



Planning Department

TOWN OF ACTON

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MEMORANDUM

To: Planning Board **Date:** January 21, 2005
Revision Date: April 7, 2005

From: Roland Bartl, AICP, Town Planner *R. Bartl*

Subject: **Ellsworth Village** – Application for Senior Residence Special Permit
Review of Revised Plan (March 1, 2005) and of Additional Materials (in bold)

Location: Off End/ Brabrook Road
Applicant: Ellsworth Village, LLC (James Fenton & Michael Jeanson)
Address: PO Box 985, Acton MA 01720
Owner: 125-135 Great Road Realty Trust (Robert R. Moran, Richard B. Warren)
James Fenton
Michael Jeanson

Engineer: Stamski and McNary, Inc.
Units: 33 Proposed Units (3 affordable)
Street: Brabrook Road
Street Length: 1050 +/- proposed
Map/Parcel: F-4/69 & F-5/40
Zoning: R-8, Affordable Housing Overlay Sub-district B
Hearing Dates: 1/25/05, **2/22/05, 3/22/05 (w/o discussion)**
Decision Due: 4/25/05, **extended to 4/28/05 (vote on meeting of 4/26)**

Attached for your review are the plan and application for the "Ellsworth Village" senior housing special permit, and comments from other Town departments, committees, and agencies.

Planning has reviewed the plan and the application and offers the following comments:
Revised and additional comments are in bold print below.

Access:

(See also: 1. traffic impact study by David J. Friend Transportation Planning Services.
2. Transportation Advisory Committee Comments.)

During the preliminary discussions with the proponent, the Planning Board expressed a preference for Brabrook Road to serve as primary access to the development, with emergency access provided from Great Road, and direct pedestrian connections into East Acton Village and perhaps to Brookside Shops.

1. Brabrook Road is a public way, but Town ownership takes three different forms (see also several attached historic plans and documents):

- a. The Town owns fee-simple the improved portion from Pope Road to the end of pavement at lot 8 (house #10) Brabrook Road on the left. No issue or question here.
- b. The Town owns a right-of-way easement in the layout of Brabrook Road, which extends for +/-250 feet beyond the end-of-pavement and along the property of the applicant for Ellsworth Village. With an easement, the fee in the layout is owned by someone else. In this case, it appears from our records that the fee is owned by the owners of lots 8 and 9, house #s 10 and 11 Brabrook Road respectively, each to the middle of the layout for the length that they abut it. A third owner might be quite possibly the original developer for the portion of the layout that abuts the Ellsworth Village proper – Arthur Dunphy and Robert McGarigle. The Ellsworth Village proper was not part of the original "Acton Heights" subdivision that created Brabrook and Flagg Hill Roads, and the deeds we have do not seem to convey any ownership right to it. However, we do not have a complete chain of title here. The applicant will have to research this at the Registry of Deeds.

The fact that the Town owns as a right of way easement and not as fee simple the unimproved portion of the Brabrook Road layout has implications on how the applicant can use and improve it. I refer you to Town Counsel's e-mail correspondence of 10/27/04, which is attached. In short, the easement gives the Town (but not the applicant) the right and authority to construct a street. The applicant has the right to build an access driveway (as currently proposed on the plan) only if he owns the entire underlying fee in the layout. If the Town extends the street (or contracts the work out to someone else) procurement rules that apply to the Town come into play. Ownership and control of the proposed improvements in the layout also affects potential liabilities later on. The applicant (or his attorney) should propose a method by which to create the access from Brabrook Road in a manner that resolves these complications and addresses these concerns. We would then check with Town Counsel as needed.

If the extension of Brabrook Road will be a public street rather than a driveway, the applicant's engineer will have to fully meet the technical street design requirements as set forth in the subdivision rules, including a location for a turnaround.

- c. The town owns a temporary right-of-way easement in the turn-around at the current end of Brabrook Road in front of house #11. Under the State Subdivision Control Law, this easement reverts to the adjacent land owner if the street is extended. In that case the turn-around should be removed. But, if the applicant establishes the right to build just a private driveway in the layout, then the turn-around would conceivably remain as is.

(4/7/2005) Questions regarding the ability and right of access via Brabrook Road have now been resolved definitively. Brabrook Road extension is a street easement that the Town owns for all purposes for which street are used in the Town. The applicant does not own the underlying fee. The applicant has the right to use the street easement for access, subject however to terms and conditions by the Town affecting its construction.

The Planning Board, with the assistance of departmental reviews, is best positioned to determine appropriate and necessary construction standards, which it should do in its decision if it grants the special permit. The actual work would then still require a "permit to construct in a public way" following the procedures that the Town has outlined for such permits. This "street cut permit" (in short) is under the authority of the Board of Selectmen in their role as Street Commissioners, but the permit is generally an administrative matter handled by "the Town Manager or his designee".

Once completed, the applicant should formally give all the improvements within the Brabrook Road extension to the Town.

The Plan now shows a new turn-around at the end of Brabrook Road that meets the practical needs of the Town's Highway Department to turn snow plows at the end of a public way, a function that existing temporary turnaround could no longer fulfill. To minimize wetlands impacts, the turnaround would be located on land presently owned by the applicant (see parcel 1D-2), which should eventually be divided from the main tract via an ANR plan and then given to the Town for street purposes along with the improvements thereon. The plan now appropriately specifies the removal of the existing temporary turnaround.

2. Brabrook Road safety improvements:

- a. The applicant proposes to add a sidewalk for the entire length of Brabrook Road. This is appropriate mitigation.
- b. The pavement of Brabrook Road appears wider in parts than necessary even with the insertion of the proposed sidewalks – up to 26 feet. The Subdivision Rules require 22-24 feet. A narrower street should be considered as this tends to discourage speeding.

(4/7/2005) No change in width shown.

- c. There is sufficient width in the Brabrook and Flagg Hill Roads layout to reconfigure their intersection for additional "traffic calming" as shown on the attached sketch, possibly with a "stop" for Brabrook Road traffic. This would be an alternative option to the traffic impact study recommendation. The applicant's traffic engineer should evaluate and prepare a preliminary design of this option for further review.

(4/7/2005) This adjustment is shown on the revised plan. This effectively makes Flagg Road and Brabrook Road to Pope the main street, and the rest of Brabrook the side street. The applicant's traffic P.E. should review the revised intersection and prepare a warrant to determine if a stop sign and line is warranted for the side street. A yield sign may be sufficient.

3. Brabrook/Pope Road intersection improvements:

- a. The applicant proposes to improve sight distance for Pope Road traffic approaching Brabrook Road by regarding the west-side shoulder of Pope Road and removing several trees. Improving sight distance in this location is appropriate mitigation. Pope Road is a scenic Road. Removals of public trees and stone walls require a joint hearing of the Planning Board and the Tree Warden.
I would not agree with TAC comments on this point. Lack of sight distance is a safety issue that cannot be mitigated with a raised crosswalk. The TAC recommendation could possibly be an additional modification to the Brabrook Road/Pope Road intersection, but not as a substitute for a raised crosswalk at Bayberry Road. The raised crosswalk design at Bayberry Road is a recommendation in the EAV plan as an "entrance" feature into the Village. Brabrook Road is further from the village.
- b. The applicant proposes a stop sign for traffic exiting Brabrook Road onto Pope Road. This is appropriate mitigation, but the stop line could be moved forward a bit, which might in itself enhance sight distance.

(4/7/2005) The stop sign/line has been moved as recommended. We have received and forwarded to the Board two series of photographs by Mr. Chapin on the subject of sight distance. The Town's Engineering Department staff has revisited the location, took further measurements, and has concluded that the sight distance improvements as proposed by the applicant would be adequate.

4. As an additional and appropriate mitigation I recommend that the applicant install a sidewalk along the Pope Road west side from Brabrook Road to connect with the existing sidewalk at the first commercial driveway in EAV near Great Road. See also TAC recommendation. The scenic road bylaw will apply.

(4/7/2005) Not shown on revised plan. The plan now shows a pedestrian connection from the end of Brabrook Road extension into East Acton Village and a crosswalk on Pope Road connecting the new sidewalk on Brabrook to the Pope Road sidewalk on the other side. The Board might perhaps consider that to be adequate pedestrian accommodation – or not.

5. As proposed, the length of the single access way into Ellsworth Village is substantial and in addition to single-access Brabrook Road. The number of dwelling units on a single access would also be significant. By both measures, the proposal would exceed the Acton Subdivision Rules, which are referenced as a guide for the construction of ways in a senior residence development (ZBL section 9B.13). As mitigation for this deficit, the applicant should provide an emergency access to Great Road, presumably via lot 1C as shown on the record plan. The Planning Board gave this direction to the applicant during preliminary consultations in the fall 2004. This access should also be available for general public non-motorized use.

(4/7/2005) The emergency access is now shown. I concur with Engineering Department's recommendation for an easement to ensure the Town's interest and right in the emergency access. The easement should also include the right for pedestrians to pass and re-pass.

6. The Planning Board last fall also directed the applicant to seek agreement with the owners of Wetherbee Plaza to install direct pedestrian access from the end of the Brabrook Road layout to the Wetherbee Plaza in East Acton Village. The site plan approved for Wetherbee Plaza incorporates pedestrian accommodations to make this connection. The application now before the Board does not address this. In my opinion this pedestrian connection is more important and more consistent with Acton planning objectives than the proposed pedestrian connection to the Brookside Shops.

(4/7/2005) The pedestrian access is now shown on the revised plan, primarily in form of a boardwalk due to the presence of wetlands.

7. The applicant proposes a pedestrian access to Brookside Shops across Town land. There exist a number of restrictions on the Town-owned land and on the easements for access to that land from Great Road, which cast some doubt on whether or not the pedestrian access is allowed as proposed. To resolve this matter, the Board of Selectmen and the owner of Brookside Shops should be consulted. At this time it may be simpler to just build the access to the border of the Town land and let the future development of a recreation facility on it take care of the rest. With future ball field development in mind, the access to the Town land would be better located between street numbers 12 and 14, so that it can tie into other recreation access facilities along that side when the Town constructs them.

(4/7/2005) I have looked into this matter further and can offer a slightly changed recommendation, here. A 5-foot recreational pedestrian path should be pursued in the location suggested previously (between house #'s 12 and 14), and follow along the westerly edge of the Town-owned land to Brookside Shops. This recommendation is subject to the following: (a) the trail should be open to the general public to walk back and forth between Brabrook Road and Brookside Shops; and (b) the trail needs the consent of the Board of Selectmen. There is no need consult with the owner of Brookside Shops.

As originally shown, the path was cutting up the land that the Town might use in the future for recreational fields. Also as originally shown, it resembled an emergency

vehicular access, which raised the prior legal questions since the Town's land is restricted to recreation and conservation use. The emergency access is now shown in a better location.

Affordable Units

(please see the various draft documents in the application and comments from the Acton Community Housing Corporation (ACHC))

8. A brief scan (no detailed review was conducted in Planning) of the draft application materials related to the affordable units reveals familiar LIP (Local Initiative Program) documents. I therefore share the ACHC's assumptions that the affordable units are proposed as LIP or LIP Elderly Exception units and recommend that the LIP compliance will be a special permit condition so that the units may count towards the Town's DHCD-recognized affordable housing stock.

(4/7/2005) The applicant's attorney has made proposed revisions to the master deed and regulatory agreement that appear to address the ACHC comments adequately. They related to affordability levels (2 units at or below 80% if median income, 1 unit at 70% or below), inclusion of the LIP Elderly Exception Program as optional, monitoring agent fees, etc. If the project is approved, the special permit should condition compliance with these aspects and all other elements needed to ensure that the three affordable units count towards the Town's 10% goal under M.G.L. Ch. 40B and remain affordable in perpetuity. In addition such condition should designate the ACHC as the monitoring agent, spell out the local preference criteria and should be flexible enough to allow final adjustments to the master deed, regulatory agreements, deed riders, etc. as necessary to achieve the stated goal.

9. The distribution of the affordable units should be indicated on the plan (ZBL 9B.12.6).

(4/7/2005) The revised master plan sheet indicates the proposed location of the affordable units consistent with the request by the ACHC.

10. The zoning bylaw requires that 65% of the affordable units be marketed initially to income eligible Acton seniors unless otherwise regulated by the State or the Federal Government (ZBL 9B.12.7). Can the applicant comply with the 65% rule?

(4/7/2005) The applicant has confirmed. The ACHC in their original comment letter has suggested more detailed local preference criteria that seem to be consistent with the bylaw requirement.

11. I recommend that the Planning Board appoint the ACHC to act as the Town's monitoring agent subject to the agent fees suggested in the ACHC comment letter.

(4/7/2005) See new comments under 8. above.

12. The proposed number of three affordable units meets the minimum requirement of the zoning bylaw. It would seem rather appropriate to ask the proponent if one or two additional affordable units could be provided.

(4/7/2005) The applicant has responded that 3 units will be all he wishes to set aside as affordable, which is the minimum bylaw requirement.

Condominium Master Deed

13. The age restriction (p. 7 of draft deed) should be revised to allow up to two children, whose parents are deceased or are otherwise incapacitated to perform their parental functions, to reside with their grandparents at Ellsworth Village without a limitation on time. A tragedy

should not be the cause for additional hardships such as eviction or separation of families.
(see also ZBL section 9B.11)

(4/7/2005) The proposed master deed has been amended accordingly..

14. In some spots the draft refers to "Summerfields" Condo matter, a carry over from another project by the developer that should be corrected.

(4/7/2005) I have not checked for this but assume this has been corrected.

15. The condominium master deed should be modified to include a common land restriction for open space easements A, B, and C that is consistent with sections 9B.9.2 and 9B.9.3 of the zoning bylaw and section 3.7 of the applicable special permit rules.

(4/7/2005) Done.

Condominium Bylaws

16. The condominium bylaws should allow the exterior modification of dwellings for solar power and heating installations with approval powers by the Board of Governors only to address reasonable design and quality issues, but not over whether or not such improvements are allowed.

(4/7/2005) Done.

Zoning Bylaw Compliance Check (for items not covered above)

17. The units do not comply with ZBL section 9B.10 to be adaptable for persons with disabilities.

(4/7/2005) This bylaw requirement is enforceable at the point of issuance of building permits. No other assurances are necessary at this point. The special permit, if granted, should carry a condition to that effect as a reminder.

18. It appears that in one location (unit 6 / #11) the standard required 15-ft. building setback to Ellsworth Village Road is not met (see ZBL 9B.5.3). The Planning Board may waive the dimensional standards where additional affordable housing is provided as is the case in this proposal (ZBL 9B.12.3.4).

(4/7/2005) Change was made to comply with the 15-ft. requirement.

19. The use description in the application should be expanded to address the proposed uses of the common land and the village house in general terms to meet intent of ZBL section 9B.9.2.1.

(4/7/2005) Done.

Other

20. All outdoor lighting, whether proposed on the plan or added in the future should comply with the applicable requirements of section 10.6 of the zoning bylaw. Outdoor lighting details should be shown for luminaries that are regulated by section 10.6.

(4/7/2005) Still nothing indicated on the plan. However, this can be a condition. The zoning bylaw does not regulate residential lighting around homes. This development should be treated alike. However, should there be street lights or other luminaries with more lumens than the standard residential type lighting; it should meet the standards of section 10.6.

21. A performance guarantee as required in the Acton Subdivision Rules is recommended for proposed Ellsworth Village Road, including drainage facilities, and for the access improvements that the Planning Board may require in the special permit.

22. The letter authorizing the Town to enter and complete the work should be modified so that the proponent can sign it now, as has been the case in most other projects before the Board. I do not wish to have to chase it later.

(4/7/2005) Revised but not signed.

23. The landscaping plan needs refinement and a L.A. stamp.

(4/7/2005) Now stamped. Tree Warden has reviewed landscape plan and found it appropriate and adequate.

(4/7/2005)

24. The ownership of the Town's parcel on the north side is incorrectly shown as that of Esterbrook Road LLC.

25. The Board might ask the applicant if primary construction site access could be established via Great Road 2A. Otherwise, travel of construction vehicles on Brabrook Rd. should be limited to reasonable hours during weekdays, say 7:00 AM to 6:00 PM.

26. There was mention at the last hearing about intermittent stream not shown on the plan. The Town's Natural Resources Director has informed me that the intermittent stream is contained within the wetland shown on the plan and is therefore properly identified.

27. I have reviewed the common land calculations (Land Use Data on Master Plan Sheet) and found that the calculations were done correctly. The P.E. and L.S. stamps on the plan certify that the numbers are correct.

Cc: Applicant
Town Manager
Engineering Department

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