



TOWN OF WAYLAND  
MASSACHUSETTS  
01778  
**BOARD OF APPEALS**

TOWN BUILDING  
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**MODIFICATION DECISION NO. 05-22b**

**WAYLAND COMMONS COMPREHENSIVE PERMIT MODIFICATION DECISION**

RE: Application of Wayland Meadows Development, Inc. for a Substantial Change to a Comprehensive Permit

DATE: October 8, 2009

LOCATION: Assessors Map 23, Parcels 52D, 52E, 52G, 52H, 52I, 52J, 52K, 52L and 52M; on and off Old Sudbury Road (Route 27), Wayland, Massachusetts

TITLE REFERENCE: Middlesex South Registry of Deeds Book 32174, Page 145; and Land Registration Office Certificate of Title No. 220301

**PROCEDURAL HISTORY**

1. On January 27, 2006, the Zoning Board of Appeals ("ZBA") granted Wayland Meadows Development, Inc.'s application for a comprehensive permit pursuant to M.G.L. c. 40B, §§20-23 to construct an affordable housing project at the property located on and off Old Sudbury Road (Route 27) in the Town of Wayland consisting of 48 "for sale" home ownership townhouse condominium dwelling units to be called "Wayland Commons" (the "Development"), subject to a restriction that each unit shall be occupied by an individual or individuals where at least one (1) of the resident individuals in the unit is fifty-five (55) years in age or older. As approved, the Development would be located on two (2) parcels of land, totaling approximately 18.1 acres of land, separated by a private drive, and consisting of the "Southerly Parcel" containing approximately 11.4 acres and the "Northerly Parcel" being approximately 6.7 acres, being shown on Town of Wayland Atlas Plate 023, as Parcels 052-D, E, G, H, I, J, K, L and M (hereinafter, the "Subject Property").

2. By a letter dated September 15, 2009, Wayland Meadows Development, Inc. (the "Applicant") applied to the ZBA for a substantial change pursuant to 760 CMR 56.05(11) to the Comprehensive Permit for the Development by striking from said permit the requirement or condition that all dwelling units in the Development shall be occupied by an individual or individuals where at least one (1) of the resident individuals in the unit is fifty-five (55) years in age or older.

3. A notice of the public hearing on this application for a modification, a true copy of which is on file in the Office of the Town Clerk, was:

- a.) Published in The Town Crier, a newspaper with general circulation in the Town of Wayland on September 24, 2009 and October 1, 2009;

b.) Posted in a conspicuous place in the Wayland Town Building on September 24, 2009, which was at least fourteen (14) days prior to the first session of the hearing at which evidence was received; and

c.) Mailed, postpaid, on September 24, 2009, which is at least fourteen (14) days before the hearing, to the Applicant, abutters, owners of land directly opposite the property in question on any public or private street or way, abutters to the abutters within three hundred (300) feet of the subject property, the Planning Boards of the abutting towns. The notice was mailed to the names and addresses shown on the most recent tax list provided by the Assessors Office.

4. The public hearing was opened and closed on October 8, 2009.

5. The following documents and exhibits were received during the public hearing and are hereby incorporated by reference in this decision:

- a. E-mail message from Attorney Robert A. Shelmerdine to Daniel Bennett dated September 15, 2009 requesting a hearing before the ZBA.
- b. Letter from Attorney Robert A. Shelmerdine to the ZBA dated September 15, 2009 requesting an amendment to the Comprehensive Permit issued for the Wayland Commons Project.
- c. Interoffice Memorandum from Building Commissioner Daniel F. Bennett to various Town official and board dated September 17, 2009 seeking their input relative to the application.
- d. Memorandum from Fire Chief Robert F. Loomer to Building Commissioner Daniel F. Bennett and ZBA dated October 1, 2009 expressing public safety concerns relative to the application.
- e. Memorandum from School Business Administrator Joy E. Buhler to Building Commissioner Daniel Bennett dated October 2, 2009 expressing the School Departments concerns and comments about the application.
- f. Memorandum from Director of Public Health Steven Calichman to the ZBA dated October 8, 2009 relative to wastewater generated by dwelling units without age restrictions.
- g. E-mail message from Cindy Oliver of 15 Old Sudbury Road , Wayland, Massachusetts to the ZBA dated October 8, 2009 discussing several topics of concern relative to the application.
- h. Memorandum from Conservation Administrator Brian J. Monahan to the ZBA dated October 8, 2009 requesting no change to the requirement that the Applicant comply with DEP's Stormwater Management Handbook standards.
- i. Handwritten, unsigned and undated document entitled " Wayland Commons Sidewalk" sent via facsimile from "Wayland Highway" on October 8, 2009.
- j. E-mail message from Martha Harris to Daniel Bennett, et al dated October 8, 2009 expressing concern about the Applicant's compliance with its obligations.
- k. Memoranda (2) from the Planning Board to the ZBA dated October 8, 2009 commenting on and making recommendations relative to the application.
- l. Undated e-mail message from Daniel Bennett to the ZBA forward an e-mail message from Police Chief Robert Loomer to him dated September 17, 2009 in which Chief Loomer states that he has no issues with the application.

Any documents or other evidence received during the public hearing which are not listed above are unintentionally omitted. All documents and plans received during the public hearing are part of the record on file relative to this decision.

During the public hearing, the Applicant, through its Attorney, Robert A. Shelmerdine and its President and Treasurer, Michael Intoccia, presented the ZBA with the Applicant's plans and supporting materials.

The ZBA sought and received input and recommendations relative to the Applicant's proposed modification from various Town boards, committees and officials including the Planning Board, Town Planner, Board of Health, Board of Public Works, Building Commissioner and the Wayland Housing Authority ("WHA").

Several parties in interest, persons residing in the area of the Subject Property and other residents of the Town appeared at the public hearing and/or gave the ZBA written input relative to the Applicant's proposed modification.

The ZBA deliberated on this decision at its meeting of October 8, 2009 and made the following findings and decision based on the evidence submitted at the public hearing.

### **FINDINGS**

1. The Applicant's proposed modification to the Comprehensive Permit for the Development is a substantial change to said permit within the meaning of 760 CMR 56.05(11).
2. Construction of the dwelling units on the Southerly Parcel of the Subject Property has begun. The Applicant has been unable to obtain construction financing for all of said dwelling units and the related infrastructure due to the requirement or condition that all dwelling units in the Development shall be occupied by an individual or individuals where at least one (1) of the resident individuals in the unit is fifty-five (55) years in age or older.
3. If developed in accordance with the conditions set forth in the Comprehensive Permit for the Development, as modified by this decision, and the conditions set forth herein, the Development will be consistent with local housing needs.

### **DECISION**

Pursuant to M.G.L. c. 40B, §§20-23 and 760 CMR 56.05(11), based on the above findings and the evidence submitted at the public hearing, the ZBA hereby modifies the Comprehensive Permit for the Development dated January 27, 2006 by striking therefrom Condition No. 9 entitled "Age Restriction" in its entirety, subject to the following conditions.

### **CONDITIONS**

1. Condition No. 49 of the Comprehensive Permit for the Development is further modified by increasing the amount of the Applicant's donation to the Town for the design and construction of a sidewalk along Old Sudbury Road from the Southern Parcel of the Subject Property to the

Wayland Depot property from \$65,000.00 to \$75,000.00 and by changing the date of the donation from before the issuance of the twelfth Certificate of Occupancy for a dwelling Unit. to upon the issuance of the eighth Certificate of Occupancy for a dwelling Unit, so that said Condition No. 49, as so revised, reads as follows:

"49. The Applicant has offered to participate in the construction of a public sidewalk along Old Sudbury Road (Route 27) to connect the entrance of the Development with the Wayland Depot by donating \$75,000.00 to the Town for this public improvement Pursuant to said offer, the Applicant shall donate \$75,000.00 to the Town, as a gift, to be used for the design and/or construction of said sidewalk, upon the issuance of the eighth Certificate of Occupancy for a dwelling Unit."

2. Immediately after the sale of fifty percent (50%) or sixteen (16) of the dwelling Units constructed in the Development is consummated, the Applicant shall attend a meeting of the ZBA and discuss with the ZBA the construction of a school bus stop shelter on the Southern Parcel based on the need for such a structure at that time.

3. When construction of the dwelling Units on the Southerly Parcel of the Subject Property is complete, the pile(s) of earth materials on the Northerly Parcel of the Subject Property shall be removed from said Northerly Parcel and said Northerly Parcel shall be planted with grass and/or other plantings so as to restore said parcel to its natural condition, unless the development of said parcel has commenced.

4. Within sixty (60) days after the filing of this decision in the Office of the Town Clerk, the Applicant shall a.) submit to the ZBA plans and material samples for the modification of the retaining wall on said Southerly Parcel so that said wall will have the appearance of a traditional New England-type field stone wall; and b.) attend a meeting of the ZBA to discuss said plans and modification.

In all other respects the Comprehensive Permit for the Development dated January 27, 2006 is hereby ratified and confirmed, except that the references therein to the provisions of the predecessor version of 760 CMR that have been superseded and replaced are hereby replaced with the current provisions of 760 CMR.

### RECORD OF VOTE

The following members of the ZBA voted (5-0-0) to grant the above-reference application to for a substantial change to the Comprehensive Permit for the Development, subject to the above-stated terms, conditions and limitations:

E. Michael Thomas sc  
E. Michael Thomas, Chair

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Jerry L. Boos

Aida A. Gennis  
Aida A. Gennis

Eric B. Goldberg  
Eric B. Goldberg

Linda L. Segal  
Linda L. Segal, Associate Member

Filed with the Town Clerk on October 28, 2009.