



Board of Selectmen

11/13/06  
**TOWN OF ACTON**  
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**DECISION**  
2006.C19

**Railroad Realty Trust**  
**American House Condominium**  
Condominium Conversion Permit  
November 13, 2006

GRANTED

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of Michael Gurtler, Trustee of Railroad Realty Trust (hereinafter the Owner) for a Condominium Conversion Permit under the provisions of Chapter 584 of the Acts of 1987 - "An Act Relative to the Protection of Tenants and Purchasers of Condominium or Cooperative Units in the Town of Acton" (the Act) and the Town of Acton Regulations for Condominium or Cooperative Conversion Permit Applications (the Rules). The subject building is an older building located at 19 Railroad Street on property shown on the 2006 Acton Town Atlas map H-2A as parcel 19 (the Property).

The Board held a public hearing on the matter on October 30, 2006. The Applicant was present at hearing. Board members Walter M. Foster (Chairman), Peter K. Ashton, F. Dore Hunter, Andrew Magee, and Lauren S. Rosenzweig 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 Documentation and items required by the Rules consisting of:

- A properly executed Application for a Permit to Convert a Rental Housing Unit from Rental Housing Use, dated August 23, 2006 and filed on September 6, 2006.
- A letter to the Board, dated 9/6/06 with a list of requested waivers from the Rules.
- The propose condominium master deed.
- Certification by an independent licensed architect (Elton + Hampton Architects) regarding building and health code compliance, dated 8/11/06.
- Application filing fee.

1.2 Additional items submitted by the Applicant:

- Unit floor plans by Elton + Hampton Architects, dated 8/10/06.
- Correspondence from the Applicant, dated 9/13/06, stating that the subject building is vacant and undergoing repair and remodeling.
- A list of former tenants with dates when they vacated their apartments.

- Sample copy of notification letter, dated 10/3/06, that the Applicant sent to each former tenant at their last known mailing address; and certified mail receipts for each such letter.
  - Copy of hearing notice as it appeared in the Boston Globe Legal Notices on 10/8/06.
- 1.3 Interdepartmental communication received from:
- Acton Building Commissioner, dated 9/21/06.
  - Acton Fire Chief, dated 10/24/06.
  - Acton Planning Department, dated 8/25/06.
  - Acton Community Housing Corporation, dated 9/27/06.
- 1.4 Correspondence:
- From Roland Bartl, Town Planner, to the Applicant dated 9/11/06 and 9/18/06 regarding certain supplemental filing requirements and special procedures for this application.
- 1.5 Other permits:
- Site Plan Special Permit #04/30/04-398, issued on November 9, 2004.

## **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 subject building is an older building and houses three 1-bedroom and six 2-bedroom dwelling units. The building is currently vacant and undergoing repair and renovations.
- 2.2 The Owner has on the same Property (+/-1 acre) two new buildings near completion with six additional dwelling units. The units in the new buildings are not condominium conversion units. They were approved under Site Plan Special Permit #04/30/04-398.
- 2.3 The Owner proposes that the entire Property with all three buildings becomes the "American House Condominium". According to the Owner, this was not the original intent. Rather, he had intended to split off the new buildings for a condominium on a separate lot while he would retain ownership of the subject rental building. Lack of planning for required zoning setbacks made this impossible. Now, the Owner wishes to create a condominium for the entire Property, whereby he would retain ownership of all former rental units and will continue to offer them on the rental housing market.
- 2.4 In the absence of present tenants, the Owner has provided each most recent former tenant on the Property notice of his intent to convert the subject building to the condominium form of ownership, including information about certain rights afforded under the Act to present tenants, and the time and date of the hearing. The Owner also published a notice to this effect in the Boston Globe.
- 2.5 The Board received no correspondence from any former tenant, and no former tenant appeared at the public hearing.
- 2.6 The Owner has provided to the Board a certification, stamped and signed by an independent registered engineer or architect licensed to practice in the Commonwealth, that he housing accommodations on the Property meet all applicable building and health codes of the Town of Acton and the Commonwealth.
- 2.7 Site Plan Special Permit #04/30/04-398 requires in condition 3.2 that, upon the issuance of a valid certificate of occupancy, the Owner shall offer the Town a 120-day right of first refusal on one of the newly constructed units so that the Town may purchase it as an affordable unit for qualified low or moderate income first time homebuyer in compliance with DHCD's Local Initiative Program (LIP) guidelines.

- 2.8 As presented at the hearing, the proposed conversion of the subject building to condominium ownership will comply with the purpose and intent of the Act and the Rules.
- 2.9 The Applicant has requested certain waivers from the Rules. These are discussed in section '3.1 Waivers' below.

### **3 BOARD ACTION**

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted on November 13, 2006 to GRANT the requested Condominium Conversion permit.

#### **3.1 WAIVERS**

The Applicant has requested waivers from sections 2.3, 2.4, 2.4.1 through 2.4.5, and 2.5 of the Rules. The waivers are granted. The subject sections of the Rules pertain to requirements for notification of tenants residing in the apartment units. However, all units were vacant at the time of the application and remain so while the building is undergoing renovations. The Owner has instead undertaken reasonable and acceptable efforts to contact most recent former tenants.

#### **3.2 CONDITIONS**

The following conditions shall be binding upon the Applicant and its successors and assigns. The Town of Acton may elect to enforce compliance with this decision and the Act using any and all powers available to it under the law.

- 3.2.1 Condition 3.2 of Site Plan Special Permit #04/30/04-398 in its entirety is hereby made part of this permit and decision (see Exhibit A attached hereto). It requires that the Owner offers to Town one unit in one of the new buildings on the Property for purchase and use as an affordable dwelling unit. Therefore:
- a) Prior to recording of the condominium master deed at the Middlesex South District Registry of Deeds or the Land Court, the Owner shall cause it to be revised to include provisions for the affordable unit in one of the new buildings on the Property. Specifically, the master deed shall reserve the Owner (or the "Declarant" in the master deed) the right -
    - to file a single unit deed for the affordable dwelling unit to be sold at a reduced and deed restricted price, reduced percentage interest, and reduced condominium fees; and
    - to make all necessary amendments in the master deed to ensure that the affordable unit complies with Massachusetts Department of Housing and Community Development (DHCD) Local Initiative Program (LIP) regulations and guidelines, and to ensure that the unit counts as part of Acton's Subsidized Housing Inventory.
  - b) Prior to the recording of the first unit deed or the sale of the first condominium unit, the Owner shall offer the Town for purchase and right of first refusal one of the units in the new buildings as required in condition 3.2 of Site Plan Special Permit #04/30/04-398.
- 3.2.2 This decision shall be recorded with the Acton Town Clerk; and it shall be recorded with the Middlesex South District Registry of Deeds or the Land Court concurrently with the condominium master deed.

#### **3.3 LIMITATIONS**

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

- 3.3.1 The foregoing 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 Act, the Rules, and other applicable laws and regulations.
- 3.3.2 Other approvals or permits required by law and other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.3.3 This condominium conversion permit shall expire after 1 year has elapsed from the date that this decision has been filed with the Town Clerk without recording of the condominium master deed at the Middlesex South District Registry of Deeds or the Land Court. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension and to issue any appropriate changes to this Decision.
- 3.3.4 The Board hereby reserves its right and power to modify or amend this Decision and its terms and conditions with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

**4 APPEALS**

Appeals to this Decision, if any, shall be made pursuant to section 6A of the Act within 20 days after the date of filing this Decision with the Town Clerk.

The Town of Acton Board of Selectmen

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Walter M. Foster, Chairman

Peter K. Ashton

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F. Dore' Hunter

Andrew Magee

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Lauren S. Rosenzweig

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.

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Eva Taylor, Town Clerk

Date

Copies furnished:

Owner -  
certified mail #  
Fire Chief  
Planning Department

Tenants  
Health Director  
Acton Water District

Building Commissioner  
Town Clerk  
Assistant Assessor

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## EXHIBIT A

Condition 3.2 of Site Plan Special Permit #04/30/04-398:

- 3.2 Upon issuance of a valid certificate of occupancy and when the Petitioner is ready to sell one unit, the Petitioner shall offer in writing to the Town, to make available said property to a qualified low or moderate income first time homebuyer. This shall be administered by the Acton Community Housing Corporation, or any other affordable housing entity, such as the Acton Housing Authority, for the express purpose of providing one or more deed-restricted affordable housing units.

Notice of such offer shall be addressed to the Acton Community Housing Corporation at Acton Town Hall. The ACHC shall exercise the Right of First Offer by written notice to the Applicant within 120 days of the Applicant's offer. If such notice shall not be given within such time, and a time extension has not been requested by the ACHC, the Right of First Refusal shall be deemed lapsed and the ACHC shall have no further rights hereunder.

The exercise of such Right of First offer is expressly contingent upon the execution of a mutually-acceptable purchase and sale agreement for the property which shall be subject to the approval of the MA Department of Housing and Community Development.

The designated affordable unit shall be offered to qualified low or moderate-income first time homebuyers. Sales price, deed, deed restrictions, and all other documents and procedures shall comply with the DHCD's Local Initiative Program (LIP). If permitted by DHCD, the affordable unit shall be marketed under ACHC's local preference guidelines.

The Applicant shall bear the cost of marketing the designated affordable unit, including the cost of the lottery that may be necessary to select from a pool of qualified homebuyers. Included in those costs, generally 3% of the selling price, would be the expense of hiring a consultant to prepare all the necessary documents and applications required for certification of the affordable unit by DHCD. Throughout the process of marketing and selling the designated affordable unit, the Applicant shall consult with and seek guidance from the ACHC, which is the designated facilitator of affordable housing in Acton.