

9/21/09 (11)

Christine Joyce

From: Nancy Tavernier [ntavern@comcast.net]
Sent: Wednesday, September 16, 2009 3:24 PM
To: Christine Joyce
Cc: Manager Department; Planning Department; 'authhomes@msn.com'
Subject: Re: Ellsworth Village Regulatory Agreement

Attached please see the memo from ACHC to the Planning Board in Feb. 2009 supporting the revision of the special permit which would carry through to the regulatory agreement changes also. If you need a separate memo to the BOS, let me know.

At 02:45 PM 9/16/2009, Christine Joyce wrote:

We are in receipt of a request from Ellsworth Village for a change in the Agreement dated July 20, 2006 between the Town and Ellsworth Village LLC to re-designate one of the Affordable Units to be located at #30 instead of #22 as approved by the Planning Board on February 17, 2009.

Your comments, questions

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

achc@acton-ma.gov

TO: Roland Bartl, Town Planner
FROM: Nancy Tavernier, Chair, ACHC
SUBJECT: Revision to Ellsworth Village Special Permit
DATE: February 10, 2009
Cc Authentic Homes

In regard to the age restricted development, Ellsworth Village, the Acton Community Housing Corporation is the designated Monitoring Agent for the affordability aspect of the development. The special permit granted by the Planning Board in 2005 included a condition that three units had to be made available for age, income, and asset eligible buyers. It specified the affordable unit numbers in the permit and these designations were carried into other documents as well. The idea was to spread out the units in the development to allow for up to ten market units to sell before each new affordable unit was constructed. These three units would count toward the Town's 10% housing goal.

In 2007, a full affirmative marketing effort, approved by DHCD, was carried out by the developer's lottery agent and three eligible buyers were found for the three units even though only one unit had been constructed at that point. The first buyer moved into the first unit at the end of 2007. The other two eligible buyers will be kept on the lottery list for up to two years until the other units are constructed. Due to the housing slowdown, construction at Ellsworth Village is not proceeding at a fast enough pace to bring forth the next unit in this time frame. The developer recently contacted ACHC to seek their input on moving the next unit forward into the current phase and allowing the second buyer on the list to purchase the unit. This buyer will have to sell his home to remain eligible but this is not expected to be a problem and he is judged to remain asset eligible after doing so.

The ACHC discussed this request for support and unanimously agreed to the proposal recognizing it would be at the discretion of the Planning Board. We see no down side to the change and applaud the developer's willingness to provide this unit at an earlier schedule than currently possible.

We urge the Planning Board to support this revision to the special permit.

Christine Joyce

From: Roland Bartl
Sent: Wednesday, September 16, 2009 3:53 PM
To: Christine Joyce; Nancy Tavernier; Manager Department; Planning Department
Cc: 'authhomes@msn.com'
Subject: RE: Ellsworth Village Regulatory Agreement

This is fine - planning board decision amendment is attached.

Roland Bartl, AICP
Planning Director
472 Main Street
Acton, MA 01720
(978) 264-9636

From: Christine Joyce
Sent: Wednesday, September 16, 2009 2:45 PM
To: Nancy Tavernier; Manager Department; Planning Department
Cc: 'authhomes@msn.com'
Subject: Ellsworth Village Regulatory Agreement

We are in receipt of a request from Ellsworth Village for a change in the Agreement dated July 20, 2006 between the Town and Ellsworth Village LLC to re-designate one of the Affordable Units to be located at #30 instead of #22 as approved by the Planning Board on February 17, 2009.

Your comments, questions



Planning Board

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**AMENDMENT #2
OF DECISION
05-01**

February 17, 2009

Ellsworth Village
Senior Residence Special Permit

This is an amendment by the Planning Board (hereinafter the Board) of its decision issued to Ellsworth Village, LLC (hereinafter the Applicant) filed with the Town Clerk on April 27, 2005 and first amended on April 27, 2006. (hereinafter the Original Decision)

This amendment is in response to the request of the Applicant for a change in the dwelling unit numbers designated as affordable units as required in the Original Decision.

The Board considered this matter at a regular posted meeting on February 17, 2009. Board members Mr. Greg Niemyski (Chairman), Mr. Bruce Reichlen (Vice Chair), Ms. Ruth Martin, Mr. Alan Mertz, Mr. Roland Bourdon, Mr. Ryan Bettez, Mr. Ray Yacouby, and Associate Ms. Leigh Davis-Honn 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:

- A letter requesting the change from Donna Cisek, authentic Homes, Inc. dated 2/9/09 with attachments (Planning Board's 4/26/05 decision, regulatory agreement, master deed documents).
- A letter from Nancy Tavernier, Chair of the Acton Community Housing Corporation in support of the requested change, dated 2/10/09.

2 FINDINGS AND CONCLUSIONS

- 2.1 The Applicant requested a re-designation of one affordable dwelling unit to be located in unit 30 instead of unit 22.
- 2.2 The proposed change in the affordable unit designation maintains the overall number of affordable units in Ellsworth Village.
- 2.3 Units 22 and 30 are both end units.

- 2.4 Changes in the affordable unit designation must be consistent throughout all relevant documents pertaining to Ellsworth Village.
- 2.5 The requested modification is minor, does not change the project in any significant way from how it was approved in the Original Decision, and therefore does not warrant a public hearing.

3 BOARD ACTION

Therefore, the Board voted unanimously at the meeting to **APPROVE** the requested modification. Section 3.2.9 of the Original Decision is hereby amended so that condition 3.2.9 shall read as follows:

- 3.2.9 Units 11, 17, and 30 as shown on the Plan shall be the designated affordable units as shown on the Plan. However, the Board requests that the Applicant consider favorably exchanging unit 11 for one of the larger market-rate duplex units.

3.1 CONDITIONS

- 3.1.1 Except as modified herein, the Original Decision, and the plan approved thereunder, shall remain in effect.
- 3.1.2 All pertinent condominium documents such as the master deed including amendments and phases and the regulatory agreement shall be amended accordingly.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner

Copies to:

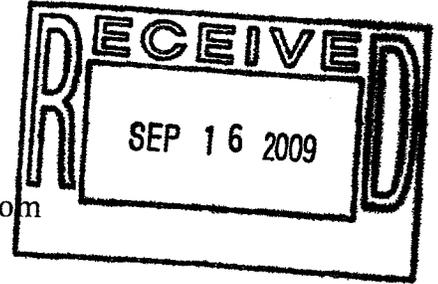
Applicant
Town Engineer
Town Clerk
Town Assessor

Building Commissioner
Municipal Properties Director
Natural Resource Director

Board of Health
Town Manager
Fire Chief

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Ellsworth Village, LLC
PO Box 985 Acton, MA 01720
978-266-9751 Fax 978-635-0988 authomes@msn.com



September 16, 2009

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

Re: Ellsworth Village Regulatory Agreement

Ellsworth Village, LLC, hereby requests that the Board of Selectmen sign the attached amendment to the above referenced Regulatory Agreement dated July 20, 2006, between Ellsworth Village, LLC, and the Town of Acton.

This amendment reflects the re-designation of one Affordable Unit to be located in Unit 30 instead of Unit 22. The re-designation was approved by the Planning Board on February 17, 2009.

Thank you for your assistance.

Sincerely,

ELLSWORTH VILLAGE, LLC


Donna Cisek

AMENDMENT TO REGULATORY AGREEMENT

Reference is hereby made to a Regulatory Agreement dated July 20, 2006 by and between Ellsworth Village, LLC, a Massachusetts Limited Liability Company, having an address at 25 Westford Lane, Acton, MA 01720 (“Developer”) and the Town of Acton, acting by and through its Board of Selectmen, having an address of 472 Main Street, Acton, MA 01720 (the “Municipality”) and recorded with the Middlesex South District Registry of Deeds, Book 47846, Page 246 (“Regulatory Agreement”).

Whereas, said Regulatory Agreement affects and encumbers the Affordable Units 17, 22 and 31 of the Ellsworth Village Condominium pursuant to paragraph 1 (incorrectly now numbered 6 at the top of page 2) contained therein;

Whereas, the Developer has requested the Municipality to re-designate one Affordable Unit to be located in Unit 30 instead of Unit 22;

Whereas, the Municipality has agreed to said re-designation pursuant to Amendment #2 of Decision 05-01, Ellsworth Village Senior Residence Special Permit recorded with the Middlesex South District Registry of Deeds, Book 52403, Page 291;

Now, therefore, paragraph 1 of the Regulatory Agreement is hereby amended as follows:

“1. This Regulatory Agreement affects and encumbers only the Affordable Units being Units numbered 17, 30 and 31 of the Ellsworth Village Condominium.

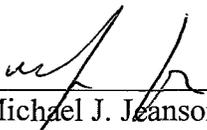
Unit Distribution. The distribution of the Affordable Units by Unit size shall be as set forth below:

	Unit 17	Unit 30	Unit 31
Initial Certified Sales Price	\$150,000.00	\$150,000.00	\$150,000.00”

In all other regards said Regulatory Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a sealed instrument as of the date first above written.

DEVELOPER:
ELLSWORTH VILLAGE, LLC



Michael J. Jeanson
Authorized Signatory

MONITORING AGENT AND MUNICIPALITY

The Town of Acton
Board of Selectmen

