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ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

David A. Green, Clerk
Newton, MA 02459

2016 NOV - 7 PM 4:00

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#01-16 DETAILED RECORD OF THE PROCEEDINGS

AND DECISION

#1-16 Petition of 1521 Beacon Street AMA Realty Ventures, 1461 VFW Parkway, West Roxbury, Massachusetts, revised September 28, 2016, for a comprehensive permit pursuant to G.L. c. 40B sections 20 through 23 to construct eight (8) units, two of which will be affordable to individuals earning eighty percent (80%) of the average median income for the Boston Metropolitan Area, of rental townhouse style housing located on a 31,250 square foot parcel located at 1521 Beacon Street in Newton. The property is located in Single Residence 2 (SR2) zoning district.

The Newton Zoning Board of Appeals (the "Board") held a duly noticed public hearing on January 26, 2016, and held further sessions on April 28, 2016, July 14, 2016 and September 29, 2016 in the City Council Chambers at City Hall, Newton, Massachusetts.

The following members of the Board were present and voting:

Brooke K. Lipsitt, Chairman

Vincent Farina

Harvey Creem

Michael Rossi

Treff LaFleche

The petition was filed on December 17, 2015.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the *Newton TAB*, a newspaper of general circulation in Newton, Massachusetts, on January 6, 2016 and January 13, 2016.

FACTS

At the opening session of the public hearing, Attorney Steven Buchbinder, Schlesinger and Buchbinder, LLP, 1200 Walnut Street, Newton, Massachusetts described the initial application. The site consisted of a 70,233 square foot lot containing a church building and parking lot. The Applicant sought to demolish the church and construct 48 townhouse-style residential units including 38 market rate units and 10 units affordable to individuals earning up to 50% of the average median income of the Boston Metropolitan Area (the "AMI"). The Applicant's architect, Steve Allen, PCA Architecture, 221 Hampshire Street, Cambridge, Massachusetts described the proposed buildings. Randy Hart, VHB Engineers, 101 Walnut Street, Watertown, Massachusetts, provided an overview of the traffic study, proposed traffic plan and traffic site design.

Speaking in response to the application were the following individuals:

John Rice, Ward 5 Councilor, 9 Selden Street

Brian Yates, Ward 5 Councilor-at-large, 1094 Chestnut Street,

Deborah Crossley, Ward 5 Councilor-at-large, 26 Circuit Avenue,

Deborah Karl, 599 Chestnut Street,

Ty Cushing, 575 Chestnut Street,

Suzan Nessen, 47 Karen Road,

Diane Levy, 20 Oakvale Road,
Daniel Dory, 131 Upland Road,
Ed Corris, 29 Montclair Road,
Richard Berenson, 39 Karen Road,
Katherine Hobson, 128 Dorset Road,
Dolores Acevado Garcia, 129 Pine Ridge Road,
Mort Moghaddam, 612 Chestnut Street,
Kathleen Kouril-Grieser, 258 Mill Street,
Phil Herr, 20 Marlboro Street,
Lynn Weisberg, 5 Alden Street,
Chris Pitts, 1756 Beacon Street,
Candy Snyder, 49 Lawmarissa Road,
John Blessington, 543 Chestnut Street,
Sallee Lipschutz, 24 Radcliff Road,
Troy Bocker, 587 Chestnut Street,
Andy Silverman, 6 Glastonbury Oval,
Rena Getz, 192 Pine Ridge Road, and
Barbara Berenson, 39 Karen Road.

The residents who spoke in opposition to the project, expressed concerns regarding the increase in traffic and the incongruity with the neighborhood in terms of the size and massing of the project. The residents also raised concerns about the disrepair of the existing building and the owner's failure to maintain the building and site.

Chief Planner for Current Planning, Alexandra Ananth, presented an analysis of the project and the City's position regarding whether the City of Newton had reached safe harbor status by having 1.5% of its land available for commercial, industrial or residential use dedicated to affordable housing. Following the presentation, on motion by Harvey Creem, seconded by Vincent Farina, the Board voted 3 in favor (Creem, Farina, McLaughlin), 2 opposed (Lipsitt, LaFleche) to declare that the City of Newton has reached the safe harbor status pursuant to 760 CMR 56.03(3)(b) and (8).

In preparation for the July 14, 2016 public hearing, the Applicant submitted revised plans entitled 1521 Beacon St.- Townhouses, Site Plan -8 units, dated 6/21/2016 by PCA Associates, SK-1; 1521 Beacon Street, Townhouses, Plans & Building Section, SK-2, pages 1 -2; 1521 Beacon Street- Townhouses, View of Short St. Facades, SK-3.

At the hearing, the Applicant's attorney reported that the Applicant and its representatives had met with the neighborhood and agreed to revise the plans to present a less dense project on which all parties could agree. Attorney Buchbinder presented conceptual drawings of the revised proposal. Attorney Buchbinder explained that the Applicant has subdivided the lot, thereby reducing the size of the project. It created one 31,250 square foot lot on which the project would be built and two other lots which were no longer part of the comprehensive permit application. The Applicant revised its request by reducing the size of the project to 8 townhouses with 2 affordable units available for 50% AMI. The architect Steve Allen explained that the 8 units will abut Short Street. The plan showed five curb cuts along Short Street to accommodate the units. The market rate units will contain 2,544 square feet with outdoor decks. These units will consist of three bedrooms and 3.5 bathrooms with 2-car garages and 2 additional parking spaces. The affordable units will contain 2,217 square feet with outdoor

decks. These units will consist of 3 bedrooms and 2.5 bathrooms with a 1-car garage and 1 additional parking space.

The Applicant's engineer, Verne Porter, Jr., Verne T. Porter, Jr. PLS Land Surveyors – Civil Engineers, 354 Elliot Street, Newton presented the site design; landscape architect, Faith Michaels of Faithful Flowers, 108 Upland Road, Brookline and traffic consultant, Randy Hart, VHB, Watertown presented the project.

The Board requested that the number of curb cuts be reduced and that the façade of the buildings be redesigned. The building as proposed is 38.4 feet in height, exceeding the dimensional requirements of 36 feet. The Applicant explained that the height of the building measured from the street is 35.4 feet; however, measured as required by the zoning ordinance the height is 38.4 feet.

The following residents expressed their opinions about the conceptual design presented:

City Councilor John Rice, 9 Selden Street,

Deborah Karl, 599 Chestnut Street,

Stuart Matthews, 77 Windsor Road,

Kathy Winters, 41 Amherst Road,

Kathleen Kouril-Grieser, 258 Mill Street,

Dorothy Robert, 1564 Beacon Street.

At the next scheduled hearing on September 29, 2016, the applicant presented further refined plans incorporating the comments and suggestions of the Board and residents.

The final plans are incorporated herein by reference, and shown as 1521 Beacon St. –

Townhouses, Site Plan 8 Units- Option B, Revision 1, SK-1B through SK-4B, dated 9/26/16 by PCA, 221 Hampshire Street, Cambridge, MA, 02139. The Applicant's attorney stated that the

curb cuts are reduced to two, the landscaping plan serves to create a visual buffer between Short Street and the development, the buildings are sited to follow the curve of the road and the exterior design and color of the buildings will create the look of single family homes. The Applicant's attorney explained that as a part of the negotiations with the neighborhood, the Applicant is entering into a written agreement with the abutters regarding the two lots on Karen Road which were removed from the application. Under the agreement, the applicant will abide by the Zoning Ordinance without seeking any relief via variance or special permit and will build only what is allowed by right.

The following residents spoke in favor of the revised plan:

Ray Noveck, 31 Karen Road,

Nathan Chaffin, 69 Karen Road,

Edward Nesson, 47 Karen Road,

Rick Berenson, 39 Karen Road,

Deborah Karl, 599 Chestnut Street,

Stuart Matthews, 77 Windsor Road

Isabel Albeck, 24 Windsor Road,

Philip Herr, 20 Marlboro Street,

Raymond Roberts, 1564 Beacon Street,

Chris Pitts, 1756 Beacon Street,

Kathleen Kouril-Grieser, 258 Mill Street,

Councilor John Rice, 9 Selden Street, Ward 5 Councilor.

On the basis of the documents, testimony and all of the information presented at the public hearing and contained within the public record, the Board makes the following findings:

FINDINGS

1. The Board finds that the Applicant has complied with all rules and regulations of the City of Newton as they pertain to the application for a comprehensive permit.
2. The hearing was opened on January 26, 2016. Based upon a presentation by the Chief Planner for Current Planning for the City of Newton regarding the status of Newton's land area minimum requirements, the Board voted by 3 in favor (McLaughlin, Creem, Farina), 2 opposed (Lipsitt, LaFleche) that pursuant to 760 CMR 56.03(8), the City of Newton has dedicated 1.5% of the total land area zoned for residential, commercial or industrial use to affordable housing and thus the general land area minimum was satisfied and the City has the protection of a safe harbor status.
3. On January 27, 2016, the Board sent notice to the Applicant, with a copy to the Department of Housing and Community Development, that the City of Newton has reached the 1.5% land area minimum.
4. The Applicant did not appeal that determination.
5. The Board finds that the Applicant is qualified pursuant to 760 CMR 56.04 in that:
 - a. the Applicant is a limited dividend corporation as that term is defined in 76 CMR 56.04(1) (a);
 - b. On July 23, 2015, Massachusetts Housing Finance Agency ("MassHousing") issued a Project Eligibility Letter to develop not more than 48 rental units with 12 units affordable to individuals earning 50% of the Average Median Income on a 70,322 square foot lot. During the pendency of this application before the Board, the Applicant recorded a plan at the Middlesex South Registry of Deeds

subdividing the lot into three (3) lots recorded at Plan No. 211 of 2016. On August 23, 2016, a revised plan and application were submitted to the Board. The revised plan depicts a 31,250 square foot lot, and two additional lots, as shown on a plan entitled 1521 Beacon Street, Newton Massachusetts, Existing Conditions Plan, dated August 23, 2016, drawn by R. Jurdine, Jr., PLS Land Surveyors – Civil Engineers, 354 Elliot Street, Newton, MA 02464. The revised application seeks to construct three buildings containing eight townhouse-style residential units with two units affordable to individuals with an income of 80% of the AMI.

- c. As a result of the significant revision to the application, the Board finds that prior to the issuance of a building permit, the applicant shall obtain an updated Project Eligibility Letter from MassHousing and submit it to the Planning and Development Department.
 - d. the applicant is entering into a written agreement with abutters regarding the two lots on Karen Road which were removed from the application. Under the agreement, the applicant will abide by the Zoning Ordinance without seeking any relief via variance or special permit and will build only what is allowed by right.
 - e. the Applicant has site control as evidenced by the quitclaim deed from The Roman Catholic Archbishop of Boston, recorded at the Southern Middlesex Registry of Deeds at Book 8682, Page 461 on January 21, 2014.
6. The Applicant has provided evidence that a regional need for low and moderate income housing exists.
7. As conditioned by the decision of this Board, the proposed development is consistent with local needs.

CONDITIONS

Pursuant to G.L. c. 40B, after a public hearing, the Board, on motion of Michael Rossi, seconded by Treff LaFleche, voted five (5) in favor (Rossi, LaFleche, Creem, Farina, Lipsitt) and zero (0) opposed to grant a comprehensive permit to the Applicant to construct eight (8) rental townhouse residential units, two of which shall be affordable for households earning up to 80% of AMI, subject to the following conditions of approval (the "Conditions") and waivers and exceptions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this comprehensive permit shall be located and constructed consistent with the following:
 - a. a plan entitled "1521 Beacon Street, Newton, Mass., Proposed Layout Plan – Option B," prepared, stamped and signed by Verne T. Porter, Jr., PLS, 354 Elliot Street, Newton, Massachusetts, dated August 23, 2016, as revised through September 27, 2016;
 - b. a set of plans entitled "1521 Beacon St. – Townhouses," prepared by Prellwitz / Chilinski Associates Inc., 221 Hampshire Street, Cambridge, MA, 02139, dated September 26, 2016:
 - i. Site Plan 8 Units- Option B, Revision 1 (SK-1B),
 - ii. Plans and Building Section (SK-2B),
 - iii. Affordable Unit Plans and Building Section (SK-3B),
 - iv. View of Short Street Facades (SK-4B);
 - c. a plan entitled "Landscape Plan Option B," prepared by Faithful Flowers, Faith Michaels, submitted to the Board dated 9/2016, and revised by Faith Michaels,

and submitted on September 28, 2016, with the condition that such Landscape Plan will be revised to show the installation of a conforming sidewalk; and

- c. all documents included in the "Comprehensive Permit Application, Under M.G.L. Chapter 40B, Sections 20-23, submitted by Waban AMA Realty Ventures, LLC" dated December 2015, which are not inconsistent with the Applicant's revised plans submitted on September 26, 2016.
2. Prior to the issuance of any building permits, the Applicant shall submit a complete set of architectural plans including elevations, signed and stamped by an architect, dimensioned site plans, engineering plans, storm water drainage plans, landscaping plans, utility plans, signed and stamped by a professional engineer, consistent with the plans and materials referenced in Condition 1 above.
3. Except as expressly waived in this comprehensive permit decision, the Project shall comply with all Newton ordinances and other local rules and regulations, including the payment of all applicable permit fees.
4. Copies of all state and federal permits and approvals related to the Site or the Project shall be submitted to the City's Department of Planning and Development as well as the Law Department for review to ensure consistency and compliance with this comprehensive permit decision.
5. The two deed-restricted units shall be affordable to households earning up to 80% AMI, adjusted for household size. The units shall be deed-restricted in perpetuity, or for as long as the Project does not comply with zoning.
6. The marketing and resident selection process for the affordable units shall be consistent with the "Guidelines for Uniform Local Resident Preferences in Affordable Housing",

prepared by the City's Fair Housing Task Committee (Revised March, 2012) and the Affirmative Fair Housing Marketing Selection Plan Guidelines updated 2013, by DHCD, Massachusetts or any subsequent update. That process is consistent with the provisions of Newton Zoning Chapter 30 Section 5.11., and is intended as a standard provision for all Newton housing programs. The plan shall be reviewed and approved by the Planning Department and the Law Department.

7. Before any site clearing, grading, demolition or construction may begin on site, the Applicant shall submit a municipal lien certificate that shows all taxes, assessments and betterments have been paid in full and there are no outstanding liens on the property.
8. All construction and demolition activity shall be limited to 7AM-6PM Monday through Friday and 8AM-5PM Saturday, excluding holidays, unless extended with the approval of the Commissioner of the Inspectional Services Department.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY BUILDING

PERMIT.

9. No Building Permit shall be issued pursuant to this Comprehensive Permit until the Applicant has:
 - a. submitted a revised Project Eligibility/Site Approval letter from MassHousing approving the revised project.
 - b. recorded a certified copy of this Decision at the Middlesex County (South) Registry of Deeds and submitted copies of the recorded Decision with the City Clerk, the Clerk of the Zoning Board of Appeals, and the Department of Planning and Development;

- c. submitted evidence of Final Approval by the subsidizing agency and executed a Regulatory Agreement and an Affordable Housing Restriction in a form reviewed by the City's Law Department;
- d. submitted final site and building plans and material samples, which shall include all required information for building code review and approval;
- e. submitted evidence of compliance with all conditions listed in the revised MassHousing letter of Project Eligibility/Site Approval;
- f. submitted a Construction Management Plan (CMP) to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development for review and approval. The CMP shall include a 24-hour contact number for the site supervisor/general contractor, which shall also be provided by First Class Mail to the owners of all properties which are abutters and abutters to abutters within 300 feet of the site.
- g. submitted a revised final landscape plan to the Tree Warden and the Director of Planning and Development for review and approval that includes a mix of evergreen and deciduous trees that provides screening of the property for abutters and from the adjacent street without blocking visibility of the units from the street and maintains adequate sightlines at the driveway entrance and exit; and,
- h. submitted a plan for building materials and colors to the Director of Planning and Development for review and approval; and,
- i. obtained a written statement from the Department of Planning and Development that confirms that the building permit plans are consistent with plans approved in Condition #1.

CONDITIONS RELATED TO CONSTRUCTION

10. The Applicant shall make every effort to utilize building materials and systems that are “Energy Star” certified and at a minimum, all new appliances installed shall be “Energy Star” certified.
11. The Applicant shall make every effort to reduce water use on the site, and at minimum, all new water fixtures shall have “Water Sense” labels.
12. A utility plan shall be submitted showing that all utilities from the street into the property are installed underground, and located in accordance with the approved plans.
13. The Applicant shall notify the abutters and the abutters to the abutters on Short Street at least 24 hours prior to any anticipated road closures or disruptions to parking on Short Street.
14. During construction periods of significant removal or delivery of materials to or from the site, the Applicant will arrange for necessary traffic control measures and appropriate signage.
15. After construction is completed, if requested by the Engineering Division of Public Works the Applicant shall reconstruct the sidewalk and curbing along the property frontage to City standards.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY OCCUPANCY PERMITS

16. No building or structure, or portion thereof subject to this Comprehensive Permit shall be occupied nor shall any Certificate of Occupancy be issued until:
 - a. the Applicant shall have filed with the ZBA Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by a registered architect and registered land surveyor certifying that the site and

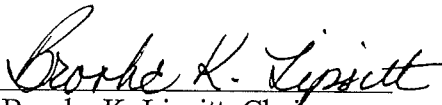
- buildings have been constructed consistent with plans submitted to the Board and on file with the Clerk of the Zoning Board of Appeals;
- b. there shall have been filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department;
 - c. there shall have been filed with the Board's Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, fencing and parking areas;
 - d. the Applicant submits the language for the proposed deed restrictions to the City of Newton Law Department for review and approval.
 - e. No certificate of occupancy permit, temporary or otherwise, shall be issued for the market rate units until the Commissioner of Inspectional Services issues a certificate of occupancy permit, temporary or otherwise, for the affordable units.
 - f. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provided that the Applicant shall first have filed with the Director of Planning and Development a letter of credit or other security in a form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the remaining landscaping to secure installation of such landscaping.

ONGOING CONDITIONS

17. The landscaping shown on the approved plan shall be maintained in good condition. The plantings shall be inspected annually and any plant material that has become diseased or dies shall be replaced in a timely manner with similar material.
18. There shall be no free standing structures used for storage or other accessory purposes located on the site.
19. The color scheme showing a uniform color scheme for each structure, with no distinction between the garages and the living space shall be maintained; however, the three structures shall be different colors.
20. No exterior lighting shall trespass onto abutting properties, and all exterior lighting fixtures shall be residential in scale and shall be shielded or diffused as necessary.
21. In accordance with 760 CMR 56.04(8), copies of cost certifications shall be submitted to the City of Newton Department of Planning and Development and Law Department within 6 months of the issuance of a final Certificate of Occupancy to determine whether any funds in excess of the profit limitations of the subsidizing agency are payable to the City.
22. In accordance with 760 CMR 56.02 & 56.05(13), the subsidizing agency or its designated monitoring agent shall provide information on the status and enforcement of the use restriction deed riders for the affordable units in the Project to the Law Department.
23. Unless extended by the Newton Zoning Board of Appeals upon a finding of good cause, this comprehensive permit shall lapse and become void if construction pursuant to a building permit has not begun within three years of the date on which it is filed with the City Clerk. The Applicant shall use its best efforts to insure that the units are eligible to for inclusion on the City's Subsidized Housing Inventory as outlined in the Department

of Housing and Community Development regulations, 760 CMR 56.03(2)(C); to that end, the Applicant shall attempt to secure a building permit within one year of the filing of the comprehensive permit with the City Clerk and thereafter make diligent efforts to insure that all units permitted remain continuously eligible for inclusion on the City's Subsidized Housing Inventory.

24. This comprehensive permit, and all conditions herein, shall run with the land and be binding on any successors or assigns. In the event that this Project, the comprehensive permit or any of the obligations therein are sold, transferred, sub-contracted or otherwise made the obligation(s) of an entity other than the original Applicant, Waban AMA Realty Ventures, LLC, the successor or subcontractor shall be bound by all of the terms and conditions of this comprehensive permit.


Brooke K. Lipsitt, Chairman

AYES: Brooke K. Lipsitt
Treff LaFleche
Vincent Farina
Harvey Creem
Michael Rossi

Copies of this decision and all plans referred to in this decision have been filed with the City Clerk.

This decision was filed with the City Clerk on _____ day of October 2016.

The City Clerk hereby certifies that all statutory requirements have been complied with and that 20 days have elapsed since the date of filing of this decision and no appeal, pursuant to G. L. c. 40A, §17 has been filed.

David A. Olson, City Clerk