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**Planning Board**

# DECISION
05-01

FILED
APR 27 2005
TOWN CLERK
ACTON

**Ellsworth Village**
Senior Residence Special Permit
April 26, 2005

GRANTED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Ellsworth Village, LLC (hereinafter the Applicant) for property in Acton, Massachusetts, owned by: Robert R. Moran & Richard B. Warren, Trustees, 125-135 Great Rd. Realty Trust, 171 Great Road, Acton, MA 01720; James D. Fenton, 3 Milbery Lane, Acton, MA 01720; and Michael J. Jeanson, 12 Kennedy Lane, Acton, MA 01720.

The property is located in the rear of 133 Great Road and off the end of Brabrook Road in Acton, and consists of portions of parcels shown on the 2004 Acton Town Atlas map F-4 as parcel 69, and map F-5 as parcel 40 (hereinafter the Site).

This Decision is in response to an application for a Senior Residence special permit, received by the Acton Planning Department on December 1, 2004, pursuant to Section 9B of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations for Senior Residence special permits (hereinafter the Rules).

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public hearing on January 25, 2005. Mr. George Dimakarakos of the engineering firm Stamski and McNary, Inc. represented the Applicant. The hearing was continued to February 22, 2005, March 22, 2005 (without presentations, discussions, or deliberations), and April 12, 2004, and then closed. Board members Lauren S. Rosenzweig (Chairman), Gregory E. Niemyski (Vice Chairman), Ruth M. Martin, Stacy S. Rogers, Christopher R. Schaffner, and associate Edmund R. Starzec were present throughout the hearing. The Chairman designated Mr. Starzec to sit on the Board to act on this application pursuant to section 10.3.9 of the Bylaw. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

## 1 EXHIBITS

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

1.1 A plan entitled "Senior Residence Special Permit Plan for Ellsworth Village, Brabrook Road, Acton, Massachusetts" dated November 19, 2004, last revised on March 1, 2005, drawn by Stamski and McNary, Inc., 80 Harris Street, Acton, MA 01720, consisting of ten sheets.

1.2 Supplemental items and documentation required by the Rules consisting of:
- A properly executed Application for a Senior Residence Special Permit, dated 11/23/04.

- Filing fee.
- A completed Development Impact Report, form DIR.
- Certified abutters list.
- Use description.
- Draft master deed and bylaws for the Ellsworth Village Condominium containing age restrictions; and descriptions and restrictions for the common land, last revised 4/7/05.
- Documents, last revised 4/7/05, related to the affordable dwelling units including a written statement; draft deed restrictions, deed rider, and regulatory and monitoring agreements; development pro-forma; description of the criteria and process for the selection of affordable unit buyers; schedule for the construction of the affordable units; tabulation of affordable and market rate unit types; developer information.
- Copies of deed and plans of record.
- Drainage, earth removal, and water balance calculations.
- Traffic impact study.
- Architectural floor and elevation plans.

1.3 Additional information submitted by the Applicant:

- Conceptual pathway plan over abutting Town land to Brookside Shops, 145 Great Rd.
- Letter from Robert R. Moran regarding his exploration for access from Great Road with Mr. Al Frizzel, owner of the apartments at 121 Great Road, received on 2/18/05.
- Conceptual access plan for access via 121 Great Road, dated 1/31/05.
- A sketch of potential impact of access via 133 Great Road, received on 2/18/05.
- Letter from Stamski and McNary, Inc, accompanying the revised plan submission, dated 3/10/05, including a revised use description and supplemental data in support of the storm sewer design.
- Cover letter from D'Agostine, Levine, Parra & Netburn, P.C., dated 4/7/05, for revised condominium documents, and the affordable housing monitoring agreement.
- Correspondence from Acton Water District Manager to project engineer, dated 4/11/05.

1.4 Interdepartmental communication received from:

- Acton Building Commissioner, dated 12/27/04 with attachments, and 3/17/05;
- Acton Community Housing Corporation, dated 1/13/05;
- Acton Engineering Administrator, dated 1/21/05 and 3/28/05;
- Acton Finance Director's office, dated 12/14/04;
- Acton Fire Chief, dated 1/20/05 and 4/11/05;
- Acton Health Director, dated 12/16/04;
- Acton Historical Commission, dated 12/8/04;
- Acton Municipal Properties Dir. & Tree Warden, dated 12/15/04 and 3/16/05;
- Acton Town Planner, dated 1/21/05 with attachments, 2/17/05, and 4/7/05;
- Acton Police Chief Frank Widmayer, dated 2/25/05;
- Acton Transportation Advisory Committee, dated 1/13/05.

1.5 Correspondence received from abutters and nearby residents:

- Mr. Chip Chapin, 4 Brabrook Rd., dated 2/24/05 and 4/4/04, both with attachments.
- Mr. Tom Lemire, 5 Brabrook Rd, dated 4/8/05.
- Mr. Ed Vrablik, 11 Brabrook Road, dated 2/13/05, and 2/28/05.

1.6 Other:

- Various e-mail correspondence between Town Counsel Stephen Anderson, Town Planner, and the Applicant's legal counsel between 9/30/04 and 3/18/05.
- E-mail from Town Planner to Mr. Dimakarakos of Stamski & McNary, dated 10/29/04.

- Documents of record relating to the status of Brabrook Road as a public way and additional record plans for the area in the vicinity of the Site.
- Letter from Town Counsel to the Acton Building Commissioner, dated 6/11/1998.
- Letter from Town Counsel to the Engineering Department, dated 3/16/1983.
- Ellsworth Village Housing Starts Program Application to MassHousing, dated 6/10/03.
- MassHousing "Site Approval" letter, dated 9/22/03.
- Miscellaneous correspondences, plans, and aerials, dated in 2003, relative a to potential Comprehensive Permit project on the Site.
- Letter from Stamski and McNary, Inc., dated 9/10/04, with three alternative conceptual site plans attached.
- Hearing and decision extension agreement dated 3/22/05.

Exhibits 1.1 through 1.3 are referred to herein as the Plan.

## 2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

2.1 The Site is located within the Residence 8 zoning district, the Affordable Housing Overlay District B, and the Groundwater Protection District Zone 4.

2.2 The proposed use, Senior Residence housing, is allowed on the Site by special permit in accordance with the Bylaw section 9B.

2.3 The Plan shows a 33-unit Senior Residence development with a common septic system on a parcel containing +/-8.31 acres of land. The resulting density of 3.97 units per acre meets the standards of section 9B.

2.4 The Applicant proposes that the required common land remains in private condominium ownership. The common land provides open space benefits to the future residents and the nearby neighborhood but has no town-wide significance.

2.5 Three of the dwelling units are proposed as affordable in accordance with the provisions of the Bylaw, section 9B.12. To adequately meet the needs of low- and moderate income households, it is important that affordable units come in a range of prices and sizes. M.G.L. Ch. 40B sets a 10% affordable housing goal for every community in the Commonwealth. This decision intends to ensure that the three affordable units count and meet local needs.

2.6 Brabrook Road leads through a residential neighborhood of +/-10 single-family homes. A side street, Flagg Road, has 8, or so, homes on it. Brabrook Road is a public way that currently ends in a temporary turnaround with an easement on the lot at 11 Brabrook Road. The public street easement continues for +/-260 feet in an unimproved state.

2.7 The Brabrook and Flagg Roads homes currently use wells for their domestic water supply.

2.8 The Plan shows an extension of Brabrook Road as a public way within the public street easement for primary access to the Site, and the removal of the temporary turnaround. A new suitable turnaround is proposed at the new end of Brabrook Road.

2.9 The Plan shows improvements over the entire length of Brabrook Road including the installation of a sidewalk and water main.

2.10 Ellsworth Village Road does not conform to the standards of the Acton Subdivision Rules and is proposed as private way.

2.11 An emergency access will be provided from Great Road over lot 1C (133 Great Road), which also provides convenient pedestrian access to shops and businesses on Great Road.

The Plan shows pedestrian access to East Acton Village via the end of the Brabrook Road layout and connecting with a sidewalk on the abutting commercial property, and a pedestrian walk will lead to the Town-owned land that abuts the Site in the northwest. Thus, the project provides ample potential for walking to nearby shops and services, between neighborhoods, and to future Town recreation facilities, and thus could reduce automobile travel in the immediate area. To turn their potential into opportunity, the pedestrian connections need to be secured with easements that allow their general public use on foot.

2.12 The Plan shows the removal of several trees and an embankment in the shoulder of Pope Road for sight distance improvements at the Pope Road / Brabrook Road intersection. Pope Road is a designated scenic road under Chapter J of the Town Bylaws which regulates the removal of street trees in scenic roads.

2.13 The proposed construction work on the site and in the adjacent public ways may require blasting. Recent findings show that toxic perchlorate compounds used in blasting are stable in the ground and resurface in nearby drinking water supply wells. The risk has been identified but neither the State nor the Federal Government appear to have regulations on safety standards or exposure limits, yet.

2.14 The Applicant had proposed a +/-750-foot long emergency access road or pathway from the Site to Brookside Shops via Town-owned land. This road is not feasible as proposed and therefore not required. The Board finds that within reasonable cost limits the resources for the pathway should be diverted to providing public water service on Flagg Road.

2.15 The Applicant requested no waivers from the Rules.

2.16 The Board has received comments from various Town departments and other parties, which are listed in Exhibits 1.4 through 1.6 above. The Board considered these comments and comments received at the public hearing The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as the Board deemed appropriate.

2.17 The Plan as amended herein and the proposed uses as approved herein are appropriate for the Site; consistent with the Master Plan; in harmony with the purpose and intent of the Bylaw, specifically Section 9B; comply in all respects to the applicable requirements of the Bylaw and the Rules, and will not be detrimental or injurious to the neighborhood. After considering several alternatives, the Board finds that granting this special permit protects and enhances Acton's New England character, its environmental and historic resources, and scenic vistas; provides common land that benefits the Town, abutters, and the future residents in the proposed development; provides quality housing for seniors with a range of incomes and physical abilities; provides for the safety of vehicular movement, and for the safety and convenience of pedestrians in a manner that is compatible with the Town's New England character and the needs of seniors.

## 3 BOARD ACTION

Therefore, the Board voted on April 26, 2005 – five in favor, one opposed – to GRANT the requested special permit subject to and with the benefit of the following Plan modifications, conditions, and limitations.

### 3.1 PLAN MODIFICATIONS

No building permit shall be issued before the endorsement of the Plan as modified and approved hereunder. Before the endorsement of Plan and before any construction activity begins on the Site, the Plan shall be revised to include the following additional, corrected, or modified information.

Except where otherwise provided, all such information shall be subject to the approval of the Planning Board or its designee.

**Brabrook, Flagg, and Pope Roads**

3.1.1 Provide a Professional Engineer's analysis in accordance with MUTCD, section 2B.05 to determine if traffic or street conditions warrant the installation of the proposed stop sign and stop line on Brabrook Road at Pope Road. If not warranted, remove it from the Plan.

3.1.2 Add an advanced pedestrian crossing sign on the southbound side of Pope Road north of the Brabrook Road intersection. The exact location shall be determined in consultation with the Engineering Department.

3.1.3 For the work on Brabrook Road, specify a sloped granite curb at the Pope Road rounding and around the neck-down opposite Flagg Road as specified in the Acton Subdivision Rules, section 9.5.2, and the pavement & sloped granite edging detail on Plan sheet 6.

3.1.4 On Plan sheet 5 – cross section STA -1+24.65 to 0+52, specify a minimum sidewalk width to 4 feet free of obstructions.

3.1.5 With reference to sheet 5 - cross section STA -1+24.65 to 0+52, add a construction detail and specifications for mounting the guardrail to the pre-cast modular retaining wall, or on the alternate block retaining wall if it is used.

3.1.6 Add Plan drawings and specifications for a water main over the entire length of Flagg Road, subject to the conditions and qualifications stated under Conditions below.

3.1.7 Add a construction detail and/or note that specify that trenches and new pavement joints in all public ways shall be patched using the "grind and inlay method" subject to more detailed specifications to be obtained from the Acton Engineering Department.

**Documents**

3.1.8 Submit a signed authorization for the Town to enter and complete the improvements. (Rules, s. 3.10).

3.1.9 Submit a list of current mortgage holders, if any (Rules, s. 3.11).

3.1.10 Submit a signed fee retainer statement for parcel 1D-2, as outlined in the Acton Subdivision Rules, section 5.2.7.

3.1.11 Submit drafts for permanent easements from the owner of lot 1C (133 Great Road) for the benefit of Ellsworth Village Condominium for:

- The emergency vehicle access over lot 1C as shown on the Plan; and
- The drainage easement shown on the Plan.

3.1.12 Separately, submit drafts for permanent easements from the owner of lot 1C (133 Great Road) and the Applicant for the benefit of the Town of Acton for purposes of:

- Emergency vehicle access between Brabrook Road and Great Road via Ellsworth Village Road and the emergency access over lot 1C; and
- Public pedestrian access between Brabrook Road and Great Road via Ellsworth Village Road and the emergency access over lot 1C, and between Brabrook Road and the Town-owned land abutting the Site in the Northwest via Ellsworth Village Road.

3.1.13 Add to the Ellsworth Village Condominium Master Deed and Bylaws appropriate provisions for the condominium's responsibility to mow, plow, and otherwise maintain in a safe walkable condition the emergency access over lot 1C and the "Walkway to Property Line" between Ellsworth Village Road and the boundary of the abutting Town-owned land.

3.1.14 Add in conspicuous locations of to the Ellsworth Village Condominium Master Deed and Bylaws that all uses of the land in Ellsworth Village shall comply with the Town of Acton zoning bylaw and this Senior Residence Special Permit.

**Affordable Dwelling Units – Documents**

3.1.15 In the condominium master deed and all legal documents related to the affordable units, specify which unit numbers will be the designated affordable units. Note, that the Board under conditions below is requesting an upgrade/relocation of one of the affordable units.

3.1.16 In the condominium master deed and all legal documents related to the affordable units, specify that the affordable units shall be sold to income eligible persons or households that meet the age restrictions of the master deed.

3.1.17 In the condominium master deed specify the percentage in ownership of the affordable units in the condominium reflecting the units' restricted sale and re-sale prices, and specify that the condominium fees shall be assessed proportionately to the units' percentage in ownership. Accordingly, votes in the decisions of the condominium association shall also be based on the percentage in ownership.

3.1.18 In the condominium master deed and all legal documents related to the affordable units, specify the local preference criteria for the sale and re-sale of the affordable units in accordance with section 9B.12.7 of the Bylaw, which the Acton Community Housing Corporation may be further defined from time to time.

**Miscellaneous**

3.1.19 On the Record Plan sheet, correct the ownership designation for the Town-owned parcel.

3.1.20 Provide detailed sub – and total area calculations for the common land and the wetlands and drainage facilities within it, to prove beyond reasonable doubt that the common land meets the area requirement of the Bylaw. If necessary, make Plan adjustments to comply.

3.1.21 Modify the landscape Plan sheet to show evergreen screening in the rear of units 16, 17, and 18 as the Applicant had indicated during the public hearing.

3.1.22 Remove from all Plan sheets the water line that runs from the cul-de-sac easterly across open space easement A to the Site boundary.

3.1.23 Relocate the proposed "Walkway to Property Line" to a place nearest to the southerly corner of the abutting Town of Acton land, such as between units 27 and 28. Specify that it shall be constructed with a paved surface. Add a cross section for this walkway, generally equivalent to the typical sidewalk cross section on Plan sheet 6.

3.1.24 On Plan sheet 6 - pavement & sloped granite edging detail, change curb reveal to 6 inches.

3.1.25 Remove the stop sign and pavement markings at the end of Ellsworth Village.

3.1.26 On Plan sheet 4 correct note 1 to reference parcel 1D-1 instead of 1D.

3.1.27 Add construction specifications and a cross section for the emergency access. It shall be at least 18 feet wide, including gates (see detail on Plan sheet 7). Its surface shall be finished with grass pavers. Add signage as may be required by the Acton Fire Chief.

3.1.28 Add as general notes on Plan sheet 7 the construction activities restrictions stated in section 3.3.1, under Conditions, below.

3.1.29 The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the Rules, and to address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

## 3.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

**Restrictions on Construction Activities**

3.2.1 The following restrictions on construction activities shall apply:

- Construction for all work shown on the Plan shall be limited to the hours between 7:00 AM and 5:00 PM Monday through Friday. Work on the Site itself, but not in any public way, may also be conducted between 9:00 AM and 4:00 PM on weekends.
- Blasting, if necessary, shall be limited to the hours between 9:00AM and 5:00 PM Monday through Friday.
- Construction and contractor vehicle access to the Site shall be restricted to the emergency access route via 133 Great Road shown on the Plan. Construction and contractor vehicle access via Brabrook Road shall be prohibited, except for work actually performed on Brabrook, Flagg, and Pope Roads as approved hereunder and except for extra large vehicles that cannot safely negotiate the access from Great Road.

**Performance Guarantee**

3.2.2 Prior to the endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee pursuant to section 6 of the Acton Subdivision Rules to secure the construction of Ellsworth Village Road, the improvements in Brabrook Road, Flagg Road, and Pope Road, the pedestrian facilities, the emergency access, and all appurtenances thereto, all as shown on the approved Plan, and the conveyances to the Town required herein. If the performance guarantee is first provided as a restrictive covenant, the Applicant shall provide a monetary performance guarantee under said section 6 for all improvements within Brabrook, Flagg, and Pope Roads before beginning any work there. The Board reserves the right to require additional performance guarantees or to further specify their form for any and all items and improvements shown on the Plan.

**Brabrook, Flagg, and Pope Roads**

3.2.3 Before any work shall begin in any public way, the Applicant shall obtain a permit for construction within a public way from the Acton Engineering Department and coordinate the timing of the work with the Acton Highway Department.

3.2.4 All work in public ways shall comply with the Town of Acton "Specifications for Regulating Construction within Public Ways", except as otherwise specified or approved herein.

3.2.5 The Applicant shall keep residents on Brabrook and Flagg Roads informed of the construction schedule for work in these streets, and of any changes that may occur.

3.2.6 Before removal of any public shade trees within Pope Road for purposes of improving sight distance, follow the procedures for posting, notification, and hearing as specified in Chapter J (Scenic Road Bylaw) of the Town of Acton Bylaws.

3.2.7 Upon completion of all work, and prior to the release of the last $100,000 of performance guarantee, the Applicant shall donate to the Town all the improvements he has made in Brabrook Road and in parcel 1D-2 (except water and utility lines) along with proof that any mechanics liens for such work have been released.

3.2.8 The responsibility for plowing and maintaining the improvements in Brabrook Road extension shall be that of the Applicant until such time as they are completed to the satisfaction of the Town and formally conveyed to the Town, including parcel 1D-2. Following its acceptance of the streets, the Town's maintenance responsibilities will follow standard procedures for Town streets and ways and shall be limited to the improvements located within the street layouts and associated with their function as a street, and to any improvements associated with street drainage located within designated utility easements. The maintenance of all private utilities and services located within or outside the street layout or said easements and of any private drainage facilities feeding into drainage structures within the street layouts or easements shall not be the responsibility of the Town.

**Affordable Dwelling Units**

3.2.9 Units 11, 17, and 22 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.

3.2.10 Two of the affordable units shall be sold and resold to qualified persons or households with incomes at or below 80% of the Boston Area Median Income for two-person households, and one unit shall be sold and resold to age qualified persons or households with incomes at or below 70% of the Boston Area Median Income, at prices that allow these income groups to purchase the units in accordance with the Department's of Housing and Communities Development (DHCD) Local Initiative Program (LIP) guidelines and to qualify these affordable units a part of Acton's affordable housing stock under M.G.L. Ch. 40B.

3.2.11 The affordable units shall be sold and re-sold in accordance with the local preference criteria of the Bylaw, section 9B.12.7, which the Acton Community Housing Corporation (ACHC) may further define from time to time.

3.2.12 The affordability restrictions for the three designated affordable units shall remain in effect in perpetuity except in the event that at the time of resale no qualified buyer can be located within 180 days after a unit is first marketed, or such extended time as the seller and the monitoring agent may agree to. In such an event the conditions of the regulatory agreement for the unit shall take effect and any proceeds of the sale of the unit in excess of the restricted sale price shall be paid to the Town of Acton for purposes of supporting other affordable housing initiatives in Acton.

3.2.13 The Board hereby names the Town of Acton or its designee, the ACHC, as the monitoring agent for the sale and resale of the Site's affordable units on the Site.

3.2.14 All draft legal documents and restrictions concerning the affordable dwelling units may be further modified to ensure compliance with the Department's of Housing and Communities Development (DHCD) Local Initiative Program (LIP) guidelines and to qualify these affordable units a part of Acton's affordable housing stock under M.G.L. Ch. 40B. Such changes, if any, shall be made only under the direction and subject to the approval of the ACHC, which the Board hereby names as its designee in this matter.

**Hotline**

3.2.15 The Applicant shall establish a construction telephone hotline and inform all parties in interest within the Town of Acton (as specified in the Rules) and all residents on Brabrook and Flagg Roads of the hotline number to call for questions, concerns, and complaints. The applicant shall reply to such inquiries within a reasonable time.

**Ellsworth Village Road – Private Way Restriction**

3.2.16 Ellsworth Village Road shall remain a private way. The Ellsworth Village Condominium and the owners of units 1 through 33 shall be jointly responsible for plowing, sweeping, and

otherwise maintaining Ellsworth Village Road, including all related infrastructure. The Ellsworth Village Condominium or the owners of units 1 through 33 shall not petition the Town to plow, sweep, or maintain Ellsworth Village Road and shall not petition the Town for acceptance of Ellsworth Village Road as a public way.

**Accessibility**

3.2.17 All dwelling units shall be built to be adaptable with only minor structural changes for persons with disabilities to meet the requirements for Group 2B residences as set forth in the Massachusetts Building Code, 521 CMR, as amended.

**Blasting**

3.2.18 If blasting is required for any of the work shown on the approved Plan, the applicant shall strictly follow the regulations and instructions of the Acton Fire Department.

3.2.19 If perchlorate compounds will be used in the blasting process, the Applicant shall offer all immediate abutters of the Site, and, in the event that blasting is required on Brabrook, Flagg, and Pope Roads, all residents on Brabrook and Flagg Roads and residents abutting the blasting location on Pope Road, a pre-blasting screening of their domestic well water for ammonium perchlorate and other perchlorate compounds. Prior to conducting the blasting, the Applicant shall pay each such abutter or resident who agreed to a pre-blasting test, the cost of a post-blasting test which they may conduct at the time of their choosing. The post-blasting payment is waived for any abutter who ties into the newly installed water main.

3.2.20 If perchlorate compounds will be used for blasting work in Brabrook, Flagg, and Pope Roads, the insurance requirements in the "Specifications for Regulating Construction within Public Ways" shall be expanded to indemnify the Town for a period not less than 10 years against claims for injury, death, or property damage due to any perchlorate contamination of domestic water supply wells that may result from the blasting activity.

**Common Land**

3.2.21 All common land areas shall remain in their natural state and remain undisturbed during and after construction except as shown on the Plan.

3.2.22 The common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall not be reduced in area.

3.2.23 No portion of the common land shown on the Plan and approved hereunder, including any portion in excess of minimum zoning requirements, shall be used to meet area, setback, or any other zoning requirements for any other development or improvement not shown on the Plan, specifically, it shall not be used to support additional dwelling units or house lots.

**Recording of Plans and Documents**

3.2.24 This Decision, Plan sheets 1 and 2 (general site layout/master plan and record plan), and the emergency access and drainage easements benefiting the Ellsworth Village Condominium as required herein shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

**Streets and Easements to the Town**

3.2.25 In all conveyances, the Applicant shall retain the right to convey to the Town of Acton the emergency and public pedestrian access easements as specified herein, and parcel 1D-2.

3.2.26 Upon completion of all work, and before release of the last $100,000 of performance guarantee, the Applicant shall offer the Town of Acton for acceptance by Town Meeting parcel 1D-2 for street purposes and the emergency and public pedestrian easements required herein.

**Miscellaneous**

3.2.27 The proposed pathway from the Site to Brookside Shops on Town-owned land, or any variation thereof, shall not be constructed.

3.2.28 Instead, and subject to the approval by the Acton Water District and the issuance of a Town of Acton permit for construction in a public way, the applicant shall install a water main on Flagg Road. The Board reserves the right to waive this requirement without further public notice, if the Applicant can prove to the Board's reasonable satisfaction that the cost of the water main installation on Flagg Road exceeds the cost of the pathway to Brookside Shops as proposed by a factor of 1.25. Pavement patching of the trench shall follow the "grind and inlay method" required under section 3.1.7 above.

3.2.29 All outdoor lighting installations on the Site shall comply with the standards set forth in section 10.6.2 of the Bylaw.

3.2.30 No work on the Site shall begin prior to the endorsement of the Plan.

3.2.31 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way, or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

3.2.32 The installation of the common septic system shall be made in compliance with Acton Board of Health requirements.

3.2.33 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.

3.2.34 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.

3.2.35 The number of dwelling units on the Site shall not be increased above the number shown on the Plan and approved hereunder.

3.2.36 All work on the Site shall comply with the terms of this special permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.

3.2.37 Upon completion of all work, submit to the Board an as-built plan and a Professional Engineer's certification that all work and construction was executed in compliance with the approved Plan.

3.2.38 If applicable, all taxes, and penalties and back charges resulting from the non-payment of taxes, shall be paid in full prior to issuance of a building permit.

## 3.4 LIMITATIONS

The scope of this special permit is limited as follows:

3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.

3.4.2 This special permit applies only to the Site identified in this decision and to the proposed improvements, use, and activity as shown on the Plan.

3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies, or bodies having jurisdiction shall not be assumed or implied by this decision.

3.4.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading of at least one street or way as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than one year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

## 4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Bowen, Town Clerk Date

Copies furnished:

| | | |
|---|---|---|
| Applicant - certified mail # | Building Commissioner | Health Director |
| Town Clerk | Engineering Administrator | Municipal Properties Director |
| Fire Chief | Conservation Administrator | Town Manager |
| Owner | Police Chief | Acton Water District |
| | Historical Commission | Assistant Assessor |

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