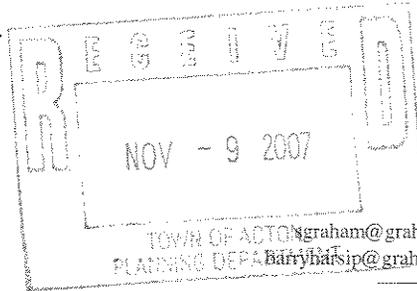


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November 7, 2007

VIA EMAIL AND REGULAR MAIL

Planning Board
Town of Acton
472 Main Street
Acton, MA 01720

Re: Special Permit for Reconstruction of Non-Conforming
Multi-Family Dwelling, Decision 01-06, As Extended
By Decision dated January 12, 2006

Dear Board Members:

The undersigned, on behalf of the owner of the property which is the subject of the above-noted Decision, GPT-Acton, LLC (the "Applicant"), does hereby request a further extension of the Special Permit for an addition two-year period until January 10, 2010.

As reasons therefore, the Applicant states as follows:

1. The extension, specifically Section 2.8, provides "With this extension the Building Commissioner shall be authorized to issue a building permit for the subject property, provided there is also final approval from the Board of Health and DEP for the sewerage disposal." A final approval for the sewerage disposal has not yet been secured from the Acton Board of Health and DEP.
2. Construction of the sewerage treatment plant which will serve the premises and the four other buildings owned by the Applicant was not commenced until May 9, 2007. Completion is anticipated in February, 2008, with the operation of the waste water treatment plant commencing on or about March 21, 2008.

GRAHAM & HARSIP, P.C.

Planning Board
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Page Two

3. Commencement of construction of the sewerage treatment plant was delayed until after the Acton Town Meeting on April 10, 2007 wherein Town Meeting approved the relocation of a storm water easement which delayed the construction of a sewerage treatment plant.

For the foregoing reasons, the Applicant believes that "good cause" exists for the extension and requests that this matter be placed on the agenda for the Planning Board's consideration and that an extension of the Special Permit be granted as requested hereinabove.

Very truly yours,

GRAHAM & HARSIP, P.C.

A handwritten signature in black ink, appearing to read 'SRG', followed by a long horizontal flourish.

Steven R. Graham

SRG/jm
cc: Client



Planning Board

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**Extension of
DECISION
01-06**

Village Arms Apartments
also referred to as the
Spring Hill Commons Apartment Complex

**Special Permit for Reconstruction of Nonconforming Multifamily Dwelling
January 12, 2006**

This is an extension by the Planning Board (hereinafter the Board) until January 10, 2008 of its special permit and decision #01-06 granted to GPT-Acton, LLC and filed with the Town Clerk on May 10, 2001 (hereinafter the Original Decision). This action is in response to the petition by Attorney Stephen R. Graham (the Applicant) on behalf of Equity Residential (now the property owner) for an extension of the Original Decision, or a finding that the original decision was "tolled" by pending litigation and therefore had not lapsed.

The Board granted the extension by unanimous vote at its regular meeting on January 10, 2006. Board members Gregory E. Niemyski (Chairman), Michael C. Densen, William F. King, Ruth M. Martin, Christopher R. Schaffner, Edmund R. Starzec, and associate members Alan R. Mertz and Bruce Reichlen were present. The minutes of the meeting and submissions, on which this decision is based upon, may be referred to in the Office of the Town Clerk or in the Acton Planning Department.

1 EXHIBITS

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

- 1.1 Letter from Steven R. Graham to the Planning Board, dated 12/15/05.
- 1.2 Letter from Steven R. Graham to the Acton Building Commissioner Garry Rhodes, dated 11/29/05.
- 1.3 Letter (e-mail) from Stephen Anderson, Acton Town Counsel, to the Building Commissioner dated 12/05/05.
- 1.4 The Original Decision.
- 1.5 Copies of miscellaneous documents and plans upon which the Original Decision relied upon.
- 1.6 Memo from Assistant Town Planner Kristin Alexander to the Board, dated 01/06/06.

2 FINDINGS, CONCLUSIONS and SUPPORTING CONSIDERATIONS

- 2.1 The special permit issued with the Original Decision expired on May 10, 2003 except for "good cause". It was issued under section 8.7 of the Acton Zoning Bylaw for the reconstruction of a nonconforming multifamily building previously demolished or destroyed by fire or other disaster. Under this section, an application for such a special permit must be filed within one year from the demolition or destruction. Thus, the Applicant could not file for a new special permit today, which makes this special permit different and unique from all other special permits that a person may seek under the Acton Zoning Bylaw.
- 2.2 The Original Decision requires that an application for a special permit extension must be filed with the Board at least 30 days prior to the expiry date. This requirement is hereby waived for the extension granted hereunder.
- 2.3 In the Original Decision the Board reserved its right and power to modify or amend the terms of the special permit.
- 2.4 The Original Decision requires that "all work and construction shall comply with Acton Board of Health regulations", which in this case encompasses regulations of the Massachusetts Department of Environmental Protection (DEP).
- 2.5 The Applicant reports that the owner of the property was in litigation with DEP regarding the issue of sewerage treatment, that only recently a judgment has been entered in the matter, and that a Consent Order with DEP will be formulated shortly to guide the implementation of the judgment. The Town was aware of but not involved in the ongoing litigation.
- 2.6 The Applicant could not have proceeded in compliance with the Original Decision without first coming to terms with DEP. Thus the Applicant has established "good cause" by reason of which the special permit has not lapsed or deserves an extension.
- 2.8 With this extension the Building Commissioner shall be authorized to issue a building permit for the subject property, provided there is also final approval from the Board of Health and DEP for the sewerage disposal.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner

Copies to:

Applicant
Town Clerk

Building Commissioner
Town Manager

Board of Health

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Planning Board

DECISION
01-06

Village Arms Apartments
also referred to as the
Spring Hill Commons Apartment Complex

Special Permit for Reconstruction of Nonconforming Multifamily Dwelling
May 9, 2001

Decision of the Acton Planning Board (hereinafter the Board) on the application of Victor Morgenthaler, on behalf of GPT-Acton, LLC (Owner, Grove Property Trust), both of 598 Asylum Avenue, Hartford, CT 06015 (hereinafter the Applicant). The property is located at 411, 419, and 421 Great Road, and 25 and 33 Harris Street in Acton, and shown on the 2000 Acton Town Atlas map C-5 as parcels 54 and 67-1 and 2. (hereinafter the Site).

This Decision is in response to an application for a special permit application received by the Acton Planning Department on June 1, 2000 pursuant to Section 8.7 of the Acton Zoning Bylaw (hereinafter the Bylaw) to allow the reconstruction of a nonconforming multifamily dwelling.

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public hearing on July 24, 2000. Attorney Stephen R. Graham of Graham and Harsip, P.C., assisted the Applicant in the presentation. The hearing was continued to September 25, 2000, November 6, 2000, December 18, 2000, February 12, 2001, and April 23, 2001 and then closed. Board members Patrick E. Halm (Chairman), Ken Sghia-Hughes (Vice Chairman), Hartley E. Millett, Edwin F. Pearson, Lauren S. Rosenzweig and Christopher S. Tolley were present. 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 "Site plan for 419 Great Road, Acton MA 01720" dated 12/1999, drawn by Acton Survey & Engineering, Inc. of Acton consisting of one sheet, subsequently modified by Architectural Partners, Inc. of 103 Morse Street, Watertown, MA.
- 1.2 A "Site Plan (S-1)" for 419 Great Road, Acton dated 5/26/00, prepared by Architectural Partners, Inc., consisting of one sheet.
- 1.3 Architectural plans consisting of two sheets, A-1.1 - Floor Plans, dated 5/26/00 and A-1.2 - Elevations (dated 12/30/00), prepared by Architectural Partners, Inc.
- 1.4 Supplemental items and documentation:
 - A properly executed special permit, dated 5/31/00.
 - Filing fee.
 - Certified abutters' list.

- Copy of the 1969 building permit for the building in question.
- 1969 record plans for the site.
- An application cover letter, dated 6/1/00.

1.5 Interdepartmental communication received from:

- Acton Building Commissioner, dated 6/19/00;
- Acton Community Housing Corporation, dated 6/29/00;
- Acton Engineering Department, dated 7/19/00;
- Acton Fire Chief, dated 7/13/00;
- Acton Health Director, dated 7/11/00;
- Acton Historical Commission, dated 6/14/00;
- Acton Housing Authority, dated 6/29/00;
- Acton Natural Resources Director, dated;
- Acton Planning Department, dated 7/19/00, 11/3/00, and 4/20/01;
- Acton Tree Warden & Municipal Properties Dir., dated 6/13/00; and
- Acton Treasurer's Office, dated 6/8/00.

1.6 Other:

- Copy of letter from Irfan Nasrullah, Massachusetts Department of Environmental Protection, to Doug Halley, Acton Health Director, dated 7/5/00.
- Agreements for the public hearing continuation and the decision deadline extension, dated 7/24/00, 9/25/00, 11/6/00, 12/18/00, and 2/12/01.
- Letter from Atty. Steven R. Graham, dated 2/9/01, concerning change in property ownership and hearing extension.

Exhibits 1.1 through 1.4 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 Site is located within the Residence A (R-A) zoning district and Zone 3 of the Groundwater Protection District.
- 2.2 The Site contains five apartment buildings, three on Great Road, and two on Harris Street.
- 2.3 The middle apartment building at 419 Great Road was severely damaged in a 1999 fire and rendered uninhabitable. Since then, the structural ruins remain on the Site.
- 2.4 Section 8.7 of the Bylaw provides that nonconforming multifamily dwellings may be reconstructed, if the Board grants a special permit for the reconstruction.
- 2.5 The Applicant filed the special permit application to reconstruct the building within one year of the date of the fire, as the Bylaw requires (section 8.7.2).
- 2.6 The Bylaw provides that the Board should seek to reduce or eliminate nonconformities to the extent possible (section 8.7.1).
- 2.7 The Site is nonconforming to the Bylaw on four points:
 - Consistent with then applicable law, the multifamily buildings were constructed in about 1969 without a special permit. The Bylaw today requires a special permit for multifamily use in the R-A District (section 3, table of principal use, line 3.3.4, column R-A).
 - There are 104 dwelling units in five buildings on the +/-11 acre Site, or +/-9.5 units per acre. The Bylaw limit today is 5 units per acre (section 5.3.2.1).

- The approximate wastewater discharge on the site is over 20,000 gpd with standard septic systems. The discharge limit without tertiary treatment in Zone 3 of the Groundwater Protection District is 6,000 gpd per buildable lot (section 4.3.7.2, Table 4.3.7.2, lines 21 & 22).
- In the rear parking lot, pavement runoff enters the adjacent wetlands without prior treatment. The Bylaw today requires that all such runoff be treated before discharge. Section 4.3.6.3 of the Bylaw describes the desired method of treatment.

2.8 The three latter items are the substantive nonconformities:

- *Density*: The damaged building itself contained eighteen of the 104 dwelling units. The Applicant proposes to rebuild all eighteen units. Apartments such as those on the Site provide housing for lower income households in Acton. Reducing the degree of nonconformity relative to density would diminish or eliminate housing for lower income people. The reconstruction of all eighteen units is therefore appropriate and needed.
- *Wastewater*: The current septic disposal system is inadequate and outdated. It is a concentrated source of untreated wastewater in a groundwater sensitive area. The Massachusetts Department of Environmental Protection (DEP) declared the Site in violation of the Massachusetts Clean Water Act and issued an Administrative Order - UAO-CE-99-1003. DEP also made it clear that it will not allow re-established wastewater flows for the subject building if it is reconstructed as long as the Site is in violation of the Clean Water Act. This matter is still under court review. Regardless of its final resolution, the Board finds it is imperative that the disposal method must be improved.
- *Parking Lot Runoff*: Full compliance cannot be practically achieved due to the high groundwater table. However, some improvements can be made with little effort.

2.9 Since the application date and before the close of the public hearing ownership of the Site changed to a new owner - Equity Residential. A representative of Equity Residential (Donna DiCenso of Norwood) attended the last public hearing session.

2.10 The Plan shows a complete reconstruction on a footprint slightly larger than that of the damaged building. More recently, the new owner indicated that, depending on the outcome of DEP matters, it might restore the damaged building rather than build a replacement. In any case, an increase in building floor area or pavement area by more than 1,200 square feet will trigger a site plan special permit in addition to the special permit granted herein.

2.11 The Massachusetts Building Code in CMR 521 sets forth requirements for units in an apartment complex that are accessible for persons with disabilities.

2.12 Massachusetts General Law, Chapter 148, section 26 requires that the reconstructed building be equipped with an automatic sprinkler and fire alarm system.

2.13 The Acton Housing Authority reports that at the time of the fire three subsidized tenants resided in the building. The Acton Housing Authority and the Acton Community Housing Corporation have voiced concern that the building, after reconstruction, may not be available to eligible tenants with rent subsidies, such as Federal Section 8 vouchers. The Applicant stated that general law prohibits discrimination against Section 8 certificate holders.

2.14 The Board received comments from various Town departments listed in Exhibit 1.5 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as deemed appropriate by the Board.

2.15 The Plan as amended herein and the proposed multifamily use as approved herein, are appropriate for the Site; consistent with the Master Plan; in harmony with the purpose and intent of the Bylaw, specifically Section 8.7; are not detrimental or injurious to the

neighborhood, and except for continuing nonconformities identified herein, complies with the applicable requirements of the Bylaw.

3 BOARD ACTION

Therefore, the Board voted at its May 7, 2001 meeting to **GRANT** the requested special permit subject to and with the benefit of the following waivers, Plan modifications, conditions, and limitations.

3.1 PLAN MODIFICATIONS

Except for purposes of securing the building to prevent further damage, deterioration, or vandalism, the Building Commissioner shall not issue a building permit for the reconstruction of the damaged building, nor shall any such 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 a DEP-approved wastewater disposal system for the Site. The wastewater disposal system for the Site shall be subject to Board of Health approval and, at a minimum, meet the April 23, 2001 Board of Health policy standards for biological oxygen demand (BOD), suspended solids, and nitrogen (Total Kjeldahl Nitrogen) removal efficiency.
- 3.1.2 Show a "water quality swale" consistent with the Mass. Stormwater Policy to capture pavement runoff from the parking lot. Add curbing along the pavement edges as necessary to channel water towards the swale. The final design of the swale shall be subject to approval by the Board or its designee.
- 3.1.3 If the Applicant proceeds with the reconstruction of a new building from the ground up according to the Plan, including the architectural plans A-1.1 and A-2.1 (Exhibit 1.3), the Plan shall be revised to show horizontal ridge lines on the 3rd floor dormers and rectangular staircase windows above the side entrances.
- 3.1.4 If the Applicant should choose to restore the damaged building instead of building a new one, the Building Commissioner shall not issue a building permit until the Board has reviewed and approved revised architectural floor and elevation plans, and a revised site plan. This would constitute a plan modification and special permit amendment under paragraph 3.4.5 of this decision.
- 3.1.5 Submit a landscape plan for approval by the Board or its designee.
- 3.1.6 Show the new sidewalk along Great Road and a walkway leading from that sidewalk past the north-side entrance connecting with the existing sidewalk in the rear of the building.
- 3.1.7 Show the location and specify the size of the water main needed to supply water for domestic use and fire suppression.
- 3.1.8 Show a direct fire department connection in a location specified by the Acton Fire Chief.
- 3.1.9 The Plan shall be modified to comply with the Bylaw. Unless directed otherwise herein, the Plan shall also be modified to address all departmental comments received by the Board 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 Before the issuance of any occupancy permit for the reconstructed building, all improvements shown on the Plan, as revised herein, shall be completed as shown on the Plan.
- 3.2.2 The reconstructed building shall contain eighteen dwelling units.
- 3.2.3 The reconstructed building shall contain dwelling units for persons with disabilities in compliance with CMR 521 of the Massachusetts Building Code. These units shall be certified as being ready for occupancy and in compliance with Massachusetts Architectural Access Board standards before or concurrently with all other dwelling units in the building.
- 3.2.4 The reconstructed building shall be equipped with automatic sprinklers and fire alarm systems in compliance with MGL, chapter 148, section 26.
- 3.2.5 No person or household that qualifies for rental subsidies from the Federal Section 8 rental assistance program, or any similar Federal, State, or Town subsidy program shall be denied tenancy in the reconstructed building on the basis of having to rely on such subsidy to pay rent or other housing costs.
- 3.2.6 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.
- 3.2.7 All taxes, and penalties and back charges resulting from the non-payment of taxes, shall be paid in full prior to the issuance of a building permit.
- 3.2.8 No work under this special permit shall begin before the issuance of a building permit.
- 3.2.9 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.
- 3.2.10 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.2.11 All work and construction on the Site shall comply with Acton Board of Health regulations.
- 3.2.12 All work and construction on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.2.13 This decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court before the issuance of a building permit for the proposed building reconstruction on the Site.

3.3 LIMITATIONS

The authority 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. Commencement of substantial use of this special permit shall mean that actual construction activity to rebuild the damaged building has started on the Site. 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, and 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.

Roland Bartl, AICP, Town Planner
for the 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.

Ed Ellis, Town Clerk

Date

Copies furnished:

Applicant - certified mail #
Engineering Administrator
Conservation Administrator
Police Chief
Historical Commission
Historic District Commission

Building Commissioner
Municipal Properties Director
Town Manager
Acton Water District
Assistant Assessor

Health Director
Town Clerk
Fire Chief
Owner

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