

Acton Community Housing Corporation
Nancy Tavernier, Chairman
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TO: Board of Selectmen
FROM: Nancy Tavernier, Chair
SUBJECT: ACHC comments on Residences at Lillian
DATE: July 1, 2011
Cc Steve Ledoux, Roland Bartl

The Board of Selectman has been asked to provide comments to MassHousing in regard to a proposed 8-unit 40B located at 19 Bulette Road on a 1.9 acre parcel that extends to Lillian Road. ACHC is providing these comments to you for your consideration when preparing your own comments. ACHC will not comment directly to MassHousing since the Selectmen, as Chief Executive Officers, have standing in this process. This memo contains more explanation than usual to help Board members come up to speed on the Comprehensive Permit (40B) process since four of the members have not been on the board for a 40B review. The last 40B came before the Board in 2009.

BASIC 40B PROCESS

Chapter 40B is a state statute, which enables local Zoning Boards of Appeals (ZBAs) to approve affordable housing developments under flexible rules if at least 25% of the units have long-term affordability restrictions. Also known as the Comprehensive Permit Law, Chapter 40B was enacted in 1969 to help address the shortage of affordable housing statewide by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions.

The goal of Chapter 40B is to encourage the production of affordable housing in all cities and towns throughout the Commonwealth. The standard is for communities to provide a minimum of 10% of their housing inventory as affordable. For those communities that fall below that threshold, a 40B development can be proposed (communities above the 10% threshold can still accept 40B development proposals at their choice). The affordable units are reserved for households who make less than 80% of median household income for the area. Most of the residents in the affordable apartments and homes earn less than \$60,000 per year.

To qualify for Chapter 40B, a development proposal must first be approved under a state or federal housing program, such as **MassHousing**, MassDevelopment, the Department of Housing and Community Development, or the U.S. Department of Housing and Urban Development. Towns are allowed to establish a local preference for residents (currently, up to 70% of the units can be for local preference). Developers (whether for-profit or nonprofit) must also agree to restrict their profit to a maximum of 20% in for-sale developments.

After a project has been determined to be eligible by the state agency, the developer can submit an application for a comprehensive permit to the local Zoning Board of Appeals (ZBA). The ZBA is empowered to grant all local approvals necessary for the project after consulting with other relevant boards, such as the Planning Board, and the Board of Health. This results in a more streamlined review process at the zoning board, although it typically involves a number of hearing sessions. State regulations, such as the Wetlands Protection Act, Title 5, and all building codes, remain fully in effect under the comprehensive permit.

Basic Steps – Summary

1. Developer applies to a state housing program, in this case MassHousing
2. Town is notified and given a copy of the application to provide comments to MassHousing within 30 days.
3. MassHousing will make a site visit during the 30 day review period, Town officials will be invited.
4. MassHousing will make a determination of whether or not the project is found to be eligible based on specific standards.
4. MassHousing will issue a letter to the Town of approved eligibility or denial.
5. Developer will then apply to the ZBA for a Comprehensive Permit.
6. If granted, construction will commence. If denied, an appeal to the DHCD Housing Appeals Committee could be made.

The Town is at Step #2 now. This is the only opportunity to comment on the proposed development until it is being heard by the ZBA, assuming it is found to be eligible by MassHousing. This is the time to make strong statements about any concerns the Town may have.

BACKGROUND

In 2006, the ACHC worked with the owner of this property to develop a conceptual plan for two single family homes to be located on the Lillian Rd side. This is a 1.9 acre parcel with an existing 5-BR house located on the Bulette Road side. The Board of Selectmen did not approve the application for the DHCD LIP (friendly 40B) project. In the case of a LIP, the Selectmen must support the application before it is submitted to DHCD. They had concerns about the remote location of the development and significant drainage and high groundwater problems. There was strong neighborhood opposition to the project.

In October 2009, ACHC was contacted by the engineer for the property owner to bring forth a revision of the original project. The proposal was a doubling of the density, four single family homes placed on the Lillian Rd. half of the 1.9 acre parcel. Many concerns were raised, some of them significant zoning, legal and design issues. ACHC did not hear anything more about this second proposal until notification by MassHousing that a filing had been made with them in March 2010. In April 2010, MassHousing conducted a site walk where many issues and concerns were raised, not the least of which was the status of the existing house proposed to be subdivided from the rest of the parcel, something that is not allowed by zoning. The neighborhood was fully engaged and helpful in identifying problems such as questionable easements, mislabeled lot lines, and significant drainage issues. Nothing more was heard about this 4-unit proposal until May 2011 when word was received that a revised proposal was filed with MassHousing.

This new proposal is yet another doubling of the units, 8 units of single family houses to be placed on the Bulette Rd. half of the parcel replacing the existing house which will be razed. The other half of the

parcel will hold the shared septic system with a large mound. The design is currently under review by the Health Department.

MASSHOUSING PROCEDURE

The procedure at this point is for the Town to provide comments to MassHousing to help in their review process. MassHousing is the Subsidizing Agency and will provide financing to the development should it be ultimately approved so they will focus on the financial information. The first step in the approval process is the granting of a Project Eligibility Letter (PEL)by MassHousing after finding the project is eligible. Once the Project Eligibility Letter is issued, the developer can then apply to the ZBA for a comprehensive permit.

MassHousing has to make findings to determine if the project is eligible. They do this after the close of a 30-day review period when comments from the Town need to be received. The clock is ticking on this review period now, the application to the Town is dated June 6.

MassHousing must find:

1. The proposed Project appears generally eligible under the requirements of the housing subsidy program;
2. the site of the proposed Project is generally appropriate for residential development;
3. the conceptual project design is generally appropriate for the site on which it is located;
4. the proposed Project appears financially feasible within the housing market in which it will be situated;
5. an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's guidelines, and the Project appears financially feasible;
6. the Applicant is a public agency, a non profit organization, or a Limited Dividend Organization; and
7. the Applicant controls the site.

ACHC 2011 COMMENTS

ACHC believes it will be difficult for MassHousing to determine the project is eligible based on the incomplete application that fails to address bullets 3-7 in the above list of findings. When a developer files a proposal for a 40B, we expect them to adhere to the 40B rules. The comprehensive permit guidelines require the filing of a completed application with MassHousing with a copy to the Town. This has not been done and we consider it to be a serious deficiency in the application process. A copy of the application was received on June 6, 2011 after the Town made repeated requests for a copy since May. Many sections in the application are incomplete, inaccurate, or apply to the previous 4 unit proposal. ACHC recommends the Applicant be required to start over with a new application that relates solely to the current 8 unit proposal so the Town can make proper comments based on information that is

relevant to this proposal. For example, the *pro forma* provided was the one generated for the 4 unit project in 2010. This has no relevance at all to determining the financial feasibility for 8 units.

Specific comments from ACHC as they relate generally to the affordability and design aspects of the proposal:

1. There is an Application Checklist included in the Application packet that is completely ignored. None of the boxes are checked off and of the 13 items listed, only 2 are included, the locus map and the directions to the site. All other items are either missing, contain erroneous information, or are from the 2010 4 unit proposal and have little relevance to this one. The Town should request an extension of the comment period until a full relevant application is received, everything on the Application Checklist.
2. The unit size of the affordable units is listed as 2-bedroom while the market units are listed as 3-bedroom. This should not be permitted unless some of the market units are also 2-bedroom units. We could accept one of each as long as there were also 2BR market rate units.
3. The price for the affordable units is listed at \$210,000. This is too high for a 3-bedroom unit for a household of 4, never mind the proposed 2-bedroom unit for a household of 3. The current affordable price for a 2-bedroom unit at 80% of the AMI would be \$150,000 and for a 3-bedroom it would be \$175,000.
4. We have no way of knowing if the conceptual design is generally appropriate for the site since there are no architectural plans and no building elevations. Also the layout of the houses on the site is shown one way on the site plan and another on the sewage disposal design. We are unable to give an opinion on the appropriateness of the conceptual design.
5. One of the omitted documents of importance is the broker opinion on projected sales prices for the market rate units, listed as \$400,000. Of concern to ACHC, especially in the current housing climate, is the desirability of the product, whether it will sell and resell easily. The density and design as well as quality of the construction is one of our major concerns. A market analysis is needed for this proposal.
6. The Town of Acton prides itself on the value its citizens and town boards give to appropriate design of developments. In January 2011, all the state housing subsidizing agencies adopted new guidelines detailed in "Handbook: Approach to Chapter 40B Design Reviews." These guidelines apply specifically to 2 of the findings that MH must make: 1. the site of the proposed Project is generally appropriate for residential development; and, 2. the conceptual project design is generally appropriate for the site on which it is located. We fully expect MassHousing will follow these guidelines in determining appropriateness of the design and the site. We reiterate that without conceptual designs and architectural renderings, ACHC is unable to comment on the design. The Handbook can be found here:
<http://www.mass.gov/Ehed/docs/dhcd/cd/handbook-ch40b/handbook-approachtoch40b-designreview.pdf>

As with the 2009/2010 proposal, there are many other issues of concern that have been raised by town staff and the neighbors, such as drainage, storm water management, legal lot lines, and easements. We expect these issues will be addressed by other town departments and individuals, they are beyond the scope of ACHC's purview.

The Town of Acton has been very supportive of ACHC's work in facilitating the creation of affordable housing units in the town. We have worked with private developers on over thirteen 40B projects in the town and have constructed one of our own. The vast majority of them have been DHCD LIP projects, our preferred development option. This MassHousing project, The Residences at Lillian Road, has presented credibility challenges that have placed both the ACHC and the Board of Selectmen in a position that makes our job of supporting affordable housing more difficult.

We expect this development to receive the same scrutiny as all other affordable housing developments in Acton. The developer should be invited to the July 11 Board of Selectmen meeting to present his project and answer questions. Requiring a complete and accurate application should be the first step in the approval process. We urge the Selectmen to insist that MassHousing reject the application until the developer complies with their rules. But in the inexplicable event they choose to go forward without a complete application, full comments need to be made by the Town.