any calendar year. These age and occupancy restrictions shall be set forth in a deed restriction, restrictive covenant, or other document to be recorded with the Special Permit and to run with the land in perpetuity. This restriction shall be enforceable by any unit owners' association or by the town in any legal action as may be permitted by law or equity.
- 3.3 In the event tax exempt financing is used for either the assisted living or independent living portions of the development, the Petitioner shall comply with tax exempt financing requirements regarding the availability of units to low or moderate income residents in the assisted living and/or independent living portions of the development.
- 3.4 In the event tax exempt financing is not used, the applicant has agreed that two (2) of the 31 village homes and one (1) independent living unit will be sold so as to qualify as low and moderate income housing units for purposes of Massachusetts General Laws Chapter 40B, Sections 20-23. One village unit shall be sold before the 17th occupancy permit will be issued and a second unit shall be sold before the 28th occupancy permit for the village units will be issued. One (1) independent living unit will be sold before the 16th occupancy permit for an independent living unit.
- 3.5 Occupancy Permit Condition. In order to ensure there will be two levels of living units within the development, no occupancy permits for any village home shall be issued until and shall be subject to: (a) substantial construction having commenced on either the assisted living or independent living portion of the development with satisfactory evidence that the Petitioner has financing in place adequate to complete such portion of the development so commenced; (b) the substantial completion of (or providing security acceptable to the Building Commissioner for) the roadways, subsurface sewer, landscaping, and other related infrastructure and common areas applicable to the village home located on the Land Use Plan within the affected phase; and, (c) before the 11th occupancy permit will be issued for a village home, the occupancy permit for either the assisted living or independent living portion of the development shall be issued.
- 3.6 The applicant shall provide either a van or van service prior to the rental of any unit within the assisted living building.
- 3.7 Common Area Condition. Construction of village homes shall not commence until construction of either the assisted living or independent living portion of the development has been completed to the point when framing inspection of such portion has been completed with satisfactory evidence that the Petitioner has financing in place adequate to complete such portion of the development so
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commenced. Until at least ten (10) village homes have been constructed, only village homes located within the Land Use Plan phases I or II shall be constructed. In addition, upon the issuance of an occupancy permit for the first village home, the Petitioner shall have posted a bond or other security acceptable to the Building Commissioner to secure the Condominium Association's performance of the operation, maintenance, and repair of the common areas and facilities of the Condominium applicable to the village homes in such phase for two years. The security amount shall be equal to 110% of the portion of the estimated annual budget of the Condominium Association for the operation, maintenance, and repair of the common areas and facilities of the condominium applicable to the village homes (without the operation of either the assisted living or independent living portion of the development). As the first ten (10) village homes are sold, the bond amount may be reduced by 10% upon each sale. After the first ten (10) village homes are sold the security required herein shall no longer be required.

- 3.8 The owner shall pay Real Estate Taxes as provided by Massachusetts General Laws. In the event a future owner of the development is eligible for an exemption from property taxes, such owner shall enter into an agreement in lieu of taxes that would result in payments to the Town equal to the amount that otherwise would be paid as property taxes.
- 3.9 The Petitioner shall provide a numbering system for the buildings, reasonably acceptable to the Building Commissioner prior to the issuance of any building permit.
- 3.10 The Petitioner shall, prior to issuance of any occupancy permit, provide for the Board's approval a consumer disclosure statement.
- 3.11 Prior to occupancy or use of any new building constituting a part of the project, an as-built plan shall be supplied by the engineer of record certifying that the project was built according to the approved documents. The as-built plan shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Mass. Registered Land Surveyor.

4.0 Limitations

The rights granted to the Petitioner by this permit are limited as and subject to follows:

- 4.1 This permit applies only to the site, which is the subject of this petition. All construction shall be conducted in accordance with the terms of this permit and shall be limited to the improvements shown on the Plan.
- 4.2 There shall be no further development of this site without written consent of the Board of Selectmen as outlined within the Acton Zoning Bylaw.
- 4.3 This Decision applies only to the requested Special Permit. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision, all nonconforming signs shall be removed prior to the issuance of the Building Permit.
- 4.5 The hauling of earth to and from the site shall be restricted to the hours between 9:00 AM and 4:00 PM Monday through Saturday.

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- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all inclusive or to negate the remainder of the Acton Zoning Bylaw.
- 4.7 This Site Plan Special Permit shall lapse on March 16, 2001 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to expiration. The Board reserves the right to amend the permit by its own or at the request of the applicant with or without a new hearing.

5.0 Appeals

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this 16 day of March, 1999

[Signature]
Wayne Friedrichs, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

[Signature]
Christine Joyce, Recording Secretary

March 17, 1999
Date filed with Town Clerk

[Signature]
Catherine Belbin, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Route 27 Realty Trust has passed and there have been no appeals made to this office.

June 22, 1999
Date

[Signature]
Catherine Belbin, Town Clerk

- cc: Petitioner
 Building Commissioner
 Planning Board
 Engineering
 Conservation
 Director of Municipal Properties
 Board of Health
 Town Clerk
 Planning Boards - Concord, Littleton, Westford, Maynard, Carlisle, Boxboro, Stow, Sudbury