

Betty McManus

From: "Tavernier" <ntavern@comcast.net>
To: "Nancy Tavernier" <ntavern@comcast.net>; "Kevin McManus" <KevinM@NEHE.com>; "Betty McManus" <ahabetty@attglobal.net>; "Dan Buckley" <DJB01720@hotmail.com>; "Bob Whittlesey" <rbwhittlesey@verizon.net>; "Ryan Bettez" <bettezfamily@yahoo.com>; "Pam Shuttle" <pam.shuttle@state.ma.us>; "Bernice Baran" <Bara437853@aol.com>
Sent: Monday, March 21, 2005 3:34 PM
Subject: draft comments for The Woodlands

I have reviewed the amended application for The Woodlands development. This is the proposed development of 64 townhouses on Parcel 4. These comments are due this Friday. If you have any comments, please let me know. I realize it is hard for you to match them up with the application, I apologize for not bringing the material with me to our last meeting. I will bring it tonight if anyone wishes to review it.

TO: Zoning Board of Appeals
FROM: ACHC
SUBJECT: Comments on amended submission from The Woodlands at Laurel Hill
DATE: March 21, 2005

The ACHC has reviewed the March 8, 2005 submission to the ZBA from the developers of The Woodlands at Laurel Hill. This original proposal has been amended to include Parcel 4 to be developed into 64 Townhouses as an age-restricted development for 55 and older households.

As we did with the original submittal, we will focus our comments on the "affordability" issues with just a couple of exceptions.

Here are our general comments:

1. We are pleased to see the addition of a local architect. The design of the townhouses is much more appealing than the preliminary designs submitted for the apartments. We still hold out hope that those designs can be improved.
2. We are curious about the projection for 17 +/- school aged children since we assumed this was going to be a traditional age restricted development that would not allow children to reside on the premises. We would like an explanation for this projection. Perhaps we misunderstood the intent to construct an age-restricted development.
3. We are concerned that in Section 7 of the filing, the monthly condo fees are listed as the same amount for both the market and the affordable units (\$150/mo). The affordable units must have discounted condo fees in accordance with DHCD policies. They must reflect the discount determined at the time of the purchase by comparing the market appraised value to the affordable selling price to establish the discount rate.
4. We would like details about the income and asset guidelines used by MassDevelopment to determine household eligibility for these units.

Here are our comments about the waivers to the ZBA comprehensive permit rule and regulations requested by the applicant:

1. 3.14.3.7 Location of Units

We oppose the granting of this waiver that requires a Recordable Plan Sheet showing the location of affordable housing units. We see no reason that the location of these units should not be known up front. We do not want the units to be grouped in the development but rather scattered throughout. The best way to ensure that is to see the assignment of the units up front in the process.

2. 3.16 Affordable Dwelling Units

We oppose the granting of this waiver. This section includes important information on the affordable dwelling units. Even though the information would also be included in the Regulatory Agreement after the permit is granted, we think it is essential information to have during the hearing process. We are particularly interested in sub-sections: 3.16.1 and 3.16.2.

3. 3.22 Local Needs

We oppose the granting of a waiver for this section. The ACHC has provided information to the applicant as part of the initial filing that covers the required information in (a) and (b). However, (c) is very important to the ACHC. It asks some significant questions about the proposed development and should be answered by the applicant.

The ACHC wishes to remind the ZBA that we submitted extensive comments on the initial filing in November 2004 that deal primarily with the affordability and design issues. We hope these issues will be addressed at the subsequent hearings.

Here is a summary of those comments:

1. The ACHC recommends that the Board of Appeals retain a qualified consultant at the applicant's expense to review the development and operating pro forma.
2. The proposed rent schedule anticipates maximum affordable unit rents and high-end market rents, but Acton's most significant rental housing need is housing affordable to persons with much lower incomes. The affordable rents at The Woodlands at Laurel Hill exceed the ability to pay of most low- or moderate-income households
3. The project does not guarantee long-term affordability. It is in the public interest to assure that affordable housing developments remain affordable in perpetuity or for the maximum period allowed by law.
4. The comprehensive permit application does not include an explicit commitment to making units available to "local preference" groups, such as existing residents of the Town or persons employed in Acton.
5. It is possible to accommodate high-density development in ways that achieve architectural compatibility with surrounding areas and harmony with a community's vision of itself. Unfortunately, The Woodlands at Laurel Hill stops short of accomplishing these ends. We think the developers could provide a superior design that reduces the visual impact of large, conventional apartment buildings and offers a distinctive product in the local housing market.

6. We recommend that the Board of Appeals ask the applicant to provide building plans for the club house so they can be reviewed. In addition, we recommend that the Board require the developers to provide a suitably equipped playground for young children, and outdoor and indoor recreation areas that are fully accessible to persons with disabilities.



TOWN OF ACTON
P.O. Box 681
Acton, Massachusetts, 01720
Telephone (978) 263-4776
Fax (978) 266-1408

Acton Community Housing Corporation
Nancy Tavernier, Chairman

TO: Zoning Board of Appeals
FROM: ACHC
SUBJECT: Comments on amended submission from The Woodlands at Laurel Hill
DATE: March 23, 2005

The ACHC has reviewed the March 8, 2005 submission to the ZBA from the developers of The Woodlands at Laurel Hill. This original proposal has been amended to include Parcel 4 to be developed with 64 Townhouses.

As we did with the original submittal, we will focus our comments on the "affordability" issues with just a couple of exceptions.

Here are our general comments:

1. We are pleased to see the addition of a local architect. The design of the townhouses is much more appealing than the preliminary designs submitted for the apartments. We still hold out hope that those designs can be improved.
2. We are curious about the projection for 17 +/- school aged children since we assumed this was going to be a traditional age-restricted development that would not allow children to reside on the premises. We would like an explanation for this projection. Perhaps we misunderstood the intent to construct an age-restricted development.
3. We question the monthly condo fees listed in Section 7 since they are the same amount for both the market and the affordable units (\$150/mo). We would expect the fees for the affordable units to be lower than the market unless the selling price of the affordable units is adjusted to compensate for the fees. We wonder if this figure is realistic given the common ownership of a treatment plant.
4. We would like details about the income and asset guidelines used by MassDevelopment to determine household eligibility for these units.

Here are our comments about the waivers to the ZBA comprehensive permit rule and regulations requested by the applicant:

1. 3.14.3.7 Location of Units

We oppose the granting of this waiver that requires a Recordable Plan Sheet showing the location of affordable housing units. We see no reason that the location of these units should not be known up front. We do not want the units to be grouped in the development but rather scattered throughout. The best way to ensure that is to see the assignment of the units up front in the process.

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The ACHC wishes to remind the ZBA that we submitted extensive comments on the initial filing in November 2004 that deal primarily with the affordability and design issues. We hope these issues will be addressed at the subsequent hearings.

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4. The comprehensive permit application does not include an explicit commitment to making units available to "local preference" groups, such as existing residents of the Town or persons employed in Acton.
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ends. We think the developers could provide a superior design that reduces the visual impact of large, conventional apartment buildings and offers a distinctive product in the local housing market.

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March 30, 2005

ACTON HOUSING AUTHORITY

68 Windsor Avenue

P.O. Box 681

Acton, MA 01720-0681

(978) 263-5339 fax (978) 266-1408

TDD# 1-800-545-1833 ext. 120

Mr. Jonathan Wagner
Chairman, Zoning Board of Appeals
Acton Town Hall
472 Main Street
Acton, MA 01720

Dear Mr. Wagner:

The Acton Housing Authority's (AHA) previously submitted comments and recommendations regarding Woodlands at Laurel Hills Comprehensive Permit application in our letter dated November 1, 2004. While we have been asked to comment regarding the revised comprehensive permit application showing a conceptual development plan for 64 additional townhouse style family units located on lot 4 our original comments and recommendations remain unchanged.

Here are our original comments and recommendations:

1). The proposed rent schedule does not address Acton's affordable rental housing need for low-income persons.

Recommendation: A percentage of the affordable rental units to meet HUD's Fair Market Rate Section 8 Voucher Program.

2). The proposed bedroom mix of one and two bedrooms does not address the three bedroom housing need in Acton.

Recommendation: At least six to ten three bedrooms be added to the mix

3). No guarantee of long term affordability.

Recommendation: Require a perpetual use restriction and regulatory agreement.

4). No legal document protecting the affordability of project against foreclosure.

Recommendation: Require a covenant to protect affordability

5). No marketing plan giving Acton applicants Local Preference.

Recommendation: Require project to contain condition that 70% of the units be made available to prospective applicants meeting the Town's Local Preference.

Sincerely,

Naomi E. McManus
Executive Director



Betty McManus

From: "Tavernier" <ntavern@comcast.net>
To: "Stephen D. Anderson" <SAnderson@AndersonKreiger.com>
Cc: <ahabetty@attglobal.net>; "Don P. Johnson (E-mail)" <djohnson@town.acton.ma.us>; "John Murray III (E-mail)" <jmurray@acton-ma.gov>
Sent: Thursday, April 28, 2005 2:31 PM
Subject: Re: Acton/40B LaurelHill - Continued ZBA Hearing

Hi Steve,

Here is the information I sent you March 31 that listed our issues and the anticipated resolution of them after Betty and I met with Mark Brooks and Dave Hale on March 30.

1. The rents that will be charged will be structured to include households at 60-80% of the AMI. They understand the 30% income for housing costs measurement and will adjust the rents accordingly to meet those income levels. We insist that the rents will either include heat and hot water or the rents will be adjusted downward. HUD Fair Market Rents will be used as the guideline for setting the affordable rents.
2. The affordable townhouse units on parcel 4 will be in scattered locations. The apartment units will not be specifically identified as affordable units but will be scattered throughout the complex depending on what is available. As units become vacant they will be kept filled with the required 25% affordable households.
3. They have agreed to apply local preference to the affordable units as much as is practical. They would not want to be held to maintaining local preference if there were vacant apartments that could be filled with tenants without local connection. We agreed to that.
4. We have requested 3 bedroom units, they are willing to consider that request during final design but they are under the impression that the Selectmen are not enthusiastic about the idea due to the school-aged children financial impact. They were reluctant to have public discussion of the 3 bedroom option since it might trigger new opposition. Our housing plan identified 3-bedroom rentals as an important need but not necessarily for affordable households. We would still like to have some 3 bedroom units considered in the final design and they are agreeable to that.
5. They agreed to maintain the affordable unit deed restrictions into perpetuity.

We anticipate that these agreed to items will find their way into the ZBA decision as conditions and further into the Regulatory Agreement. I would hope to see a draft of these documents before final approval.

In short, we were assured that all our concerns will be met in the final agreements.

I hope this is the information you need.

Nancy

At 02:19 PM 4/28/2005, Stephen D. Anderson wrote:

Hi Nancy and Betty

MEMORANDUM

TO: Acton Board of Appeals

FROM: Stephen D. Anderson

DATE: May 7, 2005

RE: Acton/40B Laurel Hill: Anticipated Resolution of ACHC and AHA
Comments

Acton Community Housing Corporation (“ACHC”) and the Acton Housing Authority (“AHA”) agree that their concerns regarding this project can be addressed by including the following conditions in a comprehensive permit approving the project. The Developer does not object to the inclusion of these conditions.

I. Use Requirements

As this Comprehensive Permit Decision grants permission to build the Revised Project on the Site under the comprehensive permit statute, G.L. c. 40B, ' ' 20 - 23 (the AAct@), and as the Applicant has obtained the benefits of a comprehensive permit including the right to construct and use the Revised Project in a manner that is not in compliance with the Town of Acton=s zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the comprehensive permit=s override of local bylaws to promote affordable housing, no use shall be made of the Site or of any building or unit on the Site except for (a) residential use, (b) accessory uses customarily incidental to residential uses in Acton, and (c) necessary management activities with respect to the Revised Project. Notwithstanding the Zoning District in which the Site is located, as long as this comprehensive permit is in force and effect, no business or commercial use shall occur or be conducted on the Site or in any building or unit on the Site except in strict conformity with the preceding sentence.

II. Affordability Requirements

This Comprehensive Permit shall be recorded ahead of any mortgage or other instrument capable of being foreclosed upon, such that its provisions, including without limitation the following Affordability Requirements, shall survive any foreclosure on all or any portion of the property comprising the Revised Project. In the alternative, the Board will accept the recording of a Subordination, Nondisturbance and Attornment Agreement, which provides equivalent protection and which is in a form satisfactory to Town Counsel, to satisfy this condition.

• **Condominium Component**

- 1 **Number of Affordable Condominium Units:** Sixteen (16) of the units within the Condominium Component of the Revised Project shall be made available for purchase by households whose aggregate income is no greater than 80% of the area median income as published by the Department of Housing and Urban Development for the Boston Primary Metropolitan Statistical Area (the “Affordable Condominium Units”).
- 2 **Sale Prices:** The Affordable Condominium Units shall be sold to qualified households at prices deemed affordable to four-person households earning 70% of the area median income, utilizing cost assumptions developed under the MassHousing Housing Starts Program. The maximum sale prices for the Affordable Condominium Units shall be reviewed and approved by the Monitoring Agent, which shall initially be the Acton Board of Selectmen or its designee (the “Monitoring Agent”), at the time of lottery for the selection of buyers of the Affordable Condominium Units. Any modification or deviation from the designation of units as originally proposed and reviewed by the Monitoring Agent shall be subject to approval by the Monitoring Agent.
- 3 **Selection of Buyers for Affordable Condominium Units:** The Applicant shall obtain the Monitoring Agent’s approval of a Buyer Selection Plan for the sale of the Affordable Condominium Units prior to putting the Affordable Condominium Units on the market. Buyers shall be selected through a fair lottery process (the “Lottery”).

To the maximum extent permitted by law, first preference for the purchase of ____ of the sixteen Affordable Condominium Units shall be given to households that meet one or more of the following “Acton Connection” preference criteria:

- (a) at least one member of the household is currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, §4 and would be considered a resident under the United States Census Bureau’s residency guidelines.
- (b) at least one member of the household is either a son or daughter of an Acton resident.
- (c) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-

Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.

- (d) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.

The selection of purchasers for the Affordable Condominium Units, including the Lottery, shall be administered by a consultant retained by the Applicant, subject to the Monitoring Agent's approval. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Monitoring Agent. The Monitoring Agent shall oversee the lottery. The Applicant shall deposit the sum of \$2,500 into a municipal account established pursuant to G.L. c. 44, §53G to cover the Monitoring Agent's expenses in overseeing the Lottery.

Selected purchasers shall complete a first-time homebuyer course within three months of purchasing an Affordable Condominium Unit. The Monitoring Agent shall make available a list of such courses for purchasers to attend.

The Monitoring Agent shall develop rules and guidelines to carry out the provisions of this section, as necessary. Income eligibility shall be governed by the rules and regulations of MassHousing under the Housing Starts Program, or in default, the rules and standards employed by the Department of Housing and Urban Development in the selection of income-eligible tenants for publicly subsidized housing.

Disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Monitoring Agent. A party aggrieved by qualification-related decision of the Monitoring Agent may appeal the decision to the ZBA for a final determination.

The provisions of this section are intended to complement and not to override or supersede any applicable fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

- 4 Phasing-in of Affordable Condominium Units: Affordable Condominium Units shall be sold contemporaneous with the market-rate units in the Condominium Component of the Revised Project. No more than three certificates of occupancy shall be issued by the Building Commissioner for units designated for sale at fair market prices (the “Market Rate Condominium Units”) until at least one certificate of occupancy is issued for an Affordable Condominium Unit. The proportion of Market Rate Condominium Unit certificates of occupancy issued to Affordable Condominium Unit certificates of occupancy issued shall at no time exceed 3:1.
- 5 Perpetual Affordability Restriction: Prior to the issuance of any building permits, a Regulatory Agreement, in a form acceptable to Town Counsel shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) 25% of the units in the Revised Project will be sold and resold subject to a Deed Rider, in a form acceptable to Town Counsel, and (b) the Revised Project Owner’s profit shall be limited to 20% of the total development cost of the Revised Project as defined by the Regulatory Agreement and applicable regulations. The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Condominium Unit in the Revised Project at the time of each sale and resale, and the Deed Rider shall restrict each such Affordable Condominium Unit pursuant to the Decision in perpetuity in accordance with the requirements of M.G.L. c. 184, ' ' 31-33.⁶ After obtaining the ZBA’s final approval of the Regulatory Agreement and Deed Rider, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of the Department of Housing and Community Development (formerly the Executive Office of Communities and Development) (ADHCD@), if required pursuant to M.G.L. c. 184, ' 32 or other law. The Applicant shall submit to the ZBA written evidence of the Applicant=s efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction.

6 Pursuant to G.L. c. 184, ' 31, an affordable housing restriction means Aa right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low or moderate income in either rental housing or other housing or (b) restricting the resale price of all or part of the property in order to assure its affordability by future low and moderate income purchasers or (c) in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or assuring creation or retention of rental and other housing for occupancy by low and moderate income persons and families@ (emphasis added).

In any event, as the Decision grants permission to build the Revised Project under the comprehensive permit statute, G.L. c. 40B, ' ' 20 - 23 (the AAct@), and as the Applicant has obtained the benefits of a comprehensive permit, the Revised Project shall remain subject to the restrictions imposed by the Act so long as the Revised Project is not in compliance with the Town of Acton=s zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the comprehensive permit=s override of local bylaws to promote affordable housing. Accordingly, the Decision and the Deed Rider shall restrict each such Affordable Condominium Unit so long as the Revised Project is not in compliance with the Town of Acton=s zoning bylaw, so that those units continue to serve the public interest for which the Revised Project was authorized.⁷ It is the express intention of the Decision that the period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

In the event that the Applicant shall submit to the ZBA written evidence of the Applicant=s efforts to secure governmental approval of the perpetual restriction, the written denial thereof, and the grounds for denial; the Applicant shall (a) submit to the ZBA a proposed alternative form Deed Rider which, when approved by the ZBA and Town Counsel, shall be submitted to DHCD for such approval, and (b) grant to the Town of Acton or its designee in the Deed Rider a right of first refusal, in a form mutually acceptable to counsel for the Applicant and to Town Counsel, covering each Affordable Condominium Unit in the Revised Project which shall be triggered upon the expiration of the affordability period.

7. See *Zoning Board of Appeals of Wellesley V. Ardmore Apartments Limited Partnership*, 436 Mass. 811 (2002) ("[I]t is anomalous to suggest, as the owner does, that the legislation provides a temporal, short-term fix of insufficient affordable housing at the expense of local autonomy. Rather, the Act reflects a legislative intent to provide an incentive to developers to build affordable housing in cities and towns that are deficient in affordable housing, and a developer's commitment to help a city or town achieve its statutory goal is the *raison d'Atre* for the override of inhibiting zoning practices. But if housing developed under a comprehensive permit is >affordable= only temporarily (fifteen years in this case, according to the owner), a city or town may never achieve the long-term statutory goals: each time an affordable housing project reverts to market rentals, the percentage of low income housing units in a municipality decreases, the percentage of market rate units increases, and access to a new round of comprehensive permits is triggered. We see nothing to suggest that the Legislature had in mind such an endless revolving cycle, or contemplated that over time an ever increasing number of multi-family buildings could be constructed on vacant land in areas zoned for single-family homes, as multi-family housing buildings were first added to and then subtracted from a town's statutory goal."

- 6 Profit Cap: To conform to the intent of the Act that profits from the Condominium Component of the Revised Project be reasonable and limited, the Applicant shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Condominium Component of the Revised Project, exclusive of development fees (the "Profit Cap"). The Monitoring Services Agreement shall provide that upon the closing of the sale of the last unit conveyed by the Applicant, the Monitoring Agent at the Applicant's expense shall cause a certified public accountant ("CPA") to review the financial records of the Revised Project to determine whether the Applicant has conformed to the Profit Cap requirements of this Comprehensive Permit Decision. The CPA shall submit to the ZBA and the Monitoring Agent a CPA certification that either the Applicant has conformed to the Profit Cap, or certifying the actual profit from the development. If the Applicant has exceeded the 20% Profit Cap, the Applicant shall donate the excess profit above the Profit Cap to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation affordable housing in the Town of Acton.

In determining whether the Applicant has conformed to the Profit Cap requirements of this Comprehensive Permit Decision, the CPA shall be required to certify that (a) the total profit to the Applicant for the Condominium Component of the Revised Project does not exceed twenty percent (20%) of total development costs of the Condominium Component of the Revised Project, exclusive of development fees; (b) the Applicant has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Applicant or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Condominium Component of the Revised Project in order to artificially inflate the costs of development of the Condominium Component of the Revised Project; (c) there have been no commissions charged on the Affordable Condominium Units which are required to be sold pursuant to a lottery selection process as provided by the Comprehensive Permit Decision; (d) for costs incurred for the benefit of both the Rental Component and the Condominium Component of the Revised project, the Applicant has made reasonable cost allocations between the two components of the Revised Project consistent with generally accepted accounting principles, and (e) the CPA has been provided access by the Applicant to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Revised Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular

attention to those arrangements between parties with overlapping ownership to owners of the Applicant. The Applicant shall provide the CPA reasonable access to any financial information reasonably necessary to make these determinations.

All costs of compliance with and enforcement of this Profit Cap condition, including legal fees incurred by the ZBA and/or the Town of Acton, shall be borne by the Applicant.

- 7 Regulatory Agreement: Prior to applying for a building permit for the any portion of the Revised Project, the Applicant shall submit to the ZBA a copy of a fully executed Regulatory Agreement between the Applicant, the Town of Acton, and _____, in a form mutually satisfactory to counsel for the Applicant and the Town, to be recorded with the Master Deed for the Condominium Component of the Revised Project, governing the protection and administration of the Affordable Condominium Units covered by the Decision which shall include, without limitation, provisions to (1) designate an entity acceptable to the ZBA to monitor the selection of the purchasers of the Affordable Condominium Units in the Revised Project, and (2) designate an entity acceptable to the ZBA to ensure that the Affordable Condominium Units continue as such in accordance with the requirements of the Decision. If for any reason the designated entity shall fail or refuse to administer the Affordable Condominium Units or shall cease to exist, the Applicant shall notify the ZBA and the ZBA shall designate another entity to administer those units.

- 8 Monitoring Services Agreement: Prior to commencement of any construction on the Site, the Applicant shall enter into a Monitoring Services Agreement, in a form substantially the same as the form used by MassHousing under the Housing Starts program and approved by Town Counsel, with the Monitoring Agent. The Applicant shall pay a monitoring services fee to the Monitoring Agent, which shall be deposited in an account established for this purpose. The monitoring services fee shall be determined by the Monitoring Agent, but shall not exceed \$20,000.

- 9 Style and Distribution of Affordable Condominium Units: All Affordable Condominium Units shall be constructed to be similar in exterior appearance to the Market Rate Units in the Condominium Component of the Revised Project. The Affordable Condominium Units shall be evenly distributed throughout the Condominium Component of the Revised Project. In addition, all Affordable Condominium Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, HVAC, and other amenities all as more fully shown in the approved Plans.

- **Rental Component**

- 10 Number of Affordable Rental Units Seventy-Four (74) of the units within the Rental Component of the Revised Project shall be made available for rental by households whose aggregate income is no greater than 80% of the area median income as published by the Department of Housing and Urban Development for the Boston Primary Metropolitan Statistical Area (the “Affordable Rental Units”).

- 11 Rental Prices: The Affordable Rental Units shall be rented to qualified households at rents deemed affordable to four-person households earning 60%-80% of the area median income, utilizing the cost assumptions under the subsidy program financing the Revised Project (either the Tax Exempt Bond Program for Rental Housing, or the Taxable Bond Program for Rental Housing) (hereinafter, the “Subsidy Program”), with the rent for ___ of the Affordable Rental Units targeted to meet HUD's Section 8 Program (or a successor federal program) enabling Section 8 Holders to live in the development.. The initial maximum rental prices for the Affordable Rental Units shall be reviewed and approved by the Monitoring Agent, which shall initially be the Acton Board of Selectmen or its designee (the “Monitoring Agent”), at the time of lottery for the selection of Rentals of the Affordable Rental Units. Any modification or deviation from the designation of units as originally proposed and reviewed by the Monitoring Agent shall be subject to approval by the Monitoring Agent. Heat and hot water shall be included in the rent for the Affordable Rental Units.

- 12 Selection of Tenants for Affordable Rental Units: The Applicant shall obtain the Monitoring Agent’s approval of a Tenant Selection Plan for the rental of the Affordable Rental Units prior to marketing the Affordable Rental Units. Tenants shall be selected through a fair lottery process (the “Lottery”).

To the maximum extent permitted by law, first preference for the rental of 51 (70%) of the 74 Affordable Rental Units shall be given to households that meet one or more of the following “Acton Connection” preference criteria:

- (a) at least one member of the household is currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, §4 and would be considered a resident under the United States Census Bureau’s residency guidelines.

- (b) at least one member of the household is either a son or daughter of an Acton resident.
- (c) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Rental Unit lottery application deadline.
- (d) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Rental Unit lottery application deadline.

The initial selection of tenants for the Affordable Rental Units, including the administration of the Lottery, shall be administered by a consultant retained by the Applicant, subject to the Monitoring Agent's approval. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Monitoring Agent. The Monitoring Agent shall oversee the lottery. The Applicant shall deposit the sum of \$10,000 into a municipal account established to cover the Monitoring Agent's expenses in overseeing the Lottery.

The Monitoring Agent shall develop rules and guidelines to carry out the provisions of this section, as necessary. Income eligibility shall be governed by the rules and regulations of the Subsidy Program, or in default, the rules and standards employed by the United States Department of Housing and Urban Development in the selection of income-eligible tenants for publicly subsidized housing.

Disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Monitoring Agent. A party aggrieved by qualification-related decision of the Monitoring Agent may appeal the decision to the ZBA for a final determination.

The provisions of this section are intended to complement and not to override or supersede any applicable fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, MassDevelopment, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

- 13 Phasing-in of Affordable Rental Units: Affordable Rental Units shall be rented contemporaneous with the market-rate units in the Rental Component of the Revised Project. No more than three certificates of occupancy shall be issued by the Building Commissioner for units designated for rent at fair market rents (the “Market Rate Rental Units”) until at least one certificate of occupancy is issued for an Affordable Rental Unit. The proportion of Market Rate Rental Unit certificates of occupancy issued to Affordable Rental Unit certificates of occupancy issued shall at no time exceed 3:1.
- 14 Perpetual Affordability Restriction: Prior to the issuance of any building permits, a Regulatory Agreement, in a form acceptable to Town Counsel shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that 25% of the units in the Rental Component of the Revised Project will be rented and re-rented by households whose aggregate income is no greater than 80% of the area median income as published by the Department of Housing and Urban Development for the Boston Primary Metropolitan Statistical Area (the “Affordable Rental Units”) at rents that are affordable to households earning no greater than 60% of said area median income. The Regulatory Agreement shall be in a form acceptable to Town Counsel. The Regulatory Agreement for the Rental Component of the Revised Project shall stipulate that the Applicant’s profit, cash flow and distribution of return to the Applicant or to the members, partners, shareholders, or other owners of the Applicant will be limited as set forth in MassDevelopment’s equity and limited dividend policy, and shall provide mechanisms to enforce this requirement. The Regulatory Agreement shall be recorded in the applicable Registry(ies) of Deeds and shall encumber the Rental Component of the Revised Project pursuant to the Decision in perpetuity in accordance with the requirements of M.G.L. c. 184, ' ' 31-33. After obtaining the ZBA’s final approval of the Regulatory Agreement, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a Regulatory Agreement and affordability restrictions to last in perpetuity, including without limitation the approval of the Department of Housing and Community Development (formerly the Executive Office of Communities and Development) (ADHCD@), if required pursuant to M.G.L. c. 184, ' 32 or other law. The Applicant shall submit to the ZBA written evidence of the Applicant’s efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction.

In any event, as the Decision grants permission to build the Revised Project under the comprehensive permit statute, G.L. c. 40B, ' ' 20 - 23 (the AAct@), and as the Applicant has obtained the benefits of a comprehensive permit, the Revised Project shall remain subject to the

restrictions imposed by the Act so long as the Revised Project is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the comprehensive permit's override of local bylaws to promote affordable housing. Accordingly, the Decision and the Regulatory Agreement shall restrict the Rental Component of the Revised Project so long as the Revised Project is not in compliance with the Town of Acton's zoning bylaw, so that those units continue to serve the public interest for which the Revised Project was authorized. It is the express intention of the Decision that the period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

In the event that the Applicant shall submit to the ZBA written evidence of the Applicant's efforts to secure governmental approval of the perpetual restriction, the written denial thereof, and the grounds for denial; the Applicant shall submit to the ZBA a proposed alternative form Regulatory Agreement which, when approved by the ZBA and Town Counsel, shall be recorded as the Regulatory Agreement covering the Rental Component of the Revised Project.

- 15 Monitoring: To ensure that the Rental Component of the Revised Project perpetually conforms to the intent of the Act, the conditions of the Decision, and the terms of the Regulatory Agreement, the Applicant shall enter into a Monitoring Services Agreement for the Rental Component, under which the Monitoring Agent shall annually certify: (a) whether the Applicant's profit, cash flow and distribution of return to the Applicant or to the members, partners, shareholders, or other owners of the Applicant complies with MassDevelopment's equity and limited dividend policy, and (b) whether the Revised Project complies with the affordability requirements of the Decision and the Subsidy Program. The Monitoring Services Agreement shall provide that upon the issuance of an occupancy permit for the last building in the Rental Component of the Revised Project, and annually thereafter, the Monitoring Agent at the Applicant's expense shall cause a certified public accountant ("CPA") to review the financial records of the Revised Project to determine compliance with MassDevelopment's equity and limited dividend policy and the affordability requirements of the Decision and the Subsidy Program. The CPA shall submit to the Monitoring Agent a CPA certification that either the Applicant has conformed to MassDevelopment's equity and limited dividend policy, or certifying the actual profit from the Rental Component of the Revised Project in excess of MassDevelopment's equity and limited dividend policy. If the Applicant has exceeded the allowable profit, the Applicant shall donate the excess profit to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the

construction or rehabilitation affordable housing in the Town of Acton. The CPA's certification shall also address the Applicant's compliance with the affordability requirements.

Without limitation, in determining whether the Applicant has conformed to the Profit Cap requirements of the Comprehensive Permit Decision in the first year of operation, the CPA shall evaluate the Applicant's allocation of costs incurred for the benefit of both the Rental Component and the Condominium Component of the Revised Project, to determine whether the Applicant has made reasonable cost allocations between the two components of the Revised Project consistent with generally accepted accounting principles. The Applicant shall provide the CPA reasonable access to any financial information reasonably necessary to make these determinations and to verify whether the income and expenses of the Revised Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Applicant.

All costs of compliance with and enforcement of the limited dividend and affordability requirements, including legal fees incurred by the ZBA and/or the Town of Acton, shall be borne by the Applicant.

- 16 Regulatory Agreement: Prior to applying for a building permit for the Rental Component of the Revised Project, the Applicant shall submit to the ZBA a copy of a fully executed Regulatory Agreement between the Applicant, the Town of Acton, and MassDevelopment in a form mutually satisfactory to counsel for the Applicant and the Town, to be recorded with the applicable Registry(ies) of Deeds, governing the protection and administration of the Affordable Rental Units covered by the Decision which shall include, without limitation, provisions to designate an entity acceptable to the ZBA to monitor the selection of the tenants of the Affordable Rental Units in the Revised Project, and (to ensure that the limited dividend requirement and the affordability requirement are complied with for the term of the Regulatory Agreement. If for any reason the designated entity shall fail or refuse to administer the Affordable Rental Units or shall cease to exist, the Applicant shall notify the ZBA and the ZBA shall designate another entity to administer those units.
- 17 Monitoring Services Fees: Prior to commencement of any construction on the Site, the Applicant shall enter into a Monitoring Services Agreement subject to approval by Town Counsel, with the Monitoring Agent. The Applicant shall pay an initial monitoring services fee and subsequent reasonable and necessary annual monitoring services fees to the

Monitoring Agent, which shall be deposited in an account established for this purpose. The initial monitoring services fee shall be determined by the Monitoring Agent, but shall not exceed \$20,000.

- 18 Style and Distribution of Affordable Rental Units: All Affordable Rental Units shall be constructed to be similar in exterior appearance to the Market Rate Units in the Rental Component of the Revised Project. During the initial phase of renting units in the Revised Project, the Affordable Rental Units shall be evenly distributed throughout the Rental Component of the Revised Project. Thereafter, as rental units become vacant, they will be re-occupied in a manner that ensures compliance with the required 25% affordable households. In addition, all Affordable Rental Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, HVAC, and other amenities all as more fully shown in the approved Plans.



ACTON HOUSING AUTHORITY

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TDD# 1-800-545-1833 ext. 120

May 24, 2005

Mr. Jonathan Wagner
Chairman, Zoning Board of Appeals
Acton Town Hall
472 Main Street
Acton, MA 01720

Dear Mr. Wagner:

The Acton Housing Authority (AHA) is submitting our final comments regarding the Comprehensive Permit application of Woodlands at Laurel Hill. I have met with the developers David Hale and Mark Brooks on 2 separate occasions to discuss the Authority's concerns which were stated in our November 1, 2004 letter to the Board of Appeals. The developers have also met with the Acton Community Housing Corporation's full Board on 3 separate occasions; they have met with the Acton Selectmen and held a Public Information Session for abutters and Town Board Members.

I have listed below the Authority's original concerns that were identified in our November 1, 2004 letter and how they will be addressed:

1). AHA recommended: A percentage of the affordable rental units to meet HUD's FMR Section 8 Housing Choice Voucher Program enabling Section 8 Housing Choice Voucher Holders to live in the development.

The AHA recommends a percentage of the affordable rental units to meet HUD's FMR Section 8 Housing Choice Voucher Program enabling Section 8 Housing Choice Voucher Holders to live in the development. The developers have agreed in concept to set the rents for the affordable units at a level which would allow eligible households with incomes between 60% and 80% of the median income (AMI) to be served. The developer needs to define the specific number of units at each level and need to demonstrate that some of these would meet the FMR levels established by HUD.

2). AHA recommended: The development includes three bedroom rental units.

The AHA has withdrawn this recommendation as to require 3 BR units would reduce the total number of units in the proposed project and therefore reduce the value of the Town's mitigation package.

3 & 4). AHA recommended: A perpetual use restriction and regulatory agreements

Developers have agreed and Town Counsel will require a perpetual use restriction and regulatory agreements to last in perpetuity.

5). AHA recommended: First preference for 70% of the affordable units shall be given to households that meet Acton's definition of Local Preference.

Developers have agreed and Town Counsel will require 70% of the affordable units be given to households who meet Acton's Local Preference.

The Acton Housing Authority recommends that all the necessary affordable housing agreements be implemented and enforceable either by the Orders of Condition of the Comprehensive Permit or in the Regulatory or Monitoring Agreements as determined by Town Counsel and the Board of Appeals.

Sincerely,


Naomi E. McManus
Executive Director

EQUAL HOUSING OPPORTUNITY





Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
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pb@acton-ma.gov

MEMORANDUM

To: ZBA

Date: May 24, 2005

From: Planning Board 

Subject: Woodlands at Laurel Hill 40B Project

In light of your questions and concerns expressed to the Planning Board Chair at the Public Hearing, we have asked Town Staff to review the plans submitted for review and clarify and expand upon some of the comments and suggestions of our original memo to the ZBA on this proposed project:

On density:

The Planning Board had commented that the density of the proposed development exceeds the maximum density envisioned under the master plan for this site (5 dwelling units per acre under the affordable housing overlay district B). In the original plan submitted, the density was about 8¹/₂ units per acre and then, with the recent revelation of more housing shown on lot 4, the density rose to about 10.3 units per acre, whereby lot 4 is in the affordable housing overlay district A where density under local zoning would only be allowed to increase by 1.25 that of the underlying district – here 1 unit/2 acres.

In actual counts, the Woodlands project would create:

- In Acton: 296 1- and 2-bedroom rental apartment units with 444 bedrooms and +/-302,000 square feet of living space in total on +/-18.58 acres zoned affordable housing overlay district B.
 - 75 of these units (37 1-br., 38 2-br.) would be affordable. All 296 units would count towards Acton's affordable housing count under Ch. 40B.
- In Acton: 64 2-bedroom condominium townhouse units with 128 bedrooms and +/-107,000 square feet of living space in total on +/-14.21 acres zoned R-10/8 with affordable housing overlay district A.
 - 16 of these units would be affordable. 16 units would count towards Acton's affordable housing count under Ch. 40B.

(The applicant has indicated that after 40B approval they would like to convert this portion to a senior residence special permit development under Acton's zoning rules. Under that, the 64-unit count would probably fit).

- In Westford: 84 1- and 2-bedroom rental apartment units (total bedrooms unknown) on +/-36.14 acres (zoning unknown).
 - 22 of these units would be affordable. All 84 units would count towards Westford's affordable housing count under Ch. 40B.

- In Westford: One new single-family home, market rate (included on the above acreage).

In total, 445 units on +/-69 acres for an overall density of 6.45 units per acre.

Comparisons with single family home developments:

Looking at Acton's portion, the total count is 360 units, with 572 bedrooms and 409,000 square feet of living space. Most of us are more familiar with single-family homes. Therefore, it might be a valuable exercise to translate this into single family homes. Assuming 4-bedroom homes, the above bedroom count would translate into 143 new single-family homes or assuming....

3,000 square feet, would translate into 136 single-family homes.

3,500 square feet, would translate into 117 single-family homes.

4,000 square feet, would translate into 102 single-family homes.

The current Robbins Mill development in North Acton will have 90 single family homes clustered in a PCRC. The Acorn Park PCRC has 82 single family homes; Bellows Farm has 117.

A frequent measure of impact is traffic:

Based on ITE Trip generation statistics the 360 total units as proposed (1- & 2-bedrooms only and no elderly restrictions) would generate about 2,340 trips on an average weekday. For comparison, 143 single-family homes generate about 1,369 trips on an average weekday.

A note on density and community standards:

Density limits have no universally applicable standards that might be found in some textbook or scientific publication. There may be site- or community-specific limitations: A sewer treatment plant may have limited capacity; a soil absorption bed for on-site wastewater treatment may have its physical limits; a site (such as is the case with the Westford portion of Woodlands) may be constricted by wetlands and the presence of wildlife species that are considered of special concern or endangered; building heights may be limited because the community does not have the firefighting equipment to deal with high-rise buildings; etc. Some of these limitations could be overcome, others not.

The fact is that Acton's planning goals, and with it the resulting zoning limitations, are an expression of community standards that have no universal application and have nothing much to do with insurmountable capacity limitations. It is about choices and every community has made different choices. How else, do we explain the differences between Acton and, say, Cambridge or Boston? Both places more or less meet the needs of people who live there, some prefer this, and others prefer that.

Acton's density limits (just like setbacks, or current height limits) are Acton's unique community standards that evolved over time through custom or deliberate planning exercises such as the master plan. In a master plan, and in any resulting zoning bylaw, probably 80% is somehow or other grounded in community standards – general, "feel-good", regulations that, more often than not, tend to preserve the status quo while acknowledging landowners constitutional rights, existing State land use laws, and certain community needs such as affordable housing, a healthy commercial tax base, or clean drinking water. It is a balancing act between all these issues and as many opinions on them as there are people who choose to participate in the public process.

On housing density and affordability, the master plan (1990 and revised in 1998) sought to find a balance between the goal of maintaining the character of a relatively low-density residential community, while also addressing the goal to create more affordable housing, which can only be done through increased densities or government subsidies. So, the affordable housing zoning overlay was created within the context of these conflicting goals. The 5 units per acre cap in the affordable housing overlay district B, was then chosen rather arbitrarily on the basis of a general comfort feeling among the decision makers at the time and what they felt would be acceptable at Town Meeting. 6 units per acre might have worked, too, maybe even 8. We will never know. In that context, the proposed 10 units/acre, or so, is inconsistent with the master plan, but one will not find a direct citation in the master plan, let alone scientific justification. Rather, the 1990 recommendation for the implementation of the affordable housing overlay is merely the regulatory proposal for implementing what was determined to be an acceptable density within the context of the community standards that the planning committee at the time felt it had ascertained during the master planning process.

We hope that this clarifies comments made to you in our previous memo and assists you in making an informed but still difficult decision.

Final

TO: Acton Zoning Board of Appeals
FROM: Acton Community Housing Corporation
SUBJECT: Comments on Affordable Housing issues for proposed development: The Woodlands at Laurel Hill
DATE: May 25, 2005
cc: Town Counsel, David Hale, Mark Brooks, Joel Kahn

The Acton Community Housing Corporation (ACHC) has submitted comments to the ZBA in Memorandums dated: 11/1/04, 11/29/04, 12/2/04, and 3/23/05. Most of our comments focused on the affordable housing aspects of the proposal.

The developers of The Woodlands proposal have met with the full ACHC on 3 occasions since April 2004 including a public information session for abutters and town board members. In addition, ACHC members Nancy Tavernier and Betty McManus have met with Dave Hale and Mark Brooks twice and had several follow-up phone conversations with them. Throughout the process, ACHC's concerns were discussed and negotiated to the point of agreement with one exception. Listed below are the major concerns that were identified by the ACHC, as they relate only to affordable housing, and the resolution of these concerns by agreement in principle with the developers. ACHC voted on 5/19/05 to endorse these agreements.

Concern	ACHC recommendation	Developer agreement?	Status
Rental Prices	Eligible households for affordable apartment units qualify at 60-80% of area median income for a 1 - 4 person household	Yes, in concept. ACHC wants to be assured that the full range of eligible households (60-80% AMI) will be served. We are not sure what the mechanics are for getting this done. The affordable rental units should be distributed as equally as possible among the income groups. We do not want to see the majority of the affordable units being rented to 80% AMI households. We also want the household size designation be 1-4 persons.	Pending
Utility allowance for rentals	Heat and hot water expense should be factored into the affordable rent	Yes. Developer has option of either paying the tenant utilities or will issue a utility credit each	Done

		month to compensate for the cost of heat and hot water	
Local Preference for tenants and first time homebuyers	First preference for 70% of the affordable units shall be given to households that meet the ACHC definition of Local Preference	Yes	Done
Monitoring of household income requirements for eligible tenants. Reporting responsibilities.	It should be made clear whose responsibility it will be for the monitoring and verifying of eligible households for the rental units. There should also be a reporting requirement to the state and ACHC on the status of the affordable rentals. The Applicant must be financially responsible for this requirement.	Not discussed	Pending
Lottery consultant	Owner must retain lottery consultant to administer the marketing plan and lottery (home ownership units)	Yes	Done
Long term affordability	Deed restrictions on the affordable units should last in perpetuity	Yes	Done
Style and Distribution of affordable rental units	All affordable units, rental and homeownership, shall be similar in exterior appearance and shall be evenly distributed throughout the project. Affordable homeownership units shall be designated on the plan while the rental units will not be so designated due to the turn-over issue.	Yes	Done
Condominium units sale price	The Affordable Condo units shall be sold to households earning 70-80% of the area median income	Yes	Done
3 bedroom units	One of the housing needs in Acton is for 3 bedroom rental	No. To include 3 BR units would require the	Done

	units, market and affordable. ACHC was seeking consideration of 3 bedroom units	reduction of total number of units and therefore reduce the value of the Town mitigation package. ACHC has withdrawn its request for 3 BR units.	
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In ACHC's opinion, it is important for all the necessary affordable housing agreements to be implemented and enforceable. Whether the conditions are placed in the comprehensive permit or in the Regulatory or Monitoring Agreements does not matter to ACHC. That is a decision for Town Counsel and the Board of Appeals.

In conclusion, the new Community Development Plan entitled "To Live in Acton" identified the following housing needs for the Town of Acton through a needs assessment process. We find it is worth repeating them here since many of these needs will be met by the ultimate completion of The Woodlands at Laurel Hill development. ACHC recommends the Board's approval of this comprehensive permit.

Acton's specific housing needs identified in 2004 in order of priority:

1. Affordable rental units for very-low and low-income families;
2. Affordable rental units designed for low-, moderate- and middle-income senior citizens and persons with disabilities;
3. Affordable homeownership units for moderate-income families;
4. Affordable homeownership units in a range of residential use types and sizes for moderate and middle-income seniors; and
5. Homeownership units at below-market prices, affordable to middle-income homebuyers.

TO: Acton Zoning Board of Appeals
 FROM: Acton Community Housing Corporation
 SUBJECT: Comments on Affordable Housing issues for proposed development: The Woodlands at Laurel Hill
 DATE: May 19, 2005

The Acton Community Housing Corporation (ACHC) has submitted comments to the ZBA in Memorandums dated: 11/1/04, 11/29/04, 12/2/04, and 3/23/05. Most of our comments focused on the affordable housing aspects of the proposal.

The developers of The Woodlands proposal have met with the full ACHC on 3 occasions since April 2004 including a public information session for abutters and town board members. In addition, ACHC members Nancy Tavernier and Betty McManus have met with Dave Hale and Mark Brooks twice and had several follow-up phone conversations with them. Throughout the process, ACHC's concerns were discussed and negotiated to the point of agreement with one exception. Listed below are the major concerns that were identified by the ACHC, as they relate only to affordable housing, and the resolution of these concerns by agreement in principle with the developers. ACHC voted on _____ to endorse these agreements.

Concern	ACHC recommendation	Developer agreement?	Status
Rental Prices	Eligible households for affordable apartment units qualify at 60-80% of area median income for a 1 - 4 person household	Yes, in concept. ACHC wants to be assured that the full range of eligible households (60-80% AMI) will be served. We are not sure how to structure this part of the agreement. The eligible households should be distributed as equally as possible among the income groups. We do not want to see the majority of the affordable units being rented to 80% AMI households. We also want the household size designation be 1-4 persons.	Pending
Utility allowance for rentals	Heat and hot water expense should be factored into the affordable rent	Yes. Owner has option of either paying the tenant utilities or will issue a utility credit each month	Done



ACTON HOUSING AUTHORITY

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June 1, 2005

Mr. Jonathan Wagner
Chairman, Zoning Board of Appeals
Acton Town Hall
472 Main Street
Acton, MA 01720

Dear Mr. Wagner:

The Acton Housing Authority (AHA) is submitting an additional comment regarding the Authority's letter dated May 24, 2005 in which the developer was asked to demonstrate that some of the "affordable units" would be set aside to meet the Fair Market Rents levels established by HUD.

In speaking to one of the developers, he expressed a concern that if a specific number of the "affordable units" were designated for the Section 8 Housing Choice Voucher Program and they went vacant for a period of time, the financial viability of the project would be affected. The developers have assured the Authority of their willingness to rent to Section 8 Voucher Holders at HUD's approved Fair Market Rents.

Therefore, the Authority would like to ask that the developer agree to contact the AHA thirty (30) days before a unit is vacant and if the Authority is unable to fill the unit in that time frame, the developer could proceed to fill the "affordable unit" with an income eligible household.

It was never the Authority's intention to financially impact the project and if there is a way of structuring an agreement with the developer, the Authority's concerns would be addressed.

Sincerely,

Naomi E. McManus
Executive Director



EQUAL HOUSING OPPORTUNITY

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

Fax (978) 264-9630

TO: Acton Zoning Board of Appeals

FROM: Acton Community Housing Corporation

SUBJECT: Comments on 86-unit building for The Woodlands at Laurel Hill

DATE: July 21, 2005

cc: BOS, Town Manager, Town Counsel, David Hale, Mark Brooks, Joel Kahn

The ACHC met this morning in a regularly scheduled meeting and discussed the 86 unit building proposed for The Woodlands, which combines 3 buildings from the original conceptual design into one large building in a horseshoe design. ACHC found the aerial overview very helpful in putting the large building in context with the surrounding area of existing office buildings.

ACHC's main concern about The Woodlands project remains focused on being assured that a range of affordable income groups will be served by the affordable units. We are concerned that the owners will have trouble filling the affordable units should they be priced to primarily meet the high end of affordable households, the 80% AMI group. We have an agreement with the Applicant that a range of income groups, 60-80% AMI, will be served, the specific language in the agreement has not yet been resolved.

We find the marketing argument presented by the developer, in regard to the projected increases in the 55+ area population, to be valid. To the extent that this age group can be attracted to units in a building with elevators, we believe this would enhance the overall economic viability of the development. We would hope the amenities provided in the large building would help keep the rents affordable in the long term for the entire development.

Acton's relevant housing needs identified in 2004 as #1 and #2, as part of the Community Development Plan "To Live in Acton," include these needs that would be served by the large building.

1. Affordable rental units for very-low and low-income families
2. Affordable rental units designed for low-, moderate- and middle-income senior citizens and persons with disabilities

ACHC believes the proposed 86 unit building that is 100% ADA compliant with 2 elevators would provide something unique in Acton. There are no multi-family developments with elevators anywhere in the town, except for the Robbins Brook assisted living facility. This is a desirable feature. We would like to see the entrance to the development be made as attractive as possible to minimize the visual effect of the large building as the first structure viewed upon entry.

Keeping in mind concerns about the affordable rents, the ACHC voted to support the inclusion of the 86 unit building in the final design and did not consider this to be a significant enough change in the design that it should lead to unreasonable delays in the approval process.

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

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TO: Acton Zoning Board of Appeals
FROM: Nancy Tavernier, Chair, ACHC
SUBJECT: ACHC vote to support The Woodlands
DATE: November 17, 2005
Cc: Don Johnson, Steve Anderson, Board of Selectmen, Garry Rhodes, David Hale, Mark Brooks, Joel Kahn

On November 17, 2005, the Acton Community Housing Corporation members voted to accept the following proposed language as a substitute for sections R. 1 and R. 2 in the draft decision on The Woodlands at Laurel Hill submitted by Town Counsel for review on Oct. 27, 2005. This language relates only to the affordable units in the rental component of the proposed development. This will bring to a close the ongoing issue ACHC has had with the provision of rental units to a range of household income groups. The proposed language:

At the option of the Applicant, either (i) twenty percent (20%) of the units are to be restricted for occupancy by persons of low or moderate income as defined in 760 CMR 30.00 for an occupant or occupants of a residential unit whose aggregate adjusted family income does not exceed 50% of the median gross income for the area, or (ii) twenty five percent (25%) of the units are to be restricted for occupancy by persons of low or moderate income as defined in 760 CMR 30.00 for an occupant or occupants of a residential unit whose aggregate adjusted family income does not exceed 80% of the median gross income for the area, all in accordance with the applicable rules, regulations and guidelines of the subsidizing agency.

To the extent there is any conflict between the terms and conditions of this comprehensive permit and the terms and conditions of the Regulatory Agreement, the Residential Compliance Agreement or any other document entered into between the Applicant and the subsidizing agency dealing with the marketing and rental of the affordable units, any limited dividend provisions and any monitoring provisions (collectively, the "Subsidizing Agency Documents"), the terms of the Subsidizing Agency Documents shall control.

The ACHC has advocated since April 2004 to make this project as affordable as possible to meet the identified housing needs of the community. It was our hope that units could be rented to eligible households at an income range of 60-80% of the Area Median Income. After reviewing the rules and regulations of the subsidizing agencies and the Regulatory Agreement language required by these agencies, we have agreed to accept the fact that

our request cannot be met under the current rules and economics of affordable housing development. We are disappointed but accepting of the outcome.

Of the two options cited in the proposed wording, the ACHC would like to state its strong preference for option (i) that 20% of the units would be rented to households at 50% of the AMI. This is not intended to be a binding preference since we recognize the financing decisions are beyond our control. We urge the developers to fully explore the MassHousing option.

After reviewing the wording in sample Regulatory Agreements from Mass Development and MassHousing, we were relieved to see comprehensive language that covers the methodology of calculating rents, offsets for utility allowances, tenant selection, Section 8 tenants, annual monitoring for compliance, and occupancy analysis. It is this degree of detail that ACHC was seeking in the documents throughout the process. We believe it appropriately belongs in the Regulatory Agreement since that is the default document should any conflict arise in the future. In our opinion, there is no need to repeat it in the Decision.

In conclusion, ACHC voted unanimously to support The Woodlands at Laurel Hills.